
COOK ISLANDS FOUNDATION

Introduction

Cook Islands foundations are governed by the Foundation Act 2012 and are mostly used for estate planning and/or philanthropy. A foundation is a hybrid of a company and trust, operating like a company but having governance features similar to trusts. Whilst ordinarily found in civil law jurisdictions, a Cook Islands foundation offers an alternative wealth planning vehicle for clients not familiar with trusts and/or who may be looking for asset protection measures not ordinarily offered with foundations from other jurisdictions.

Benefits of a Cook Islands Foundation

- Foundations may be charitable, non-charitable or both and can be established to benefit a person(s) or to carry out a specified purpose or both.
- Foreign forced heirship laws are specifically excluded by the Act. This means that the incorporation or the endowment of a foundation will not be void, voidable, set aside or declared invalid because it avoids or defeats forced heirship rights, claim or interest available in another jurisdiction.
- Foreign judgments, or orders including divorce outside of the Cook Islands, will not be recognised or enforced.
- A creditor can attack a foundation where they can prove beyond reasonable doubt, that the founder was insolvent or intended to defraud the creditor at the time the founder transferred property to the foundation. Further the statute of limitation is very short so a claim can only be brought within two years of the transfer of property to the foundation having taken place.
- The Cook Islands does not levy capital gains, gift, stamp duty or any other form of taxation on the foundation. Distributions from the foundation are not taxable within the Cook Islands. A beneficiary declares any distributions it receives from the foundation in their home country and will only pay taxes in that country.

Features of a Foundation

- Like a company, a foundation has its own legal personality which is capable of suing and being sued.
- The Act does not allow for nominee founders.
- There is no minimum capital requirement, however the Founder is required to endow assets/funds to the foundation. Assets can be added by any third party, this will not qualify the third party as a founder.

- Unlike a trust, there is no requirement that there be beneficiaries of a Cook Islands foundation. However, it must have objects which may be charitable or non charitable or both. The object may be to benefit a person(s) or to carry out a specified purpose or both.
- The foundation's actions are governed by the objects stated in the rules of the foundation. It may engage in commercial trade through the foundation or an underlying entity so long as it is incidental to its objects.
- Southpac Trust as the foundation's Registered Agent will provide the registered office for the foundation and must keep in its possession the following:
 - (i) A copy of the foundation rules governing the operation of the foundation and its objects;
 - (ii) A register showing the names and addresses of the members of its council and dedicator;
 - (iii) Any power exercised by the members of the council of the foundation must be sanctioned by written resolution.
 - (iv) Details of Enforcer including date of appointment; and
 - (v) Records of financial position of the foundation.
- Unlike a trust, there is no time limitation to the life of the foundation.
- Like having a protector in a trust, a foundation may appoint an enforcer whose role it is to ensure that members of the council carry out its duties.
- Unlike a trust, the duties of members of the council is not fiduciary and is owed to the council itself and not to its beneficiaries. A beneficiary under a foundation has no legal or beneficial interest in the foundation's assets. Like a company, the assets are owned by the foundation.
- A Cook Islands foundation can be migrated to another country so long as it is not bankrupt or a receiver or administrator has not been appointed; there are no proceedings relating to the solvency of the foundation; and that respective country allows the transfer. Alternatively, an overseas foundation may be registered as a Cook Islands foundation.

How long does it take to form a private Foundation?

The length of time from first receiving instructions to establishing a foundation, will depend on the submission and verification of due diligence documents. As long as all the requested information and original documents have been provided, and due diligence has been completed and passed, a foundation can be incorporated and registered within 3-5 working days.

Fees

Foundation Establishment Fee - USD\$2,000.00 p.a.

The fee includes Southpac Trust documentation, professional consultation on the proposed structure, drafting assistance and legal compliance review, provision of a registered agent for one year, registration, establishment and safe custody of essential foundation records, notary and government registration fees, and telephone and fax charges in relation to the establishment of a foundation.

Annual Foundation Renewal Fee - USD\$2,000.00 p.a.

In subsequent years, the fee includes renewal of registration, provision of a registered agent for one year, annual review of foundation records and status of asset summary, provision of a personal client services manager, maintenance and safe custody of essential records, and registration fees.

What to do now

Once you've had an opportunity to consider all the above information, please feel free to contact us on +64 7 571 8548 between Monday-Friday 6am-3pm (New Zealand), or alternatively by email at enquiries@southpactrust.com

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