

Key Facts Foundations

The Bahamas introduced its foundation law in 2004, following a detailed review of the foundations laws in other jurisdictions. The drafters of the Bahamas foundations legislation took into account the specific requirements of civilian clients and their need to exercise a degree of control which trusts may not permit.

Foundations have been used for the past 100 years. Their use in international tax and asset protection planning started in Liechtenstein in the late 1930s, moved to other European countries in subsequent years and more recently to Panama and the Netherlands Antilles. Their most active initial use was to provide protection for assets as well as confidentiality during the Second World War. Foundations have since become well-known and acceptable in many civil law jurisdictions, especially those located in Europe and Latin America, where trusts are less well known.

Uses of Foundations

Common uses for foundations include:

- Tax and estate planning
- Asset protection planning
- Maintenance of corporate control
- Assistance to charities
- Separation of voting and economic benefits in investment holding companies
- Ownership of private trust companies
- Operation of employee share option schemes
- Holding assets off-balance sheet in connection with the securitisation of mortgage

Legislation Summary

- The foundation is a registered legal entity. Assets placed within the foundation are solely owned by the foundation.
- Bahamas anti-forced heirship rules apply to transfers to a foundation.
- The foundation can be established either for an indefinite or fixed period.
- The foundation can be established for charitable, commercial or private purposes.
- The Founder can be an individual, a corporation or a Nominee.
- The establishment of the foundation becomes effective after all registration formalities have been completed.
- The Founder may reserve certain powers. Alternatively, the law provides for the foundation to have a Protector in whom powers can be vested in the event that a Nominee Founder is used.
- One natural person must also be appointed as an Officer of the foundation in addition to its Secretary.
- A Foundation Council, or an alternative supervisory or governing body/person, including a Protector, can be appointed.

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- Vested Beneficiaries of a foundation must be notified of their interest and will be entitled to request information from the Officers of the foundation.
- Proper records and accounts must be kept by the Officers of the foundation which can be inspected by an Officer, Foundation Council Member, Founder, auditor or any other supervisory person (e.g. Protector) at any time.
- Confidentiality provisions restrict any person acquiring information in his capacity as an Officer, Protector, Council Member, attorney or auditor of the foundation from disclosing information relating to the foundation without the express consent of the Founder and Beneficiaries.
- The foundation has the ability to re-domicile to and from the Bahamas.

Foundation Registration

- The registration process is comparable to that for a Bahamas company.
- The foundation is registered with the Registrar General Office.
- The name of the foundation must first be reserved at the Registrar prior to the submission of the necessary documentation. The Registrar will confirm that the foundation name is valid for use and has been reserved for a period of 90 days.
- After the foundation name has been reserved the required documentation must be submitted to the Registrar.

Required Documentation for a Foundation

- An application for registration
- A statement signed by the Secretary of the foundation or any attorney engaged to form the foundation which contains extracts from the Charter of the foundation as follows:

- Name of the foundation
 - Date of Charter and Articles (if any)
 - Summary of the foundation's purposes
 - Name and address in the Bahamas of the foundation for service of documents
 - Name and address of the Secretary
 - Name and address of the Foundation Council
 - Address of Registered Office
 - Value of initial assets, and
 - Period for which the foundation will be active
- A list of the name(s) and address(es) of the Officer(s) of the foundation
 - A statutory declaration certifying to the Registrar that:
 - The Foundation Charter contains a statement that the value of the assets of the foundation may not be less than US\$10,000 or the equivalent in any other currency.
 - All of the requirements of the Foundations Act in respect of the registration of the foundation have been complied with.

The Foundation Charter or Articles may, but need not, be filed with the Registrar to complete the registration process.

After the documentation is accepted by the Registrar, a Certificate of Registration will then be issued specifying the name and number of the foundation and stating that the foundation has been registered in accordance with the provisions of the Foundations Act, 2004. At that stage the foundation will be regarded as a registered entity and can carry on its business as outlined by the Charter.

Offices

The Americas/Caribbean

Bahamas

Trident Corporate Services
(Bahamas) Ltd
T: +1 242 322 6154
bahamas@tridenttrust.com

Barbados

Trident Corporate Services
(Barbados) Ltd
T: +1 246 621 0760
barbados@tridenttrust.com

British Virgin Islands

Trident Trust Company (BVI) Ltd
T: +1 284 494 2434
bvi@tridenttrust.com

Cayman Islands

Trident Trust Company
(Cayman) Ltd
T: +1 345 949 0880
cayman@tridenttrust.com

Nevis

Morning Star Holdings Ltd
T: +1 869 469 1817
nevis@tridenttrust.com

Meridian Trust Company Ltd

T: +1 869 469 1333
nevis@tridenttrust.com

Panama

Trident Trust (Panama) S.A.
T: +507 302 7494
panama@tridenttrust.com

United States

Atlanta

Trident Corporate Services, Inc
T: +1 404 233 5275
usa@tridenttrust.com

Miami

Trident Fund Services
T: +1 305 405 9006
miami@tridenttrust.com

New York

Trident Corporate Services, Inc
T: +1 212 840 8280
nyc@tridenttrust.com

Sioux Falls

Trident Trust Company
(South Dakota) Inc
T: +1 605 679 4355
sd@tridenttrust.com

US Virgin Islands

Trident Trust Company (VI) Ltd
T: +1 340 774 7322
usvi@tridenttrust.com

Asia

Hong Kong

Trident Corporate Services (Asia) Ltd
and Trident Trust Company (HK) Ltd
T: +852 2805 2000
hongkong@tridenttrust.com

New Zealand

Trident Trust Company (NZ) Ltd
T: +64 9 300 6067
nz@tridenttrust.com

Singapore

Trident Trust Company
(Singapore) Pte Ltd
T: +65 6653 1800
singapore@tridenttrust.com

EMEA

Cyprus

Trident Trust Company (Cyprus) Ltd
T: +357 258 20 650
cyprus@tridenttrust.com

Trident Fiduciaries (Middle East) Ltd

T: +357 253 53 520
fiduciariesme@tridenttrust.com

Dubai

Trident Trust Company (UAE) Ltd
DMCC Branch
T: +971 4 423 9988
dubai@tridenttrust.com

Guernsey

Trident Trust Company
(Guernsey) Ltd
T: +44 1481 727571
guernsey@tridenttrust.com

Isle of Man

Trident Trust Company (IOM) Ltd
T: +44 1624 646700
iom@tridenttrust.com

Jersey

Trident Trust Company Ltd
T: +44 1534 733401
jersey@tridenttrust.com

Luxembourg

Trident Trust Company
(Luxembourg) S.A.
T: +352 26 30 28 48
luxembourg@tridenttrust.com

Malta

Trident Trust Company (Malta) Ltd
T: +356 21 434 525
malta@tridenttrust.com

Mauritius

Trident Trust Company
(Mauritius) Ltd
T: +230 210 9770
mauritius@tridenttrust.com

Seychelles

Trident Trust Company
(Seychelles) Ltd
T: +248 4 422 000
seychelles@tridenttrust.com

Switzerland

Trident Corporate Services AG
T: +41 44 396 1080
switzerland@tridenttrust.com

United Kingdom

Trident Trust Company (UK) Ltd
T: +44 20 7935 1503
uk@tridenttrust.com

Trident Company

Services (UK) Ltd
T: +44 20 7487 0460
corpserVICES@tridenttrust.com