



# FOUNDATION COMPANIES

Monday April 26th, 2021

Foundation companies (“**Foundation Companies**”) introduced by the Foundation Companies Act (2017 Revision) (the “**Act**”) is arguably one of the most innovative and flexible vehicles which has been introduced in the Cayman Islands in recent years. They are becoming increasingly popular with clients because of their flexibility, the ability to be tailor made to clients’ needs and to be utilized in a wide variety of circumstances ranging from commercial transaction to estate planning and the general ease of understanding how they work.

Fundamentally, Foundation Companies are companies with a few tweaks to them. The Companies Act applies to them to the extent that it is not inconsistent with the Act. They are incorporated and registered with the Registrar of Companies like a traditional Cayman company, they receive a certificate of incorporation and its constitution consists of a Memorandum of Association and Articles of Association (the “**Constitution**”). Foundation Companies may, but are not required to, have Bylaws which set out more detailed terms of the governance, management and operation of the Foundation Company. The Bylaws are binding on the directors, officers and their delegates, and any others who have duties or powers under the Constitution, but they are not required to be registered with the Registrar of Companies.

## General Requirements

The Act requires that a Foundation Company shall:

1. be limited by shares or by guarantee, with or without share capital (most

are limited by guarantee)

2. have a memorandum that:

2.1 states that the company is a Foundation Company;

2.2 generally or specifically describes the objects of the Foundation Company (which can be, but do not have to be, beneficial to any other person);

2.3 provides details for how and to whom surplus assets of the Foundation Company will be disposed of on its winding up;

2.4 prohibits dividends or other distributions of profits to its members or proposed members;

3. have adopted articles.

4. at all times have a secretary who is a “qualified person” (i.e. a person licensed or permitted under the Companies Management Act (2021 Revision) to provide company management services).

## **Roles in a Foundation Company**

### **Directors**

Directors of a Foundation Company would generally have the same duties and obligations of directors in a traditional company. A Foundation Company’s Constitution may, as well as providing for its management by directors (however called) or their delegates, give rights, powers and duties of any type to members, officers, supervisors, founders or others concerning the Foundation Company.

### **Members**

A Foundation Company may cease to have members if its memorandum so permits or requires and it continues to have one or more supervisors. If a Foundation Company has ceased to have members, it may not subsequently admit members or issue shares unless expressly authorised to do so by the Constitution.

## **Supervisor**

A supervisor for a Foundation Company, means a person, other than a member, who under the Constitution has an unconditional right to attend and vote at general meetings, whether the person has supervisory powers or duties. When a Foundation Company ceases to have members there must be at least one supervisor.

## **Secretary**

The secretary must be a qualified person but a person who is not a qualified person may be appointed as an assistant secretary. A Foundation Company's registered office must be at its secretary's business address.

The secretary may reasonably require the Foundation Company to provide information to it to ensure that the Foundation Company is compliant with the various money laundering and terrorist financing laws and regulations.

## **Purposes**

Foundation Companies are very flexible vehicles which may be used for a variety of purposes which include:

1. Asset holding vehicle
2. Special purpose vehicle for finance transactions

3. Succession planning
4. Fintech
5. Philanthropic
6. Acting as protector, enforcer of a trust
7. Acting as a private trust company

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Please note that this briefing is intended to provide a very general overview of the matters to which it relates and is not intended as legal advice and should not be relied upon as such.