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LUXURY FIDUCIARY & LEGAL SERVICES

THE BAHAMIAN FOUNDATION
A Versatile Tool for Wealth Management and Other Purposes

Foundations may be used for myriad purposes, most notably

- estate and tax planning
- asset protection
- wealth preservation/Family Offices
- confidentiality
- segregation of assets
- avoiding forced heirship in foreign jurisdictions
- charitable purposes

In appropriate cases, setting up a company as a subsidiary of the Foundation may enhance its function and versatility. Structurally, foundations are a hybrid between a trust and a company, having features common to both types of entities.

Trust features of Foundations

- may be established by Will or by Charter
- Founder may be a natural or legal person
- Founder may be a nominee
- through the Charter, the Founder may reserve powers including the power of revocation, amendment, determining beneficiaries etc.
- vested beneficiaries are entitled to be notified of their interests and to receive a copy of the Charter and the accounts
- a Protector may be appointed as watchdog with such powers as may be provided in the Charter. Examples include the appointment and removal of Council members, and approving certain changes
- the Charter may include in terrorem provisions and restrictions against alienation

Corporate features of Foundations

- a legal entity
- limited liability
- perpetual duration
- ownership of assets
- can sue and be sued
- affords protection of officers and Council from legal liability and statutory indemnification from liability, losses, and expenses
- registered office
- can be continued from The Bahamas to another jurisdiction and vice versa

Tax advantage

- Bahamas Foundations are tax-exempt and therefore ideally suited to cross-border transactions and international estate and inheritance planning

Practical Uses of Bahamas Foundations

1. ***Family business continuity.*** For example, rather than get rid of a long-held company which for generations has been in the family and provided employment to family members, a Founder may endow a Foundation with the shares of that company with the result that the sentimental attachment to the company is not disrupted, and natural continuity of the business is provided for irrespective of the Founder.

2. ***Ownership of a private trust company.*** The Foundation may hold the shares of the PTC with the founder, family members, and advisors constituting directors and managers. Under a Foundation, the directors may be more comfortable to employ a more aggressive investment strategy than an institutional trustee might be prepared to undertake, and in the process, reduce trust administration expenses. Ownership of the PTC rests with the Foundation.
3. ***Philanthropic pursuits which may or may not be exclusively charitable*** such as the preservation and comfort of orangutans or to benefit a specific event.
4. ***Separation of voting and economic benefits.*** For example, a founder who wishes to retain control of the voting shares of a company while passing on economic benefits to his family may endow a Foundation with non-voting shares for the benefit of his family while retaining the voting shares.
5. ***To perpetuate a particular corporate governance philosophy**.* A Founder may endow a Foundation with shares which comprise a controlling interest in a company for the benefit of his family, and by the Charter, giving the Foundation Council a mandate, for example, to evaluate the performance of the CEO, to set the CEO's remuneration and to adopt and evaluate policies of corporate conduct and governance.
6. ***Structuring subordinated debt and prioritising creditors in a multi-layered loan or on insolvency.*** For example a borrower from two separate lenders may establish a Foundation with both lenders as beneficiaries. The Charter may provide for the rights of one lender to be subordinated to the other.
7. ***To hold the benefit of warranties/collateral for a large and/or revolving group of investors.*** For example a Foundation may incorporate a company to borrow funds from a consortium of lenders which lenders may change from time to time. The Company would endow the Foundation, and lenders may be added or removed as beneficiaries of the Foundation on a revolving basis in proportion to the size of their loan. The interest of lenders could be supported by the Company entering into certain warranties and lodging collateral with the Foundation for the benefit of lenders.
8. ***Packaging financial instruments into marketable securities.*** To facilitate the sale of its mortgage portfolio to a number of investors a financial institution may form a Foundation which incorporates a Company. The financial institution could then endow its mortgage portfolio to the Company which shares can be sold to investors.
9. ***Employee share option scheme.*** An employer may endow a discretionary Foundation for the general benefit of employees, affiliates and their dependants. For example, a Foundation funded by contributions from the employer, substantial shareholders in the employer, and its affiliates may use its assets to acquire shares either by purchase or by subscription and either grant options over such shares or agree to sell them to employees, possibly extending valuable credit to the purchasing employee. When the employee wishes to realize his shareholding, the Foundation can be a useful vehicle for repurchasing shares and making them available to other employees. In addition to benefitting employees and dependants, the Foundation may also perform vital functions with regard to share incentive or share option arrangements.