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Guide to Cayman Foundation Companies

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Cayman Foundation Companies are an innovative structure which act as a hybrid between a company and a trust. Although originally introduced in 2017, they have surged in popularity since 2021 with significant year-on-year growth in the number of registrations, an upward trend which has continued to the current date. It therefore appears that Cayman Foundations have now found their feet and proving to be an increasingly popular structuring vehicle in a range of different commercial and private wealth contexts.

What is a Cayman Foundation?

Cayman Foundation Companies ("**Cayman Foundations**") are companies which act as a hybrid between a company and a trust, bridging the benefits of both of those respective structuring options. Foundations have a long history in civil law jurisdictions and their introduction offshore was initially intended to attract clients for whom a trust was not suitable.

Whereas other offshore jurisdictions sought to establish an entirely new set of rules for their respective foundation offerings, the approach in Cayman was to build off the existing Companies Act framework. As such, Cayman Foundations are technically companies (albeit with special features) and Cayman's Companies Act applies to Cayman Foundations, save to the extent that it is excluded or modified by the Foundation Companies Act or otherwise inconsistent with its provisions. This means that the fundamental corporate structure of a Cayman Foundation is a tried and tested one and legal jurisprudence in respect of Cayman companies will, to the extent it is relevant, also apply to Cayman Foundations.

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Key Features of a Cayman Foundation

The key features of a Cayman Foundation which have proven particularly popular are the following:

- **Separate legal personality:** unlike a trust, a Cayman Foundation is itself a legal person which can allow for more simplified structuring.
- **Purposes:** Cayman Foundations may be formed for any lawful purpose, including both charitable and non-charitable purposes.
- **Beneficiaries:** Cayman Foundations may choose to have beneficiaries. Unless otherwise specified the beneficiaries will not have standing against the Cayman Foundation (such supervisory function being vested in a “Supervisor”).
- **Members/shareholders (or the lack thereof):** Cayman Foundations can exist as an orphaned entity without any members or shareholders.
- **Flexibility:** there is significant scope to adapt the governing rules, structure and roles of a Cayman Foundation to a range of bespoke needs. Further, the constitution of a Cayman Foundation can be supplemented by “Bylaws” which are not filed with the Register of Companies and can therefore remain private, affording the Cayman Foundation a degree of privacy in its operations coupled with further flexibility to set its own rules in relation to its structure and management.
- **Trusts legislation applies:** certain provisions of the Cayman Islands’ Trusts Act are extended to apply to Cayman Foundations, including section 48 of the Trusts Act which allows fiduciaries to apply for the directions of the Cayman Court (often referred to as a “blessing” application). This is a remedy which can be useful to protect fiduciaries when making significant decisions, for example when making a major distribution or undertaking.

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Uses for a Cayman Foundation

Cayman Foundations are being put to a wide variety of uses, including:

An alternative to a trust in both private wealth, charitable and commercial contexts

Philanthropic organisations

Private Trust Companies ("PTC")

Web3, DAO and Fintech structures

Private wealth

In the private wealth context, a Cayman Foundation can serve a similar function to a trust with assets being held for the benefit of beneficiaries or objects on terms specified in the Foundation's governing documents. The key difference from a trust is that the Cayman Foundation exists as a separate legal person so, rather than being administered by another person (i.e. the trustee), it is managed and administered by its board of directors in the same way as an ordinary company.

While Cayman Foundations have separate legal personality, their governing documents may often have features which are more familiar to trusts. For example, Cayman Foundations can be established with a "Founder" whose role is similar to that of the settlor of a trust, with the Founder able to retain certain powers in relation to the entity (such as the power to amend governing documents, approve distributions or appoint/remove directors). Similarly, the role of Supervisor in a Cayman Foundation can mirror that of a protector of a trust.

Alternatively, where a trust is still desirable, a Cayman Foundation may act as a PTC. Whereas the shares of a PTC are commonly held in a purpose trust because Cayman Foundations can cease to have members there is no need for the PTCs shares to be held on trust, resulting in a simplified structure.

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Philanthropy

Traditionally, Not-For-Profits (“NFPs”) in common law jurisdictions are often established as either a charitable trust or a company limited by guarantee, with each legal structure offering distinct advantages and disadvantages. The key distinction between the two is that unlike a company, a trust does not have separate legal personality and so cannot sue or be sued, or hold property in its own name. As a hybrid between a trust and a company, Cayman Foundations have therefore emerged as an attractive structuring option for NFPs.

Fintech

The growth of Foundation Companies has been turbocharged by the parallel growth in Cayman’s Fintech and Web3 sector which has found that the unique features of a Cayman Foundation are well-suited to innovative new organisational structures such as decentralised autonomous organisations (DAOs) and other Web3 projects. DAOs operate differently from many of today’s traditional legal entities and business structures, the objective being to achieve a more democratic form of governance whereby decisions are made by a defined community of token-holders.

While the legal status of a DAO is typically unclear, having a Cayman Foundation as a legal entity established to advance the DAO or project’s aims is increasingly commonplace. This means that there is a legal person which can contract with stakeholders and perform more traditional functions which require legal personality. The flexible nature of Cayman Foundations allows governing rules and constitutional documents to be drafted in a highly bespoke manner with the organization or project’s objectives at the forefront.

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Roles in a Cayman Foundation

Ordinarily, a Cayman Foundation will have the following roles:

- **Founder:** similar to the settlor of a trust, this will generally be the legal person responsible for establishing the structure by way of a contribution of assets. As the Foundation Companies Act does not formally define the role of a “Founder”, and does not necessarily even require the appointment of a Founder, the governing documents may specify what (if any) powers the Founder will retain. For example, the Founder may reserve the power to appoint the directors, amend its governing documents or alternatively the Founder may have no ongoing role in relation to the Cayman Foundation.
- **Director(s):** as with an ordinary company, a Cayman Foundation is managed by its board of directors. By default, the role and powers of the directors will be the same as for an ordinary Cayman company. However, there is scope to restrict the directors’ exercise of their powers to better align with the specific entity’s objectives.
- **Member(s):** while a Cayman Foundation must initially be incorporated with one or more members (in the same way as an ordinary company), one of the key features of a Cayman Foundation is that it can cease to have members at any time. The cessation or absence of a member will not affect the Cayman Foundation’s existence, capacity or powers.
- **Supervisor(s):** Where a Cayman Foundation ceases to have members, it must have one or more “Supervisors” (who may but need not be directors). As suggested by the title, such officeholder essentially fills the gap left by the lack of members in that they can enforce the rules of the Cayman Foundation as against the directors and would typically have the right to access the files, books and accounts of the company.

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How Can Conyers Provide Support?

Conyers can provide a full complement of legal, corporate and trust administrative services to Foundation companies. With nearly 40 years in Asia, the Hong Kong office of Conyers continues to lead the way in providing offshore legal advice to many of Asia's largest and most innovative corporate and private clients. Conyers' private client practice consistently maintains top-tier rankings and has a long-standing history of advising some of the world's wealthiest individuals and groups, including in various high-profile and contentious matters.

Through our affiliated Conyers Client Services, an international network of licensed trust and corporate services providers, we provide a broad scope of trustee, fiduciary and related administration services meaning we are able to deliver a comprehensive and complete service to clients seeking to establish a Foundation.

Private Clients and Trust Team



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