Why are Cayman Islands' foundation companies popular?

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The Foundation Companies Act 2017 introduced a new corporate vehicle to the Cayman Islands – the "foundation company". This company structure has several applications and is growing in popularity.

Foundation companies are governed primarily by the above-mentioned act together with certain provisions of the Companies Act (as revised) of the Cayman Islands, which apply to all types of company.

A foundation company is a legal person that is entirely distinct from that of its directors, members (where relevant), beneficiaries and founders. This means that a foundation company can own assets, and can sue and be sued.

The constitution

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A foundation company is incorporated with a memorandum of association and articles of association (the "constitutional documents"), which set out the rights and responsibilities of the various parties who manage and who benefit from the foundation company.

A foundation company may also adopt bylaws that expand on the matters dealt with in the constitutional documents, and can even be used to confer specific rights on individuals or groups of beneficiaries. These bylaws may be kept private as they are not required to be filed with the Registrar of Companies.

Foundation companies therefore provide the functionality and flexibility of a trust but without any of the complexities associated with trust administration.

The following classes of person will be involved in the management of a foundation company:

- **Directors.** A foundation company will typically be managed by its board of directors, who owe fiduciary duties to the company.
- **Secretary.** A foundation company must have a secretary who is licensed or permitted to provide company management services in the Cayman Islands. The foundation company's registered office must be at the secretary's business address.
- **Supervisor.** If a foundation company either chooses not to have any members, or at any time ceases to have any members, it is required to appoint a supervisor, who oversees its management but crucially has no ownership rights or financial entitlement. In the absence of any members, this provides necessary checks and balances on the board of directors to ensure that the foundation company is being properly managed, and is conducting its business in accordance with its constitutional documents, the requirements of any bylaws, and applicable law.
- **Founder.** The founder is similar to a settlor in the context of a trust. Founders have no specific rights or powers in respect of the foundation company unless such rights and powers are specified in the constitutional documents and/or in the bylaws. It is common for the constitutional documents to grant the founder the power to appoint or remove directors and beneficiaries.

In addition, the following classes of person can be associated with foundation companies:

- **Members.** Members are not automatically entitled to participate financially in the success of the foundation company unless the constitutional documents or bylaws provide otherwise.
- **Beneficiaries.** Beneficiaries are, subject to the constitutional documents and bylaws, able to participate financially in the foundation company.

Characteristics, common uses

The foundation company structure is flexible. The roles and entitlements of members and beneficiaries are neither prescribed nor proscribed. It is therefore entirely within the discretion of the founders of the foundation. The two most common applications for foundation companies are as family offices/family trusts, or in the establishment of decentralised autonomous organisations (DAOs).

Family offices. The benefits of using a foundation company to operate a family office/family trust include the flexibility available to founders to determine the extent of any entitlement of beneficiaries, and the extent of their direct involvement/rights to information in the underlying business. The foundation company has a separate legal personality and overcomes issues of recognition and taxation in jurisdictions that don't otherwise recognise common law trusts. For family offices with interests and assets across the globe, this is a significant advantage in terms of convenience and the potential for time and cost savings in what would otherwise be "difficult" jurisdictions.

DAOs. DAOs often do not have legal personality, and it is necessary for projects that involve DAOs to incorporate an entity that will act as the counterparty to any contractual relationships outside of the DAO (e.g. service providers). The ability for foundation companies to not have members is particularly attractive as this is consistent with the decentralised and "ownerless" nature of a DAO. Also, the ability to provide for bespoke arrangements and rights within the bylaws adds to the attractiveness of foundation companies.

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