

# POWERS OF THE FOUNDER OF CAYMAN ISLANDS FOUNDATION COMPANIES

In 2017 the Cayman Islands' Foundation Companies Act came into force. The Act introduced what was then a new type of company which bolsters the jurisdiction's offering of versatile special purpose vehicles which has potential application in a wide range of structures and scenarios. The foundation company and the act sit within the framework of the Companies Act. While a foundation company bears many of the characteristics of a traditional limited liability company, it also blends in certain attributes of a trust or civil law foundation. This article gives an overview of the key role of the founder of a foundation company.

## THE ACT

A foundation company's management will be carried out by its directors. In addition, the act states that its constitution may give rights, powers and other duties to members, directors, supervisors, founders or others relating to: a) admitting, appointing or removing members, supervisors and

directors; b) making and amending any bylaws; c) the supervision of the Foundation Company's management and operations; d) enforcing duties; e) general meetings and voting on resolutions; f) altering the constitution; and g) winding up and disposing of surplus assets.

## THE ARTICLES OF ASSOCIATION

Certain powers of the founder are set out in the articles of association of the foundation company though they can be amended to suit the needs of the foundation company. The articles state the founder has the power to: 1. authorise the admission of the members, or to restrict or prohibit the admission of members; 2. appoint or remove directors; 3. call for reports, accounts, information and explanations from the directors; 4. appoint or remove supervisors, and settle their powers and duties; 5. designate beneficiaries, give directions as to their benefits, grant them enforceable rights, and to revoke or vary the same; 6. cause the company to be wound up; and 7. adopt, revoke or vary bylaws. The articles also typically state that that founder will also have the right

to receive notice of, and attend and vote at, general meetings of the company.

The founder's powers are free of any duty, and may be exercised for the founder's own benefit. The founder may, by giving notice to the company, revocably or irrevocably terminate or restrict any or all of the founder's powers and if the termination or restriction is expressed to be irrevocable, it may not be altered or revoked, directly or through an alteration of these articles. The founder's powers are not assignable and, except as permitted by these articles or required by law, may not be exercised by any other person on behalf of the founder. Upon the founder's death, the founder's powers shall terminate. An exercise of a founder's power does not cease to be effective by reason only that the founder subsequently dies or ceases to have the power.



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Chris is the Managing Director of Stuarts. He joined in 2004 as one of the founding directors, from the London office of Kendall Freeman (now Locke Lord LLP), where he specialised in the financial services industry and regulatory related matters.

As head of the specialist investment funds team at Stuarts, Chris is a recognised leader in his field with over 20 years' experience and having registered several hundred mutual funds with the Cayman Islands Monetary Authority and routinely advises on regulatory and compliance issues involving funds, investment managers and fund administrators.