

## BELIZE

### INTERNATIONAL FOUNDATIONS ACT, 2010

#### A BRIEFING NOTE

##### OBJECT

1. This Act is designed to promote the international financial services industry of Belize by offering a new product to international investors, primarily for asset protection purposes. At present, an international trust is usually used for this purpose in most of the common law countries including Belize, but a foundation which is a civil law alternative to the common law trust is becoming increasingly popular among investors. The essential difference between a trust and a foundation is that a trust is a **relationship** (not a legal entity) between the trustees and the beneficiaries created by an act whereby the settlor transferred property to the trustees for the benefit of the beneficiaries; whereas a foundation is a legal entity in its own right and, unlike trustees (who are answerable to beneficiaries), foundation council members are answerable to the foundation.

2. Of late, a number of offshore financial centers in common law jurisdictions have enacted legislation to provide for the establishment of foundations to remain on the cutting edge of this highly competitive industry. The Act is largely based on similar legislation in Antigua, the Bahamas and Anguilla, although consideration has also been given to corresponding legislation in Panama and Isle of Man.

3. The Act applies only to non-residents of Belize. It is confined to ‘international foundations’ (as defined in para 4 below) and does not deal with domestic foundations.

### **SYNOPSIS OF THE ACT**

4. The Act is divided into 16 Parts containing 130 sections. **Part I** contains definitions of the various terms used in the Act. Of note is the definition of “**international foundation**” which means a foundation where —

- (a) the founder or any person who has contributed assets to the foundation otherwise than for full consideration is not resident in Belize;
- (b) none of the beneficiaries of the foundation is resident in Belize; and
- (c) the foundation endowment does not include any land situated in Belize or the shares of any company beneficially owning any land situated in Belize other than property —
  - (i) for use as an office for the purpose of the administration of the foundation, or
  - (ii) where books and records of the foundation are prepared or maintained.

5. **Part II** contains detailed provisions for the establishment of a foundation. Section 3 provides that a foundation shall be established upon proper execution of a foundation charter or equivalent document governed by the laws of Belize, by a founder and the members of a foundation council, by

which a founder makes a disposition of rights, title or interest in property to the foundation for a specific purpose. It is further provided that on registration with the Registrar of International Foundations, a foundation shall have a separate and independent legal personality in its own right. Unlike a trust which cannot go beyond 120 years (except a charitable trust), a foundation can be established for an indefinite period. (s. 9). A foundation can be established for any purposes which are capable of fulfilment and are not unlawful, immoral or contrary to public policy. (s. 11). Provision is also made for charitable foundations which may be established for the alleviation of poverty, the advancement of health, education, art, culture, sports or religion, the protection of the environment, the advancement of human rights and fundamental freedoms, or any other purpose which is beneficial to the community in Belize or elsewhere. (s. 12).

6. **Part III** provides for disregarding foreign law concerning the validity of a foundation or the disposition of property to a foundation which is valid under the laws of Belize, thereby providing asset protection against creditor claims in respect of assets transferred to the foundation without intent to defraud. However, the Supreme Court of Belize will have the power to declare a foundation to be invalid and unenforceable in certain circumstances, e.g., where the foundation was created under duress, mistake or misrepresentation, or for an unlawful purpose, or where the foundation is contrary to the public policy of Belize (s. 14).

7. **Part IV** provides for the registration of a foundation, and for this purpose, the Registrar shall maintain a Register containing the name of the foundation, the name and address of the registered agent and the date of registration. The registration would not require the foundation charter to be

deposited; only the particulars thereof would need to be supplied. Every foundation which specifies the law of Belize as the governing law must be registered with the Registrar; otherwise, it will be invalid and unenforceable.

8. **Part V** sets out the contents of a foundation charter, which is the governing document of a foundation. It also deals with the execution and amendment of the foundation charter and certain rules for a benevolent interpretation of the charter.

9. **Part VI** makes provision for dissolution of a foundation. A foundation shall be dissolved if it was established for a definite period and the period has expired, or where the foundation can no longer reasonably achieve its purpose or where it has become impossible to reasonably administer or maintain the foundation. This Part also deals with the voluntary dissolution of a foundation in certain circumstances. Provision is also made for the striking off of a foundation by the Registrar for non-payment of fees etc., and subsequent restoration to the Register.

10. **Part VII** provides that every foundation governed by Belize law shall at all times have a registered agent in Belize. This Part also contains detailed provisions regarding the founder, foundation council, protector and beneficiaries.

11. **Part VIII** deals with the foundation endowment which comprises all property designated by a founder, and conveyed or transferred to a foundation. It also contains the well-known rule against alienation, i.e., a conveyance, transfer, sale, mortgage, pledge, assignment or other restraint of any interest in a foundation or its endowment by a founder or beneficiary by way of

anticipation of income or principal is void (s. 79). This Part also contains certain additional provisions for the protection of the foundation endowment.

12. **Part IX** deals with the accounts and records of the foundation. A foundation is required to keep such accounts and records as the foundation council considers necessary or desirable in order to reflect the financial position of the foundation, together with minutes of all meetings of the foundation council and copies of all resolutions consented to by the foundation council.

13. **Part X** provides for the mobility of foundations both into and out of Belize. A foreign foundation may come to Belize and continue as a foundation under Belize law subject to compliance with certain conditions. Provision is also made for a foundation to depart from Belize and transfer to some other jurisdiction.

14. **Part XI** headed “Judicial Proceedings” covers such matters as the jurisdiction of the Supreme Court of Belize, the powers of the Court in relation to foundations, enforcement of judgments, priority of claims and limitation of proceedings.

15. **Part XII** contains provisions to safeguard the confidentiality of foundations. However, the Supreme Court may order the disclosure of confidential information in certain circumstances, particularly to facilitate the investigation and prosecution of money laundering, terrorism and other related offences. It is further provided that all judicial proceedings relating to a foundation shall be held *in camera*, unless otherwise ordered by the Supreme Court.

16. **Part XIII** grants exemption to international foundations from taxes and duties. It also provides that an international foundation registered under the Act shall be regarded as being **not** resident in Belize for the purpose of the Exchange Control Regulations and will thus be exempt from exchange control restrictions.

17. **Part XIV** relates to the Registrar and his functions. These provisions are largely standard though it should be noted that no inspection or production of documents kept by the Registrar shall be permitted other than by the registered agent, except that any of the foundation council members of a foundation may, by notice in writing to the Registrar, authorise the person named in the notice to inspect a document or obtain a copy thereof.

18. **Part XV** deals with the investigation of foundations. It provides that a founder, beneficiary or protector of a foundation, or the Registrar may apply to the Supreme Court for an order, directing that an investigation be made of the foundation or any company affiliated with it. Ancillary provisions have been made for the contents of the investigation order, powers of the inspector, the hearing and other related matters.

19. **Part XVI** deals with certain miscellaneous matters, including compliance inspections, registration and annual fees, powers of the Court and the arbitration tribunal. Provision is also made for the making of regulations by the Minister responsible for international financial services (i.e., the Minister of Finance) after consultation with the International Financial Services Commission.

## **KEY FEATURES IN A NUTSHELL**

- The Act seeks to make the foundation more user friendly, in effect, a hybrid between an IBC and a trust. Provisions are inserted to facilitate and enhance efficient but discrete registration, renewal, striking off, restoration, dissolution, continuance and discontinuance of foundations, as is currently the case with the IBC's and the IBC Registry.
- Registered agents must be licensed trust agents until the IFSC establishes a licence specific for foundations. This reflects the more complicated nature of the foundation, being more akin to, if not more complicated than, a trust, and the need for heightened expertise.
- Like the international trust, registration is mandatory for international foundations, with the international foundation being invalid and unenforceable if not registered.
- Registration does not require the foundation charter to be registered, only the particulars thereof, need to be furnished.
- While the Act does grant full exchange control and tax exemptions to international foundations, the Act makes it expressly clear that such exemptions only apply to international foundations duly registered.
- Specific provisions are inserted for purposes of civil asset protection. Such provisions provide for non-recognition of foreign judgments and anti-alienation of the foundation endowment as well as the reduction of the limitation period within which to bring actions in relation to a foundation. There are similarities in these provisions and our trust legislation as well as trust legislation from other jurisdictions, although the asset protection features of the Belize international foundations are stronger.
- Provision is also made for substantial security for costs in respect of claims brought against international foundations. This is an attractive feature of the Belize foundations as it seeks to discourage frivolous litigation being instituted in Belize.

- Importantly, however, the asset protection features in no way seek to hinder investigations of criminal proceedings or fiscal offences and are expressly limited to civil proceedings.
  - Detailed provisions, clarifications and limitations are also introduced in respect of the founder, the foundation endowment, the charitable foundation as well as other bodies and relevant matters involving the foundation. Such extensive codification substantially eliminates legal guesswork in the interpretation of certain powers, rights and obligations.
  - Specific provision is made for permissible disclosure of confidential information in pursuance of treaties having the force of law in Belize for mutual legal assistance in criminal matters, tax information exchange, money laundering and terrorism prevention, among other circumstances.
20. The fees as specified in the International Foundations Regulations are highly competitive as compared with other jurisdictions. The registration fee and the annual renewal fee is only **US\$200.00**.
21. On the whole, the Act combines the best of both worlds. It replicates in a common law jurisdiction like Belize, the essential characteristics of a civil law foundation while avoiding unnecessary complications. It is hoped that a foundation established under Belize law will prove to be an ideal vehicle for asset protection purposes and will find favour with investors from both the common law and civil law countries. Copies of both the Act and the Regulations are available on the IFSC website [www.ifsc.gov.bz](http://www.ifsc.gov.bz).

**OFFICE OF THE INTERNATIONAL FINANCIAL  
SERVICES COMMISSION OF BELIZE**

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