

Liberia: Liberian foundations in a nutshell

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Abstract

In this article, the author summarizes the basic provisions of the Liberian Private Foundation Law of 2002. Liberia has borrowed from the civil law and incorporated this institution into their system of common law with the aim of diversifying their corporate service offerings and of keeping abreast with modern day legal systems. The procedure for forming a Liberian Private Foundation is simple and the Registry is managed and operated out of the LISCR, LLC offices in Virginia, United States.

Key points

- A nonresident business entity that is established for holding and managing assets.
- Established by way of Memorandum of Endowment.
- The assets are donated by the donor(s) and belong to the newly formed entity.
- The assets are managed and controlled with the optional assistance of a Supervisory Board consisting of three officers.
- Beneficiaries are designated by the donor at the time of donation, and the donor may make suggestions as the management of the assets by way of Letter of Wishes.

Legal basis

The Liberian Foundation Law¹ was enacted on 8 January 2002 as an addendum to the Business Corporation Act (BCA¹). As regards the structure of the Liberian private foundation, it is modelled on the modern Austrian Private Foundation Law of 1993.

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The Private Foundation is an additional type of non-resident business entity for Liberia. It works well for individuals desiring a straight forward asset holding/protection structure designed to provide

beneficiaries with an asset-derived income. Essentially, Private Foundations serve as holding entities for assets transferred to them. The transfer is usually in the form of a gift, by a person who the BCA refers to as the donor, ie the settlor of the assets.

Establishment

Established by way of a Memorandum of Endowment, the Foundation can hold assets which are irrevocably transferred to it by one or more settlors for the purpose of managing these assets. An irrevocable transfer of assets means that once assets are placed in a Foundation, they cannot be withdrawn at will by the donor. In order for the Foundation to function, the assets need to have been endowed or

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1. Act to Further Amend the Associations Law as Amended, Title 5, Of the Liberian Code of Laws revised, By Adding Thereto a Ne Part VI, Chapter 60, Providing for the Establishment of Private Foundations.

gifted and placed at the disposal of the Foundation and its officers. The donor receives no payment in return. The Foundation becomes the owner of the assets as a separate legal entity.

Purpose

The purpose of the Foundation must be specified in the Memorandum and may include all activities related to the management of assets but specifically excludes any commercial activities and activities related to banking and the financial services industry.² However, the buying and selling of assets (real estate, shares in trading companies, investments, etc.) is not considered a trading activity. A private foundation may, however, in the course of the management of its assets, do such activities as are necessary for their proper administration. Foundations can act as a shareholder but not a director or officer, in a trading entity like a Liberian corporation.

The Donor

One or more donors are permissible, and there are no restrictions on residency or nationality of each donor. A donor cannot act as an officer or be appointed as the Secretary of the Foundation, however, he can participate in its supervisory board, if one is appointed. Moreover, the donor can be one of the beneficiaries.

Beneficiaries

A typical function of a Liberian Foundation is to provide beneficiaries with an income derived from an asset(s) endowed to it from a donor(s). The donor provides guidelines as to how the Foundation is to be managed and also defines who the beneficiaries will be, what payments should be paid to the beneficiaries, and when payments should be made.

While the officers of the Foundation need to know the names of the beneficiaries, such information is not required to be publicly filed in the Registry.

A donor can use a Letter of Wishes to provide further guidance to assist officers in managing the Foundation and can change the beneficiaries from time to time.

Letter of Wishes

The Letter of Wishes is an internal document and not, therefore, filed in the Registry. It provides guidance and suggestions from the donor to assist the officers in managing the assets of the Foundation. It is in the form of a letter so that the donor is not seen to be in control over the assets he has donated.

Initial assets

The initial assets of the Foundation may not be less than US\$10,000 and a Certification of Initial Assets must be signed by an Officer of the Foundation who is appointed in the Memorandum of Endowment. Once a Certificate of Initial Assets is signed by the Officer and submitted to the Registrar, a Certificate of Endorsement of Statement of Value of Initial Assets will be issued.³

Memorandum of Endowment

The Foundation may be founded by way of a Memorandum of Endowment or by the establishment of a Will. There is a three-step procedure for completion of the process of formation:

- i. the Memorandum of Endowment must be filed and registered;
- ii. the registered agent must be appointed; and
- iii. the Certificate of the Registrar must be issued.

In the case of formation by way of will, the Executor of the estate shall act as if he were the

2. Para 60.4 of the Act.

3. Para 60.8.

donor for the purpose of appointing officers and registering the Foundation, and the Foundation must appoint the officers in accordance with the Memorandum of Endowment and the Act.⁴

Upon receipt of the Certificate of Initial Assets, the Registry will issue a Certificate of Endorsement of Statement of Value of Initial Assets. The specific assets endowed at the time of registration need not be named and additional assets can be gifted at any-time, again without any public record of their value or their source.

A statement relating to the endowed assets also needs to be included in the Memorandum of Endowment signed by the donor and submitted with the application to register the Foundation. The Memorandum is not filed, but is returned to the Foundation attached to a Certificate of Endorsement of Documents issued by the Registry. An Extract of Particulars of the Memorandum of Endowment, signed by the Secretary of the Foundation is filed in the Registry. The names, addresses, and specimen signatures of the appointed officers and the Secretary, and details of the address to be used for the service of documents to the donor are included in this Extract. The name of the donor does not become public information.

The effect of Registration of the Private Foundation is that as of the date of registration, the Private Foundation shall be considered a legal person and capable of exercising the powers and functions of a private foundation.

As with all Liberian entities, formation instructions will only be accepted from professional intermediaries such as established trading businesses, company and trust managers, lawyers, banks, and accountancy firms. An instruction sheet with model forms 'Registration of a Private Foundation' is available for clients to use upon request. Foundation formation instructions can be submitted through any LISCR office, and the filing of the Certificate of

Registration in the Registry can be done on the same day.

Mandatory contents of the Memorandum of Endowment

The Memorandum must contain the following information:

- i. The name of the Foundation.
- ii. The objects of the Foundation.
- iii. The donor's name and address and where the donor is a legal person, the number and place of registration of the legal person.
- iv. The registered address of the Foundation in Liberia and the name and address of the registered agent, which is The LISCR Trust Company, the exclusive agent for all nonresident entities.
- v. The address for service of documents on the donor.
- vi. A statement of the initial assets of the Foundation.
- vii. The designation of the beneficiary(ies).
- viii. A statement defining the duration of the Foundation.
- ix. The name and address of the Secretary of the Foundation.⁵

Management Articles

The procedural rules for the management of the Foundation are set out in the Management Articles, which are signed by the donor and submitted with the application to register the Foundation. The Management Articles are not filed with the Registry but are returned to the Foundation attached to a Certificate of Endorsement of Documents issued by the Registrar.

4. Chapter 60, Title 50, Associations Law.

5. Para 60.6 of the Act.

Appointment of officers

Management responsibility of a Liberian Foundation sits with its officers who are usually professional administrators. Officers determine the distribution of income and capital in accordance with the donor's instructions.

A private foundation must have at least three officers (at least two of whom shall be natural persons). A beneficiary may not be an officer. One of the officers can also act as Secretary and a corporate Secretary is permitted. The names of each Officer and the Secretary who have consented to act need to be submitted with the application to register the Foundation and these are filed in the Registry together with the Extract.

As with the donor, there are no restrictions on residency or nationality for the officers and/or the Secretary. Officers can delegate their powers to one another.

Supervisory Board

Provision is made for the appointment of a Supervisory Board consisting of at least three natural persons, one of which may be the donor.⁶ The function of this board would be to assist in the management of the Foundation. The Supervisory Board must be established as a body that is independent of its officers and beneficiaries. The Board acts like the Protector of a trust. Similarly, auditors may also be appointed.

Annual return

Once formed, a mandatory annual return for the Foundation, signed by the Secretary must be submitted to the Registry. The annual return must confirm that the information filed in the Extract remains correct and that proper accounts have been

maintained. Annual returns are not publicly filed. Any changes or amendments to the Extract are required to be filed with the Registrar.

Taxation

In Liberia, there is no gift tax to pay at the time a Foundation is established, and earnings generated by the Foundation are tax exempt in Liberia. However, incomes paid by Foundations to its beneficiaries, once declared by beneficiaries, might be subject to local taxation at the beneficiaries' place of domicile.

Migrating foundations to Liberia

A Foundation domiciled outside Liberia may, if permitted to do so by its constitution, apply to establish its domicile in Liberia and to register as a Private Foundation.⁷

A corporation, a registered business company, a limited liability company, a limited partnership, or any other legal entity existing under Liberian law may, if permitted to do so by its constitution, apply to reregister as a Private Foundation.⁸

Conclusion

The Liberian Private Foundation provides an ideal holding structure for emerging financial and asset empires, while distancing the donor from otherwise taxable events. The Foundation permits income generated from assets held by the Foundation to be available to the donor and subsequently his heirs in accordance with the (changing) wishes of the donor/settlor. At the same time, the Foundation keeps the wealth-generating activities, such as shipping, real estate, of a family intact.

6. Para 60.14.

7. Ibid, Schedule Part I.

8. Ibid, Schedule Part III.