THE BAHAMAS FOUNDATION
AN OVERVIEW
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HISTORY OF THE FOUNDATION

Foundations have been available in civil law countries since their origination in Liechtenstein in the late 1930s. As the outbreak of a Second World War loomed nearer, the Foundation was created for the express purpose of providing a confidential and secure structure for safeguarding family and business assets in a time of great uncertainty.

Following the end of the war, the use of Foundations quickly spread to other European civil law countries. More recently, the Foundation has become an established wealth management structure offered in Panama and the Netherlands Antilles. As a result of The Foundations Act, 2004, the Foundation is now available in The Bahamas.

Foundations are now recognised and accepted in most civil law jurisdictions. They are widely used in Europe and Latin America where trusts are less well-known, frequently misunderstood and not always accepted.

COMMON USES OF A FOUNDATION

Foundations are most commonly utilised under any one or number of the following circumstances:

1) the holding and management of assets;
2) estate and tax planning;
3) asset protection;
4) preserving family wealth;
5) segregation of assets; and
6) establishing charities.

There are many purposes where Trusts and Companies are utilised for which a Foundation could also be used. Where a company is considered the most practical structure...
for a specific purpose, it is sometimes beneficial to set
the company up as a subsidiary of a Foundation.

A Foundation must be registered with the Registrar of Foundations
and a Certificate of Registration must be issued in order for
the formation formalities to be completed.

Where a Foundation is established by a will the Act provides
procedures to ensure the proper registration and endowment
of the Foundation.

**COMPARISON BETWEEN A FOUNDATION AND
A COMPANY OR TRUST**

Essentially, a Foundation is a hybrid between a company
and a trust having several aspects in common with one
or the other.

For example:-

1) Like a company but unlike a trust, a Foundation
may enjoy unlimited duration.

2) Like a trust but unlike a company, a Foundation
has beneficiaries and can also have a protector.

3) Like a company but unlike a trust, a Foundation
must be registered and have a registered office.

4) Like a trust but unlike a company, a Foundation
can be established by will.

5) A Foundation must have initial assets of a value
of not less than US$10,000, whereas there is
no such minimum prescribed for trusts or
companies, although, in practice, all three entities
would probably have assets well in excess of
US$10,000, if not initially, then most likely when
activated.

6) A Foundation would normally have a foundation
council, some of whose duties would be similar to
those of a trustee or the directors of a company.

Instead of a council, a Foundation may have
some other governing body or supervisory
person, such as a protector. A Foundation must
have a secretary and may also have other officers
which a company would also normally have.

While a company must have articles of association,
a Foundation is not required to have articles,
although it may do so. In the absence of articles
all provisions concerning the conduct and operation
of a Foundation would normally be included in
its charter or, where appropriate, a Foundation
would simply rely upon the provisions contained

Like a trust or an international business company
(“IBC”), a Foundation may redomicile in another
jurisdiction and a foundation established in
another jurisdiction may redomicile in the Bahamas.
The statutory provisions are similar to those for
an IBC.

Like a trust, which may include in terrorem
provisions in its trust instrument, a Foundation
may include such provisions in its charter.

Like a trust, a Foundation may include a restriction
against alienation in any instrument of disposition
to a beneficiary.

Like a trust, a Foundation may be used to avoid
forced heirship in other jurisdictions.

Like a trust, a Foundation may be used for asset
protection purposes, being able to qualify in the
same way as a trust under the Fraudulent
Dispositions Act.

The reservation of extensive powers by the founder
of a Foundation would be less likely than the
reservation of extensive powers by the settlor of a
trust to result in same being considered by a
court to be a sham.

Like a trust or a company, a Foundation would be
subject to the provisions of the Financial Transactions Reporting Act, so it will be important to conduct careful know-your-customer (KYC) due diligence to ensure only desirable clients use Foundations for satisfactory purposes.

REGISTERING A BAHAMIAN FOUNDATION

Foundations are registered with the Registrar General under a process very similar to that of registering a company in The Bahamas.

An available name must be confirmed with the Registrar General who will reserve it for a 90-day period within which time the necessary documentation and registration fee will need to be submitted.

The following restrictions apply when selecting the name for a Foundation:

i) the words “limited”, “company”, “partnership” or the abbreviation of any translation (or its abbreviation) of these words;

ii) the name of an existing Bahamas company, partnership or Foundation unless it is in the process of being liquidated or it has given its consent to the Registrar for the name to be used;

iii) the name of a registered business in The Bahamas, registered under the Registration of Business Name;

iv) a name that the Registrar finds constitutes a criminal offence or is offensive to the public; or


In addition, the words “Royal”, “Imperial”, “Windsor”, “Crown”, “Bahamas”, “Municipal”, “Chartered” and similar words will need special approval from the Registrar.

Following the acceptance of the required documentation by the Registrar and the payment of the required registration fee, a Certificate of Registration will be issued specifying the name and number of the Foundation and stating that the Foundation has been registered in accordance with the provision of the Foundations Act, 2004.

Upon registration the Foundation is a registered entity and may carry on its business as outlined by its charter.

For more information please contact:

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