

# THE LIBERIAN FOUNDATION

Hilary Spilkin outlines a flexible non-commercial financial vehicle



The Liberian *Associations Law* was amended in 2002 to include the establishment of private foundations.

The Liberian private foundation, modelled on the 1993 modern Austrian law of foundations (*Stiftung*), is a useful and flexible vehicle, used for various purposes, including charitable, public and personal. There is a prohibition against using the private foundation for commercial purposes. However, this does not exclude the regular business activities of the private foundation, such as management of its income or engaging in activities that are necessary for the proper administration of its assets. This includes the buying and selling of assets, as long as this is not deemed a trading activity.

Similar to all foundations, the Liberian private foundation is a separate legal entity and all assets transferred to it, usually in the form of a gift by a donor, are irrevocable and the sole property of the foundation.

The private foundation is established through the memorandum of endowment, and an initial endowment of not less than

USD10,000. The donor(s) cannot withdraw the assets once they are donated or endowed to the foundation. The assets are placed at the disposal of the foundation and the appointed officers will distribute income and capital in accordance with the donor's instructions, as specified in the memorandum.

The memorandum may be executed by the donor(s) while they are alive or at death, in the form of a will. Forming a private foundation in Liberia is a simple process, which involves:

(i) submitting an application for registration and the memorandum of endowment to the Registrar, and  
(ii) appointing a Registered Agent, which culminates in the issuance of an official certificate of registration.

In the case of a foundation formed by a will, the executor of the estate will act as the donor.

The memorandum of endowment must include the following information:

- name of the foundation
- designated beneficiaries
- donor's name and address

- registered address of the foundation and the Registered Agent in Liberia (this will always be the Liberia International Ship and Corporate Registry Trust Company, which is the exclusive agent for all non-resident Liberian entities)
- address for service of process
- objects of the foundation
- statement of the foundation's initial assets
- statement defining the duration of the foundation, and
- name and address of the Secretary.

Upon receipt of the statement of initial assets, the Registrar will issue a certificate of endorsement of statement of value of initial assets. A detailed statement of the specific assets endowed is not required. Moreover, additional assets may be added at any time without notifying the Registrar of their value or source.

The procedural rules governing the management of the private foundation are set forth in the management articles, which are signed by the donor and submitted with the application for Registration. The articles and

memorandum are not filed with the Registry, and so do not become part of the public record, but are returned to the foundation with the certificate of endorsement. Instead, an extract of particulars of the memorandum, signed by the Secretary, is filed with the Registrar. The extract will include the names, addresses and specimen signatures of the appointed officers and secretary, plus the address for service of documents to the donor. The donor's name will not be part of the public record.

Management of the Liberian private foundation rests with its officers, who are generally professional administrators. The officers oversee the distribution of the 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 appointed as an officer. One of the officers may also act as the secretary, and corporate secretaries are permitted under the law.

As with the donor, there are no statutory restrictions on the residency or nationality

of the officers or secretary. Moreover, there are no requirements for assets to be located in Liberia.

Provision is also made for the optional appointment of a supervisory board consisting of at least three natural persons, one of which may be the donor. The supervisory board assists with the day-to-day management of the assets and is considered independent from the officers and beneficiaries.

There are minimal filing requirements with the Registrar, thus protecting the privacy of the beneficiaries and the donor. Once formed, there is a mandatory annual return for the private foundation, which must be signed by the Secretary and submitted to the Registrar. The annual return confirms that

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the information filed in the extract is correct and that proper accounts are maintained. The Registrar does not require submissions of financial accounts, nor are they required to publically file such information. Any changes or amendments to the extract must be filed with the Registrar.

A foundation domiciled outside Liberia may, if permitted to do so by its constitution, apply to migrate its domicile to Liberia. In the same way, Liberian law allows for conversion of any recognised entity to a private foundation, provided its own constitution allows for this.

Liberia imposes no gift tax on the donated assets at the time the private foundation is established. Moreover, any income generated by the assets of the private foundation is exempt from tax in Liberia. However, there may be tax implications for the beneficiaries in their respective places of domicile for any income they receive from the private foundation.

## RECENT LEGISLATION

Liberia is one of a few common-law jurisdictions that have recently adopted legislation for establishing foundations. The reasons for this are clear.

First, foundation law is less complicated than the body of trust law that has grown up around the common-law equivalent. Second, the concept of the foundation maintaining ownership of their hard-earned assets is more acceptable to a client than the concept of a trustee maintaining ownership of the assets. In either case, the original owner of the assets has to relinquish ownership and entrust it to either a trustee, who is the designated owner of the assets in the case of a trust, or, in the case of a private foundation, to a founder, who has no ownership interest in the foundation property.

This significant difference between the trust and foundation is made clear from the formal process of registration of a foundation with the relevant authority. The Liberian law provides that 'from the date of registration which is mentioned on the certificate of registration, the Private Foundation shall be a legal person by the name contained in the Memorandum of Endowment, capable forthwith of exercising all the functions of a Private Foundation' (paragraph 60.22). Trusts, in contrast, are legal relationships which must meet certain legal requirements to be valid and enforceable. The effect of registration is similar to that of incorporation of a company.

In conclusion, a private foundation is useful for preserving wealth and for asset protection, and allows for flexibility in international tax planning.

Hilary Spilkin TEP is Vice-President and Director of the Liberian International Ship and Corporate Registry

