

Cyprus: foundation-like entities incorporated under different laws in Cyprus

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Abstract

In this article, the author analyses Cypriot law with a view to various entities which are comparable to foundations as they can fulfil similar purposes. The article also provides information on the basic characteristics of these foundation-like entities as well as further details relating to their supervision, registration, amendments to their objects and governance. It then goes on to examine the matters relating to the dissolution and liquidation of such ‘foundations’ as well as setbacks which exist in respect of these entities that should be considered prior to taking a final decision on which type to incorporate.

Key points

- Under Cyprus Law there exists no specific definition or legal framework for foundations.
- However, various types of entities do exist which fulfil functions similar to that of a foundation and they are regulated under different legislations that have been enacted throughout the years.
- The main entities which are examined in this article are four and these are charitable trusts, societies, institutions, and the company limited by guarantee.

Introduction

Under Cyprus Law there exists no specific definition or legal framework for foundations. However, various types of entities do exist which fulfil functions similar to that of a foundation. These ‘foundation-like entities’ are regulated under different pieces of legislation that have been enacted in Cyprus throughout the years and they will be discussed in this article.

Types of ‘foundations’ and their basic characteristics

Charitable trusts

The Charities Law, Chapter 41 (hereinafter ‘Chapter 41’) makes provisions for charitable trusts and

governs these types of trusts, however, the legal framework provided by Chapter 41 is somewhat lacking for the purposes of interpreting certain of its provisions and as a result, practitioners turn to case law in order to be able to address their interpretational questions.

The purpose for which charitable trusts are set up are for public benefit purposes such as relief of poverty, advancement of religion and any other purposes that are considered to be beneficial to the public or the community at large.

Societies and institutions

The foundation, registration, and function of societies and institutions in the Republic of Cyprus is governed

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by the Societies and Institutions Law 57/1972 (hereinafter 'Law 57/92').

A society is defined as the organized association of at least 20 people, for the accomplishment of non-profitable purposes whereas an institution is defined as the allocation of assets, which are dedicated to serving a specific purpose. Accordingly, whereby the society relates to the association of persons, the institution relates to the appropriations of assets.

Moreover, societies can pursue both public and private benefit purposes usually for the purposes of education, literary and scientific purposes or objects/purposes which are beneficial to the public. When such societies and institutions are established for charitable purposes, they will typically either donate funds and support to other organizations with similar objectives, or provide the source of funding for its own charitable purposes which are defined and set out in their respective Articles of Association. However, it should be noted that such purposes may be amended at any time by amending of the Articles of Association, following the procedure prescribed in the Law.

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Company limited by guarantee

These types of companies are governed by the Companies Law, Chapter 113 (hereinafter 'Chapter 113') and they are usually established for non-profit making purposes, usually for the purposes of education, literary and scientific purposes or objects/purposes which are beneficial to the public. When such

companies are established for charitable purposes, they will typically either donate funds and give support to other organizations with similar objectives, or provide the source of funding for its own charitable purposes under section 20 of Chapter 113. The liability of the members of this type of company is limited to an amount agreed by the members and is contained in the company's Memorandum of Association. The Company limited by guarantee can either be established with or without a share capital. The only difference between the two is that the members of such a company will have to pay their contribution to the company in advance (if it is with a share capital), otherwise they will need to contribute it at a later stage in the event that the company goes into liquidation (if the company is without a share capital).

The Company limited by guarantee can either be established with or without a share capital

Accordingly, a company limited by guarantee may apply to the Registrar of Companies to have the word 'Limited' removed from its name and can apply to the Council of Ministers in order to obtain charitable status.

Companies limited by guarantee are not commonly used for business purposes, however, they can pursue both public and private purposes.

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Foundations-like entities in detail: supervision, registration, amendments, and governance

Charitable trusts

Supervision

Every deed, will, or other instrument creating a charity must be submitted to the office of the Supreme Court's Registrar. The powers and jurisdiction which vest with the Supreme Court in respect of charitable

trusts are three-fold. Namely, the Supreme Court has the power to give effect/enforce any trust created for a charitable purpose. Accordingly, the Supreme Court may also give any such directions/orders which may be deemed necessary for the purposes of the charitable trust's administration. Finally, the Supreme Court also has the power to sanction the sale or other disposition of any property that belongs to the charitable trust, provided that the Supreme Court is satisfied that the sanctioning of such sale/disposition will be for the benefit of or to the advantage of the charity.

Registration procedure

The trustee of any charitable institution submits an application to the Council of Ministers for the registration of the institution as a legal entity. The Council of Minister will issue a certificate of registration if it considers it to be appropriate and subject to such terms and conditions as the Council of Minister may impose, pursuant to section 2 of Chapter 41.

No minimum capital requirements exist in relation to charitable trusts.

Charitable trusts can also be set up under the International Trusts Law of 1992 provided one of the main purposes of the trust is the relief of poverty, the advancement of education or the advancement of religion or any other purposes beneficial to the public as a whole.

Amendments to the charitable trust

It should be noted that since charitable trusts are set up for a specific purpose, that purpose cannot be amended; furthermore, there are no provisions in the law for this. Where such an unlikely event arises, it must be referred to the Supreme Court which has the power and the jurisdiction to give all such directions and make all such orders as may appear necessary or expedient to it for the administration of any trust created for a charitable purpose.

Governance requirements for charitable trusts

The trustees must have been effectively appointed by the terms of any agreement, will or any other

document that constitutes the Charitable Trust to the satisfaction of the Council of Ministers, pursuant to section 5(1) of Chapter 41, prior to the Council of Ministers being able to grant a certificate of registration to a charitable trust.

Every five years the trustees must submit a report to the Administrative Secretary with the names and addresses of the trustees. The trustees are personally responsible for the property of the charity that comes into their hands and are accountable for their own acts, as well as for the proper administration of the charity and its property.

Societies

Supervision

The registration of a society must be effected in the prescribed manner as provided in Law 57/72, and as set out herein below, and once this is done the society is entered into the Register of Societies. Such societies are subject to the supervision of an official and such official is appointed by the Council of Ministers (the 'Registrar').

Registration process

Article 6(3) of Law 57/72 provides that the society, which seeks to be registered, submits an application to the Registrar, by the founders or the board of directors of the society. To such an application the following are attached; namely, the Incorporation Act, the names and addresses of the members of the board, the Articles of Association which must be dated and signed by the members, the emblem/logo of the society and the description of the movable and immovable property which such society holds or is proposed to hold.

Article 6(4) of Law 57/72 effectively states that provided that all the legal criteria are satisfied, the Registrar accepts the application for registration and registers the society in the Register following the payment of the relevant fee, whereby the Registrar thereafter proceeds to issue the certificate of registration in the prescribed form. The said certificate is published in the Republic's Official Gazette and this is deemed

to be conclusive evidence of the date of registration of the society and the fact that it satisfies all legal propositions in order to register it. Following its registration, the society obtains full legal personality ie becomes a legal entity.

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Article 8 of Law 57/72 provides that the Articles of Association of a society must accurately provide the objects, the name and its seat, the conditions of becoming a member, the resignation and expulsion of members as well as the member's rights and obligations vis-à-vis the society. Accordingly, it must also provide for the funding means of the society, amongst others, as well as the manner and form in which the accounts of the society will be monitored. It also requires that the terms of the society's dissolution be set out as well as what will happen to the assets of the society in the event that it is dissolved, in which case such assets can in no circumstance be disposed between the members.

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It is noteworthy to mention that no minimum capital requirements exist in relation to the incorporation of a society.

Amendments to the society

In the event that the Society wishes to amend its Articles of Association, then the Society shall provide the conditions for amending the Articles, including its objectives. To be valid every such amendment must be filed within 21 days in the Register.

Governance requirements for societies

The society's Articles of Association specify the conditions whereby the society is managed and how the

members are admitted and expelled. Moreover, it should also be noted that the meeting of members constitutes the supreme organ of the society and unless the Articles of Association provide otherwise the meeting itself can make decisions on all matters relating to the society.

Institutions

Supervision

As with societies, the registration of an institution must be effected in the prescribed manner as provided in Law 57/72, as set out herein below, and once this is done the institution is entered into the Register of Institutions. Such institutions are subject to the supervision of an official and such official is appointed by the Council of Ministers (the 'Registrar').

Registration process

Article 27 of Law 57/72 provides that an institution is incorporated once its Incorporation Act is registered by the Registrar in the Register and the registration certificate is issued in the prescribed manner. Article 27(2) effectively states that the Registrar, if the purpose of the institution is not illegal according to the Law, then effects its registration in the Register and issues the certificate of registration in the prescribed manner, which bears the signature of the Registrar. Following its registration, the institution obtains full legal personality ie becomes a legal entity.

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As with the charitable trusts and societies, institutions do not have a minimum capital requirement.

Amendments to the institution

In general the purpose for which an Institution has been founded cannot be amended. This can only occur exceptionally by a court order if it can be shown that the will of the founder has become unachievable and another incidental objective/purpose

may be given to the institution according to the most probable will of the founder.

Governance requirements for institutions

One or more persons usually manage the institution and any decisions are taken on a majority basis. The person(s) who shall be appointed to the management shall attend to the dealings of the institution and shall represent it both in and out of Court.

Management members are required to keep accounting books that demonstrate all the transactions of the institution and these in turn must be audited by a certified auditor and thereafter must be submitted to the Registrar. The Cyprus Courts have the right at any time to check the accounts of the institution.

Company limited by guarantee Supervision

The supervisory authority in respect of companies limited by guarantee is the same as for the other types of companies, namely the body responsible for their supervision is the Companies Registrar.

Registration process

The procedure in setting up these types of companies is the same as that for any other company, as provided for under the Cyprus Company Law, Chapter 113. A company limited by guarantee must file its Articles and Memorandum of Association, together with details of its shareholders, directors, secretary and registered address with the Registrar of Companies. Furthermore, as mentioned further above, this type of company may be registered with or without a share capital.

Specifically, it should be noted that in relation to the Articles and Memorandum of Association of a company limited by guarantee, such document must state the number of members that that the company is intended to be registered with. The company limited by guarantee may initially be registered with a single member, however, that will restrict the right of the company to have more than fifty members in the

future. Conversely, if the company limited by guarantee is registered with at least seven members, then the above-mentioned restriction shall not apply in respect of the members it may have, since in such an instance the company (which shall be registered with seven members) will be considered a public company limited by guarantee.

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As with the rest of the institutions discussed above, the company limited by guarantee also requires approval prior to its incorporation, in this instance by the Registrar of Companies.

Amendments to the company limited by guarantee's purposes/objects

This is achieved by amending the Company's Memorandum of Association by special resolution and this must also be confirmed by the court.

Governance requirements for companies limited by guarantee

As with other types of companies incorporated under the Companies Law, Chapter 113, companies limited by guarantee (with or without a share capital) are managed by its board of directors and as such the provisions of Chapter 113 apply, unless its Articles of Association provide otherwise.

Foundations: dissolution and liquidation

Charitable trusts

These types of trusts may either continue in perpetuity or alternatively, when the trustee(s) declare that the specific purpose for which the trust was set

up has been accomplished, such trust may be dissolved.

Societies

There are three main methods in which a society may be dissolved; first, it may either be dissolved by a decision of the meeting of members, at any time but this however requires that at least half of the members plus one are present and for the motion to pass it must have been approved by three-quarters of those present.

Secondly, a society may also be dissolved by a court decision, following the application to do so by the society's management, or of one-fifth of its members, or a decision of the Attorney-General of the Republic if any of the following are applicable: it becomes impossible to elect a management; it becomes impossible for the society to continue to exist in accordance with its statutes; the objectives for which the society was incorporated have been fulfilled; due to a long period of inactivity which leads to the presumption that the objectives of the society have been abandoned; the existing statutes of the society do not reflect the new objectives that it is pursuing; the objectives of the society having been declared illegal.

Third, this also being an evident criterion which will cause the society to dissolve, is if it falls below 20 members.

Unless otherwise provided by law or alternatively decided by the responsible organ, the liquidation of the society shall be carried out by the management of the society or the court may appoint a liquidator.

Institutions

An Institution may be dissolved in two main ways. First, it may be dissolved upon the materialization/occurrence of certain events; when such events materialize/occur they will be stipulated in their Act of Incorporation. The second method whereby an institution may be dissolved is by an order of the court. Such orders are usually granted by the court if the objectives and operations of the institution have

become illegal, or the objectives of the institution have been fulfilled or such objectives have been rendered unattainable. The last cause whereby the court may grant an order to dissolve the institution is if the institution has deviated from its objectives.

On the issue of liquidating the institution, unless otherwise provided by law or otherwise decided by the responsible organ, this is usually carried out by the management of the institution; alternatively, the court may appoint a liquidator.

The property of the dissolved institution shall be vested in the government of Cyprus which shall be obliged to carry out the objective of the Institution and if no identical objective exists then the property may be used towards the carrying out of a similar objective. This shall only apply provided that no contrary provisions exist in the law or in the event that neither provisions have been made in the institution's Act of Incorporation nor a decision has been taken by the relevant organ.

Companies limited by guarantee

The company shall be dissolved by winding up either on a voluntary or compulsory basis. This will depend on the solvency position of the company at the relevant time. When a company is incorporated under Chapter 113, its winding up entails a process whereby the company's assets are realized, the proceeds are distributed to its creditors and the surplus, if any, to its members. Restrictions on the allocation of the available surplus to its members may apply in the event that a company limited by guarantee is involved.

The companies' winding up entails a liquidation stage and finally the dissolution. A liquidator who is in charge of the liquidation and responsible for the distribution of the proceeds of the realization of the company's property to the creditors and to the members, in the case that the company is solvent.

It should be taken into account that the winding up must not be misled with insolvency; a solvent company may be wound up as much as an insolvent company, but for different reasons.

Chapter 113 establishes the following types and relevant procedures for winding up a company. The types of winding up under Chapter 113 are in either of three ways; first, through a compulsory winding up according to an order of the Court pursuant to section 203(1) (a) of Chapter 113. Secondly, via a voluntary winding up by the Company's members' or creditors', pursuant to section 203 (1)(b) of Chapter 113 and third and final way through winding up subject to the supervision of the Court pursuant to section 203 (1)(c) of Chapter 113.

Foundation-like entities: setbacks to the incorporation of certain types

The major setbacks that are experienced with a view to foundation-like entities is in respect to societies and institutions.

The entire procedure with respect to the registration and incorporation of societies and institutions, as set out in Law 52/72 is extremely up to date and functional as well as in line with the international obligations of the Republic in relation to the provision of a framework for the smooth growth of non-profit organizations.

Regardless of the legislative provisions however, the Registrar of Societies and Institutions insists on following a practical route which is not provided for anywhere in the Law and which unjustifiably delays the registration of societies and institutions, for a timeframe which exceeds one or even two years.

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Specifically, the Registrar of Societies and Institutions first directs the application for registration of a society or institution to a number of other authorities

for their looking into the matter and their approval and only when all the other governmental authorities—irrelevant to the issue on registration of societies and institutions—respond, then the Registrar proceeds with the examination of the application. The above procedure leads to the undeniable delay of the registration process of the society and institution proposed for registration and as a result causes the extreme delays and even paralysis of the procedure for the registration of societies and institutions.

It is for the above reasons, especially with a view to delays that most individuals seek to employ the use of charitable trusts and companies limited by guarantee, in order to give effect to the objectives that such 'foundations' achieve through their incorporation.

Conclusion

As mentioned at the beginning of this article, there is a lack of a definition and a legislative framework in respect of foundations. But the functions of foundations are fulfilled by a variety of other entities: namely through the set up of charitable trusts, societies, institutions, or companies limited by guarantee. However, following the above contents, one may conclude that even though there exists such lack, this does not hinder the establishment of such foundation-like entities and in fact once an individual looks at the different characteristics of the different types of foundation-like entities and reaches a decision on which type to proceed with, the procedure is relatively straight-forward, with the exception of timing in respect to societies and institutions.

The fact that the different types of foundation-like entities are incorporated under different laws may also be taken as a positive trait, since it allows the various entities to be diverse in nature, whereby had they been defined under a single 'label' instead and been subject to a single legislative instrument, there would not exist such diverse features.

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