



FOUNDATION COMPANIES

The Cayman Islands Foundations Companies Act was introduced in April 2017 allowing for the formation of a new category of Cayman Islands entity, the foundation company.

A foundation company is governed by the Cayman Islands Companies Act, with key modifications to the traditional company model. It will provide a highly adaptable vehicle for achieving a wide range of private, commercial and philanthropic objectives for those located in civil and common law jurisdictions alike.

The following is an outline of the principal features of a Cayman Islands foundation company and the related services that R&H Trust & Corporate (operating as The R & H Trust Co. Ltd.) can provide.

The intent of the Foundations legislation is to enrich Cayman's well regarded collection of structuring vehicles by creating a type of corporate entity that fits seamlessly into the existing legal framework. A foundation company is free to engage in any trading or commercial activities (as may be provided in its Memorandum and Articles) and third parties will have the same protections as they would when dealing with any other company.

However, unlike a standard Cayman company, it is prohibited from paying dividends to its members and amendments may only be made to its constitution if expressly provided for.

Principal Features

Much like a traditional company, a foundation company is a body corporate with separate legal personality and has the capacity to hold property and to sue and be sued. It may be formed by any person (the Founder) for any lawful object, which need not be beneficial to other persons.

In order for a company to qualify as a foundation company (whether an existing company or newly formed) it is required to register with the Registrar of Companies and:

- Be limited by shares or by guarantee, with or without share capital;

- Have a memorandum of association that i) states that the company is a foundation company, ii) describes its objects, iii) provides for the disposal of any surplus assets the company may have on winding up and iv) prohibits dividends or other distributions of profit or assets to its members;
- Adopt articles of association; and
- Have a company secretary that is a 'Qualified Person' i.e. a person who is licensed or permitted to provide company management services in Cayman. The company's registered office shall be at the Company Secretary's business address.

Roles

Founder

Unlike foundations in other jurisdictions, a Cayman foundation company does not require anyone to have a formal role as a founder. It is incorporated on the instructions of the person(s) promoting it in the same way as any other company. If there is a founder, that person does not have any automatic rights in relation to the foundation company but may reserve rights if desired.

Members and Supervisors

A foundation company's constitution may grant any persons the right to become a member or 'supervisor' of the foundation company. A supervisor being any person, other than a member, who, under the foundation company's constitution has a right to attend and vote at general meetings.

Notably, once formed, a foundation company may cease to have members if its constitution so permits, provided that it continues to have one or more supervisors. Ceasing to have members will not affect the foundation company's existence, capacity or powers. If the foundation company ceases to have members, it may not subsequently admit members, or issue shares, unless expressly authorised to do so by its constitution.

A member or supervisor of a foundation company may also be a director of the foundation company.



Directors

The business and affairs of the foundation company are managed by a board of directors. Any individual of full capacity, and any company, may become a director and there are no residency requirements or any other restrictions as to who may act. The directors owe the same duty of care, skill and diligence to the foundation company as they would to any other Cayman Islands company.

The directors are required to give reports, accounts and any information concerning the foundation company's business and affairs to all interested persons.

Beneficiaries

A foundation company may (but need not) have beneficiaries who benefit from it carrying out its objects. A beneficiary has no statutory powers or rights in relation to the foundation company, its management or assets and is not an interested person. However, the constitution may provide for any duties and rights to be vested in beneficiaries.

Governance

A foundation company is subject to the same requirements regarding documentation and filings as any other Cayman exempted company. It must maintain registers, including a register of supervisors, at its registered office together with a minute book and anti-money laundering records. Failure to keep such records is subject to criminal sanctions under the law.

Uses of a Foundation Company

A foundation company is suitable for a broad array of estate planning purposes. It has the flexibility of a trust used to hold family wealth, without the uncertainty of appointing a trustee in the home jurisdiction of the Founder. The constitution of a foundation company may entrench its objects, therefore the Founder need not worry that future members may overturn his or her strategy. Some of the key uses are as follows:

Alternative to a trust

- Hold shares of a private trust company as an alternative to a Cayman Islands STAR Trust;
- Hold higher risk, less diversified assets as duties will be owed to the foundation company, rather than any potential beneficiaries.

Asset protection

- Unlike a trust, the beneficiaries have no powers or rights relating to the foundation company, its management or assets and can have different entitlements enshrined in the constitution.
- 'Firewall' provisions which operate to deny heirship rights to property will apply to property contributed.

Estate planning

- The structure will have the familiarity of a company but with the flexibility of a trust. It can hold family wealth/businesses and can mirror the board(s) of existing family enterprises.

Corporate transactions

- SPV vehicle without shareholders or beneficiaries.

Charitable/philanthropic

- Alternative to the traditional "not for profit" company.

Digital Assets/Cryptocurrencies

Initial Coin Offering;

To hold an array of blockchain related projects and ventures;
As a legal 'wrapper' or act as a service provider for DAOs and Defi projects.

Our Services

R&H Trust & Corporate provides the following services:

- Consultation on the use and structuring of foundation companies;
- Incorporation and registration of new foundation companies, or conversion of a current Cayman exempt company to a Cayman foundation company;
- Advising on and reviewing terms of constitutional documents to ensure they meet the needs of the Founder;
- Provision of Company Secretary and registered office;
- Provision of individual or corporate directors;
- Supervisor services;
- Administration services, including the payment of government fees, maintenance of minute book and registers;
- Maintenance of anti-money laundering records;

The R & H Trust Co. Ltd.