

Key Facts Foundations

The Bahamas introduced its foundation law in 2004, following a detailed review of the foundations laws in other jurisdictions. The drafters of the Bahamas foundations legislation took into account the specific requirements of civilian clients and their need to exercise a degree of control which trusts may not permit.

Foundations have been used for the past 100 years. Their use in international tax and asset protection planning started in Liechtenstein in the late 1930s, moved to other European countries in subsequent years and more recently to Panama and the Netherlands Antilles. Their most active initial use was to provide protection for assets as well as confidentiality during the Second World War. Foundations have since become well-known and acceptable in many civil law jurisdictions, especially those located in Europe and Latin America, where trusts are less well known.

Uses of Foundations

Common uses for foundations include:

- Tax and estate planning
- Asset protection planning
- Maintenance of corporate control
- Assistance to charities
- Separation of voting and economic benefits in investment holding companies
- Ownership of private trust companies
- Operation of employee share option schemes
- Holding assets off-balance sheet in connection with the securitisation of mortgage

Legislation Summary

- The foundation is a registered legal entity. Assets placed within the foundation are solely owned by the foundation.
- Bahamas anti-forced heirship rules apply to transfers to a foundation.
- The foundation can be established either for an indefinite or fixed period.
- The foundation can be established for charitable, commercial or private purposes.
- The Founder can be an individual, a corporation or a Nominee.
- The establishment of the foundation becomes effective after all registration formalities have been completed.
- The Founder may reserve certain powers. Alternatively, the law provides for the foundation to have a Protector in whom powers can be vested in the event that a Nominee Founder is used.
- One natural person must also be appointed as an Officer of the foundation in addition to its Secretary.
- A Foundation Council, or an alternative supervisory or governing body/person, including a Protector, can be appointed.

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- Vested Beneficiaries of a foundation must be notified of their interest and will be entitled to request information from the Officers of the foundation.
- Proper records and accounts must be kept by the Officers of the foundation which can be inspected by an Officer, Foundation Council Member, Founder, auditor or any other supervisory person (e.g. Protector) at any time.
- Confidentiality provisions restrict any person acquiring information in his capacity as an Officer, Protector, Council Member, attorney or auditor of the foundation from disclosing information relating to the foundation without the express consent of the Founder and Beneficiaries.
- The foundation has the ability to re-domicile to and from the Bahamas.

Foundation Registration

- The registration process is comparable to that for a Bahamas company.
- The foundation is registered with the Registrar General Office.
- The name of the foundation must first be reserved at the Registrar prior to the submission of the necessary documentation. The Registrar will confirm that the foundation name is valid for use and has been reserved for a period of 90 days.
- After the foundation name has been reserved the required documentation must be submitted to the Registrar.

Required Documentation for a Foundation

- An application for registration
- A statement signed by the Secretary of the foundation or any attorney engaged to form the foundation which contains extracts from the Charter of the foundation as follows:

- Name of the foundation
 - Date of Charter and Articles (if any)
 - Summary of the foundation's purposes
 - Name and address in the Bahamas of the foundation for service of documents
 - Name and address of the Secretary
 - Name and address of the Foundation Council
 - Address of Registered Office
 - Value of initial assets, and
 - Period for which the foundation will be active
- A list of the name(s) and address(es) of the Officer(s) of the foundation
 - A statutory declaration certifying to the Registrar that:
 - The Foundation Charter contains a statement that the value of the assets of the foundation may not be less than US\$10,000 or the equivalent in any other currency.
 - All of the requirements of the Foundations Act in respect of the registration of the foundation have been complied with.

The Foundation Charter or Articles may, but need not, be filed with the Registrar to complete the registration process.

After the documentation is accepted by the Registrar, a Certificate of Registration will then be issued specifying the name and number of the foundation and stating that the foundation has been registered in accordance with the provisions of the Foundations Act, 2004. At that stage the foundation will be regarded as a registered entity and can carry on its business as outlined by the Charter.

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