



GIBRALTAR – FOUNDATIONS

Background

For many years Gibraltar regulated Trustees have acted as councilors to foundations in other territories such as Panama, Liechtenstein, Belize and Cyprus. However, we have not had the ability to create or register foundations in Gibraltar itself.

It comes as a welcome development that the **Private Foundations Act 2017** came in to operation in Gibraltar on 11th April 2017. We now have a comprehensive Act providing the legal framework for the creation, registration, operation and winding up of foundations as well as the regulation of their management and a mechanism for the registration of overseas foundations.

What is the purpose of a foundation?

Foundations are often used in civil law jurisdictions, where the concept of trusts may not be generally understood. It will appeal to clients who:

- ⇒ Are involved with jurisdictions where the concept of trusts is less well known or may not be recognised by the jurisdiction;
- ⇒ Require a greater degree of confidentiality or control;
- ⇒ Wish to protect property as part of family succession planning;
- ⇒ Wish to safe-guard assets against economic or political uncertainty;
- ⇒ Want to use foundations within commercial transactions, particularly when an 'orphaned' special purpose vehicle is required.

What is a Gibraltar foundation?

A Gibraltar foundation is a **separate and distinct legal entity**. As such, it holds and manages property in its own name, as the absolute legal owner. A Gibraltar foundation requires a **Founder** who endows the foundation with the initial property, a **Council** charged with the good management of the foundation in line with the charter and rules, and one or more **Beneficiaries** or class of beneficiaries who collectively will benefit from the property of the foundation in accordance with the charter. The Gibraltar foundation may (and in some cases must) also appoint a **Guardian**.

So long as no beneficiaries of the foundation are ordinarily resident in Gibraltar, the foundation **will not be taxable** other than on income that accrues and derives from within Gibraltar. Most saving-type income is not taxable in any case. Further, Non Residents of

Gibraltar are not taxed in Gibraltar on their income as a beneficiary. More detail on taxation is covered overleaf.

Establishing a Gibraltar foundation.

A Gibraltar Foundation is established by one or more Founders making an **irrevocable endowment** to the Foundation of the initial assets and subscribing to the Foundation Charter. The **Foundation Charter** along with the **Foundation Rules** make up the Constitutional Documents of the foundation which set out the purposes of the Gibraltar Foundation and the rules for its administration as well as providing details of the beneficiaries and guardian.

As in other jurisdictions, the details of the foundation must be filed at Companies House in Gibraltar, whom maintain a Register of Foundations.

Details to be filed include:

- ⇒ The Foundation Charter;
- ⇒ Details of the initial endowment;
- ⇒ Notarised declarations signed by the Councillors, Founders and Guardian;
- ⇒ The names and addresses and consent of the Councillors and Guardian;
- ⇒ The address and telephone number of the registered office in Gibraltar.

Ongoing administration of a Gibraltar Foundation

When the Founder endows the initial property, they may reserve certain powers for themselves, for example, to appoint or remove the Guardian or Councillors, or to amend the terms of the Constitutional Documents of the foundation. The Foundation Council must include a Gibraltar

resident company holding a licence to carry out services as a professional trustee in Gibraltar (such as Acquarius Trust Company Limited). Acquarius could therefore act as the sole Councillor to the Council, however the Council can be made up of any number of Councillors and may include either the Founder or any one of the Beneficiaries. The Council is responsible for managing the foundation and is given all powers of absolute beneficial owner. The Council is also responsible for making distributions to the Beneficiaries. Both management and distribution must at all times be in accordance with the Constitutional Documents.

Beneficiaries may be either enfranchised or disenfranchised as set out in the Constitutional Documents. Enfranchised Beneficiaries are entitled to copies of the accounts and other documents relating to the Foundation, whilst disenfranchised beneficiaries are not.

A Guardian may be appointed to provide protection for the beneficiaries. In certain cases, for example, if there are no designated beneficiaries, or more than 50 beneficiaries, a guardian is required to be appointed

Taxation of foundations and beneficiaries

A brief overview of Gibraltar taxation of foundations and beneficiaries is as follows:

- ⇒ A foundation registered under the Act will be resident in Gibraltar, unless persons who are ordinarily resident in Gibraltar and the issue of such persons are irrevocably excluded from benefit in respect of the foundation.
- ⇒ A foundation that is not resident in Gibraltar will only be taxable on chargeable income that is accrued in or derived from Gibraltar (most saving-type income is in any case not taxable).
- ⇒ Non-residents of Gibraltar are not taxed in Gibraltar on their income as a beneficiary of a foundation.
- ⇒ A foundation resident in Gibraltar will generally be taxable on a worldwide basis (though in any case, most savings-type income and rental income from overseas property is not taxable in Gibraltar).
- ⇒ The applicable tax rate for foundations is currently 10% - in line with the rate for Gibraltar resident trusts and for companies.

⇒ Beneficiaries who are ordinarily resident in Gibraltar are taxable on:

- distributions received from the foundation, where the underlying income was taxable on the foundation.
- A tax credit will be given in respect of the tax suffered by the foundation on that income.
- the benefit derived by the beneficiary from the use of assets which are owned or leased by the foundation, or by a person controlled by the foundation.
- any loan made by the foundation to a beneficiary, or to any person connected with the beneficiary.

Accounting requirements

Foundations must keep proper books of account which must be retained for a period of 5 years.

For each financial year financial accounts must be prepared in accordance with International Financial Reporting Standards (IAS), and a copy of these filed with the Registrar of Foundations and must contain a report by the Councillors with respect to the state of the affairs of the foundation.

The first financial year may be for up to 18 months from the date of registration of the foundation. Thereafter, each financial year shall be for a period of 12 months.

The Foundation Rules may provide for the appointment of a Gibraltar registered statutory auditor.

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