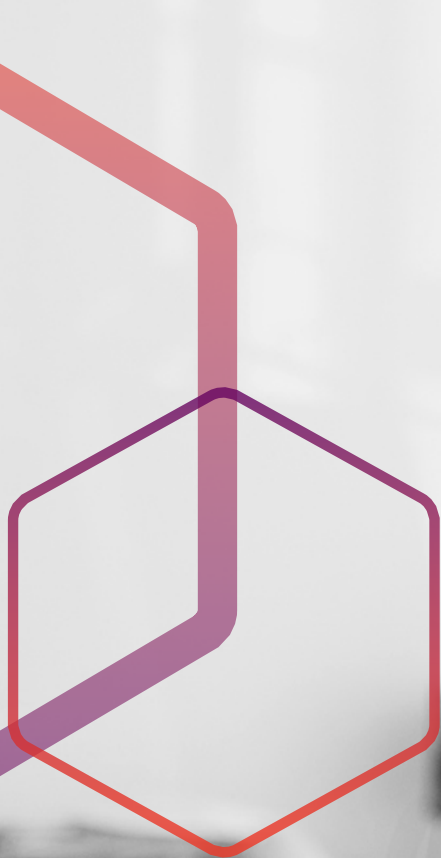


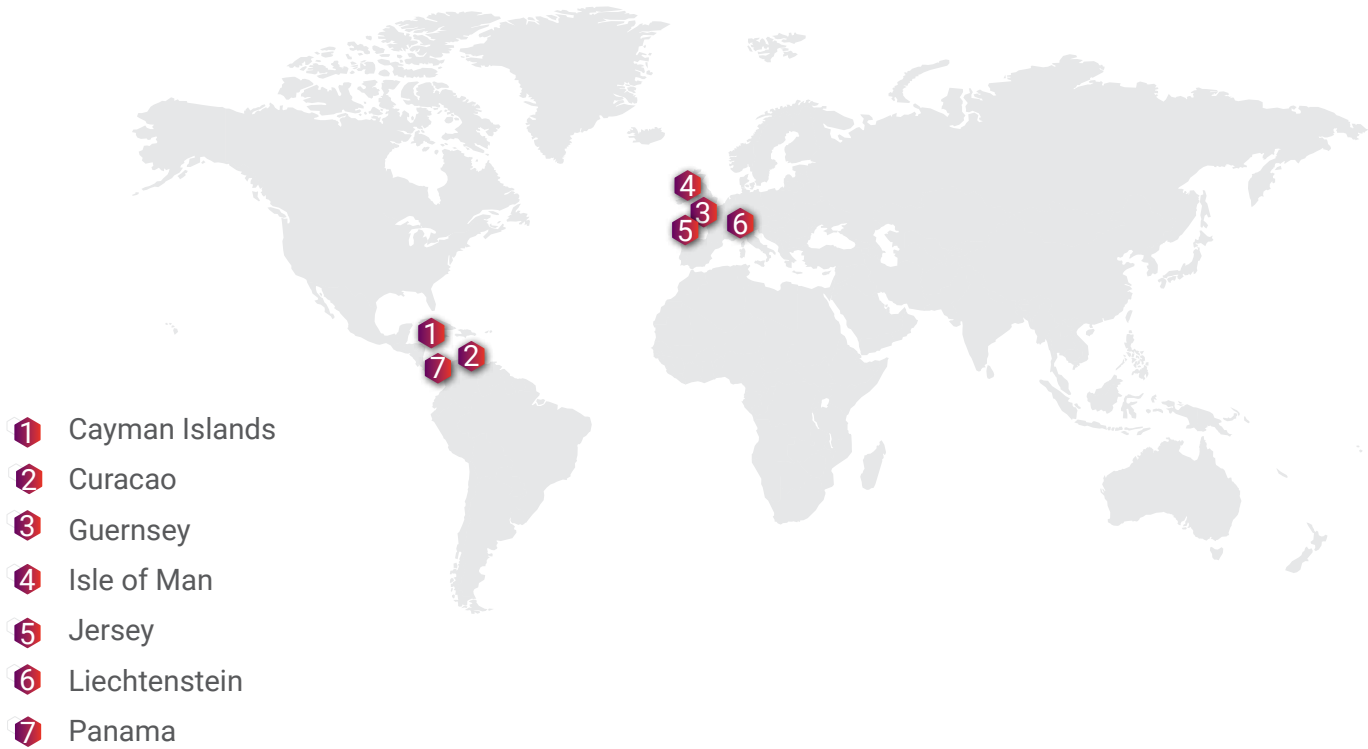
BENCHMARK MATRIX PRIVATE FOUNDATIONS

An overview of the rules and regulations for setting up a foundation in key jurisdictions



EXECUTIVE SUMMARY

TMF Group’s Family Business Wealth team performed a benchmark comparison on Private Foundations within seven key jurisdictions:



Sources of information for this comparison include TMF Group documentation, desktop research, answers to questionnaires sent to organisations in the jurisdictions, namely; chambers of commerce, other commercial registry organisations, trust companies and law firms. The benchmark comparison includes answers to questions we asked about Private Foundations, and are grouped by jurisdiction.

This benchmark summarises some of the key points determined during our research, and is not intended to be all-encompassing, nor to constitute financial or legal advice.

Some observations

- Most jurisdictions, based either on Common Law or Civil Law, have adapted their rules and regulations in such a manner as to accommodate most requirements of Private Foundations to have full flexibility in their articles of association. In fact, the Private Foundations in all reviewed jurisdictions are simply not allowed to have a commercial purpose on their own, but apart from that they can be set up in any way to accommodate unlimited other activities, as long as they are legal, including charitable and philanthropic purposes.
- Services rendered depend on client wishes. A full-service package can be provided in most jurisdictions and prices are based on the complexity of the structure, professional assistance needed (administration, management, accounting, tax and legal advice) and the qualifications and experience of the advisors.
- In most jurisdictions there is no minimum capital or asset requirement to set up a Private Foundation. The governmental, registration and initial fees of service companies do not differ sufficiently from one another for a client to base their choice of jurisdiction solely on costs, although some jurisdictions are clearly more expensive than others.
- It all boils down to the quality of service, response time and professional assistance given to the client when making inquiries; how fast does a company react? How professional are their answers to the questions asked by the client? How eager are they to assist the client to be able to land the engagement? Do they contact the client personally to find out what their wishes are, and how they can help the client further in their research? And of course, it will be important for the client to feel comfortable that the chosen jurisdiction is the one that will best provide them with the needed services and support. Where the client is based is also important. Whether they are in a country based on Common Law or Civil Law, and also where their assets are; will they be able to transfer these assets into the Private Foundation without any challenges from the country where they are transferring these assets from?
- All jurisdictions have a full AML/ KYC due-diligence process.
- TMF Group is represented in this comparison in Cayman, Curacao, Jersey, Guernsey and Panama.

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BENCHMARK MATRIX

PRIVATE FOUNDATIONS

Countries	Cayman Islands	Curacao	Guernsey	Isle of Man	Jersey	Liechtenstein	Panama
TMF office	YES	YES	YES	NO	YES	NO	YES
Legal system	Common law	Civil law	Common law	Common law	Common law	Civil law	Civil law
Enactment Private Foundation	19 October 2017 ¹	31 October 1998	2012	2011	2009	1926 ² , amended in 2008	12 June 1995 ³
Purposes Private Foundation	Unlimited, including charitable and philanthropic purposes. The foundation is however not allowed to have a commercial purpose on its own.	Unlimited, including charitable and philanthropic purposes. The foundation is however not allowed to have a commercial purpose on its own.	Unlimited, including charitable and philanthropic purposes. The foundation is however not allowed to have a commercial purpose on its own.	Unlimited, including charitable and philanthropic purposes. The foundation is however not allowed to have a commercial purpose on its own.	Unlimited, including charitable and philanthropic purposes. The foundation is however not allowed to have a commercial purpose on its own.	Unlimited, including charitable and philanthropic purposes. The foundation is however not allowed to have a commercial purpose on its own.	Unlimited, including charitable and philanthropic purposes. The foundation is however not allowed to have a commercial purpose on its own.
Incorporation Private Foundation	Registered with the Registrar of Companies. The company has a memorandum of association.	By a deed executed before a Civil Law Notary. The deed is filed with the Commercial Register and kept by the local Chamber of Commerce.	Filing of relevant documents with the registrar of foundations and registration on the register. ⁴	An application made by the Registered Agent ⁵ of the Foundation to the Registrar of Foundations.	Registered with the Jersey Financial Services Commission (JFSC) and must have a charter and regulations.	A foundation acquires legal form once a declaration of establishment is made. ⁶ Registered with Liechtenstein Commercial Register.	Registration in a Public Registry.
Capital/ assets requirement	NO	NO	NO	NO	NO	YES ⁷	NO

1. The Foundation Companies Law, 2017 (Law) introduces a new type of corporate vehicle in the Cayman Islands, the Foundation Company (FC). The Law, which came into force on 19 October, has been drafted to allow the FC to be rooted in Cayman Islands company law, but function like a civil law foundation.

2. The Liechtenstein Foundation was introduced into Liechtenstein law in 1926 by enacting the Liechtenstein Persons and Companies Act ("PCA"). It has been amended in 2008 ART 55 section 1-43.

3. Private Interest Foundation.

4. A foundation can only be incorporated by a Guernsey licensed corporate service provider.

5. The Registered Agent must hold a Class 4 license pursuant to the Financial Services Act 2008.

6. According to Art. 552 § 20 PCA, a notification of formation must be deposited with the Liechtenstein Commercial Register within 30 days after the formation of the Foundation.

7. The minimum capital requirement for a Foundation is CHF 30,000 or Euros or USD 30,884.

Countries	Cayman Islands	Curacao	Guernsey	Isle of Man	Jersey	Liechtenstein	Panama
Required parties to set up a Foundation	The company's secretary, which must be a qualified person ⁸ , a director and beneficiaries.	A Founder, a person or company can act as Founder. A director and beneficiaries.	Founder, one or more Council members, registered agent, lawyer.	Registered Agent, Founder, Council Member(s) and Beneficiaries or purpose.	Founder, Council (including at least a qualified member), Guardian and Beneficiaries or purpose.	Founder, Council Member (minimum 2), protector / supervisory body (optional), Auditor (for supervised foundation). Beneficiaries or purpose ⁹ .	Founder, Council Member (at least one corporate member or three individuals), Beneficiaries or purpose, local agent and protector.
Duration of incorporation Private Foundation	A few days,	1-2 business days,	1 day,	1-2 business days,	1-2 business days,	A few days (maximum one week),	3-5 business days.
Management requirements - minimum # directors	One company secretary is required.	One director is required. If director is non-resident, local representative needs to be appointed.	As the parties choose to specify in the foundation rules.	A foundation acts through its Council Members. The Council must have at least one member, which may be a legal entity, and which does not need to be local.	Must have Council consisting of at least Founder, Guardian and Qualified Member (QM).	The Foundation Council must consist of at least two members who can be either individuals or legal entities. According to Art. 180a PCA ¹⁰ , one member of the foundation council must be either a Liechtenstein trustee or a person with similar status.	The directors can be individuals or entities and do not have to be locals (at least one corporate member or three individuals).

8. A qualified person for a foundation company means a person who is licensed or permitted by the Companies Management Law (Revised) to provide company management services in the Cayman Islands.

9. A foundation may be set up either inter vivos by a “declaration of establishment” or mortis causa by means of a testament or inheritance contract. The declaration of establishment is a declaration of intent by the founder to set up a foundation. An inter vivos foundation may have one or more

founders who may be either natural persons or legal entities domiciled anywhere in the world. The declaration of establishment must be in written form and requires authentication of the signature of the founder. A foundation can also be set up by a Liechtenstein trustee as indirect representative of the founder.

10. Persons and Companies Act (PCA).

Countries	Cayman Islands	Curacao	Guernsey	Isle of Man	Jersey	Liechtenstein	Panama
Management requirements - other required parties	A foundation company's constitution may appoint a member or supervisor to be a director of the company, although there is no requirement for a foundation company to have supervisors who are directors. A foundation company may cease to have members following incorporation if its memorandum of association so permits or requires, and the company continues to have a supervisor.	The Private Foundation has no shareholders or members – it's managed by a board of directors composed of one or more directors. A supervisory/ advisory board is optional, only natural persons can be appointed members of the supervisory/ advisory board. Depending on control, the members must be registered with the Commercial Register.	A Corporate body can act as a Founder, protector and council member. The Private Foundation can have reservation of powers.	A Corporate body can also act as founder/ protector/ council member. The Private Foundation can have reservation of powers.	Those other than natural persons can be appointed to the Supervisory Board as long as the above mentioned minimum required parties are in place. A Corporate body can also act as founder/ protector/council member (whether Qualified Member or not) and Guardian. In principle there is complete flexibility regarding reservation of powers.	A Corporate body can also act as founder/ protector/council member. The Private Foundation can have reservation of powers.	A Corporate body can also act as founder/ protector/ council member. No express provisions are contained in the law regarding reservation of powers.
Founder's authority to appoint or dismiss required parties	As well as providing for its management by directors or their delegates, a foundation company's constitution (its memorandum and articles of association) may give rights, powers and duties of any type to members, directors, officers, supervisors, founders or others concerning the foundation company. A founder does not have any automatic rights in relation to the foundation company, but may reserve rights if they wish.	The articles of association may grant the founder several rights, such as the appointment/ dismissal of directors, the appointment of beneficiaries etc. These rights may also be assigned to a third party subject to statutory provisions.	The Founder can appoint or dismiss a director, appoint beneficiaries or can assign these rights to a third party.	The Founder has such rights (if any) in respect of the foundation and its assets as provided for in the Foundation rules. For example: Power to amend, revoke or vary the objects of the foundation. Power to appoint and remove Council Members or Beneficiaries and consent requirements.	The Founder can appoint or dismiss a director of the Private Foundation, appoint beneficiaries or assign these rights to a third party as long as the documents are drafted to support this, and provided a QM is retained.	This is possible, provided these rights are described in the Foundation documents.	In the foundation charter, the founder may reserve for himself/herself or for other persons, the right to remove the members of the foundation Council, as well as to appoint or add new members.

Countries	Cayman Islands	Curacao	Guernsey	Isle of Man	Jersey	Liechtenstein	Panama
The Beneficiaries' right to information	The directors are required to give interested persons reports, accounts, and any information/ explanations concerning the foundation company's business and affairs. A beneficiary of a foundation company is a person who will, or may, benefit from the foundation company carrying out its objects. The constitution may provide for any type of beneficiary and for any type of beneficial provision. A foundation company's constitution may (but does not have to) provide for any duties, powers or rights to be vested in beneficiaries, allowing a beneficiary to be given direct enforceable rights against the directors, officers and interested persons ¹² .	The board is legally entitled to make distributions to the beneficiaries, it is not obliged to notify the beneficiaries of their appointment, neither to provide them with information on the total assets. The beneficiaries cannot be considered to have a claim towards the Private Foundation.	<p>Whatever is specified in the foundation rules (including no rights if that is what is specified, but then a Guardian is required).</p> <p>A beneficiary without rights is called a disenfranchised beneficiary.</p>	Any 'person with sufficient interest' ¹² in the Foundation may require the Foundation to provide full and accurate information about its financial position, its assets and the manner in which they are being administered, and the way in which it is carrying out its objects. The rules of the Foundation may prohibit such disclosure and, in that case, the person may apply to the court for an order requiring the provision of the information. However, the Foundation Rules are regarded as private and are not required to be provided to any parties other than the council members, registered agent and enforcer, unless directed otherwise by the Courts or unless the rules state otherwise.	No, unless the charter or regulations explicitly provide otherwise. A 'person of standing' (which includes a beneficiary) may however, make an application to the Royal Court for the terms of a foundation to be properly enforced.	Each beneficiary is entitled to inspect the foundation deed, the supplementary foundation deed and possible regulations as far as his/her rights are concerned. He/She is entitled to the disclosure of information, reports and accounts. For this purpose, he/she has the right to inspect the business records and documents and to produce copies, and also to examine and investigate all facts and circumstances, in particular the accounting, personally or through a representative. However, the Persons and Companies Act provide important exceptions, which (partially) suspend the information rights as described above (eg. if the founder has reserved the right to revoke the foundation and he/she is him/ herself the ultimate beneficiary, or if the founder has set up a controlling body for the foundation, or the foundation is subject to the supervision of the foundation supervisory authority.	The rights of the beneficiaries are set down in the foundation charter or by-laws, or by resolutions passed by the foundation's council.

11. An interested person of a foundation company means any of the company's members or supervisors, someone who has the right to be a member or supervisor of the company and/or someone who is declared under the company's constitution to be an interested person.

12. This is anyone connected with the Foundation, including the Founder, a dedicator of assets, a Council Member, a Beneficiary, the Enforcer and the Registered Agent.

Countries	Cayman Islands	Curacao	Guernsey	Isle of Man	Jersey	Liechtenstein	Panama
Powers and authority of board of Directors	A foundation company is managed by a board of directors. There is no requirement for directors to be resident in the Cayman Islands and there are no other restrictions on who may act as a director of a foundation company, so any individual of full capacity and any company may be a director. This will have to be described in the company's memorandum of association.	The Board of Director's powers and authorities are set forth in the articles of association.	Management of the foundation – as extensive or limited as the parties choose to specify in the foundation rules.	The Council administers the assets of the Foundation and carries out its objects in accordance with the foundation' instrument and the rules.	The Council has the powers that are laid out in the charter and regulations.	The Foundation Council is the only compulsory body of the foundation. It manages the Foundation according to the documents. Respectively it represents the Foundation towards third parties.	Subject to the terms of the charter, the foundation council is accountable to the beneficiaries and any protector/ supervisory body. A beneficiary may challenge any acts of the foundation that may damage the rights conferred upon him/ her, either by applying to the protector/ supervisory body (if any) or the court.
Appointment of a Supervisory/ Advisory Board	Optional, and will have to be described in the company's memorandum of association.	Optional to appoint a supervisory/ advisory board, which will be in charge under the supervision and/or advice of the board of directors.	Optional, it has to be specified in the Foundation rules and those other than natural persons can also be appointed on the supervisory/ advisory board.	Optional, a foundation whose objects include a non-charitable purpose must have an enforcer in respect of that object. Apart from the founder and the registered agent of the foundation, no person may be both a member of the council and an enforcer.	The Council is the Supervisory Board and there can be committees below it.	Optional, and those other than natural persons can be appointed on the supervisory/ advisory board.	Optional, this will have to be described in the company's charter.

Countries	Cayman Islands	Curacao	Guernsey	Isle of Man	Jersey	Liechtenstein	Panama
Can the Private Foundations be part of Mergers?	NO, it is not currently possible for a foundation company to transfer in or out of the Cayman Islands by way of continuation, or for a foundation company to merge or consolidate under the Companies Law. Further regulations may be introduced in the future to modify the Companies Law procedures so that they can apply to foundation companies.	YES	YES, but there is no statutory regime for a 'merger.'	YES, Foundations can hold shares and so can be a party to a merger.	YES, there is ability for: <ul style="list-style-type: none">• two or more Jersey foundations to merge• one or more Jersey foundations to merge with one or more recognised entities.	Not in a general sense of a merger, as there are no owners like in a corporation ¹³ .	NO, there is no ability for mergers for a Panamanian foundation.
Services rendered	Full Service package depending on the clients wishes.	Full Service package depending on clients wishes.	Full Service package depending on the clients wishes.	Full Service package depending on the clients wishes.	Full Service package depending on the clients wishes.	Full Service package depending on the clients wishes.	Full Service package depending on the clients wishes.
Third party fee, registration fee	USD \$609.00 ¹⁴	-	USD \$141- 493.00	USD \$2024.00 ¹⁵	USD \$282.00 and USD \$564.00 for same day incorporation.	-	-

13. However, according to Art. 552 § 41 PCA, a Liechtenstein Foundation can, without dissolution and liquidation, be converted into a Liechtenstein Establishment or a Liechtenstein Trust Enterprise provided the Foundation purpose and the founder’s will are respected. The conversion leads to an automatic transfer of assets to the new entity. Furthermore, Liechtenstein Foundations are entitled to form “Sub-Foundations” and to transfer certain assets to the “Sub-Foundations” provided the Foundation purpose and the founder’s will are respected.

14. The fee payable to the Registrar to form a foundation company, or convert an existing company into one.

15. Incorporation of an Isle of Man Foundation fee.

Countries	Cayman Islands	Curacao	Guernsey	Isle of Man	Jersey	Liechtenstein	Panama
Third party fee, annual registry fee	USD \$854.00 Annual registry fee.	USD \$75.00 Annual Chamber of Commerce fee.	USD \$704.00Annual fee.	USD \$512.00 ¹⁶ Annual fee.	-	USD \$519.00 ¹⁷ Annual registry fee.	USD \$350.00 Annual Resident Agent fee.
Government fees	-	-	Incorporation and annual return fees. ¹⁸	USD \$135-674.00 Application with the Registrar.	-	Legalisation fees of a signature USD \$10.00 each, official confirmations USD \$16.00, Annual minimum tax USD \$1,868 ¹⁹	Annual corporate franchise tax of USD \$400.00.
Invoice currency	CI\$ or USD	USD	Pound Sterling, USD and Euros	Pound Sterling, USD and Euros	Pound Sterling ²⁰	Swiss Franc (CHF) and Euros	USD

16. Annual disbursement payable to the Isle of Man Government.
17. CHF 500.
18. Depending on complexity of the foundation the application with the registrar costs between £ 100-500.00.

19. Liechtenstein Foundations that qualify as “Private Asset Structure” pursuant to Art. 65 et seq of the Liechtenstein Tax Law are only required to pay an annual minimum tax in the amount of CHF 1,800.
20. Invoice can be made in all currencies, but the Pound Sterling is preferred.

Countries	Cayman Islands	Curacao	Guernsey	Isle of Man	Jersey	Liechtenstein	Panama
Publishing of information / Publicly available info	Various registers and information must be kept by the foundation company at the registered office, including its register of directors and officers, register of mortgages and charges and beneficial ownership register.	<ul style="list-style-type: none"> Deed of incorporation Any amendment of the articles of association The particulars of the member(s) of the board of directors. <p>All are filed with the Commercial Register kept by the Local Chamber of Commerce.</p>	Only 'part A' of the registrar is publicly available. This records the name and registered number of the foundation, the name and address of the councillors and Guardian (if any) and the details of the registered office.	The foundation instrument is the only document that is publicly available and includes the name of the foundation, its objects, names and addresses of The Council Members, name and address of the Registered Agent. The foundation must notify the Registrar of any amendment to its foundation instrument (including any change in the name of the foundation, registered agent or composition of the council) within one month of the amendment taking effect.	Charter, annual returns, amendments to charter, registered office, details of QM are all information that have to be public. Note the Foundation's regulations are not made public.	Limited information filling - for example, name of the foundation, address, board and purpose of Foundation but no naming of beneficiaries or founder.	The Foundation Charter (or articles) of incorporation, the names and addresses of the council members and Registered Agent are public record documentations. The Protector and Beneficiaries need not be publicly registered. Panama Foundations Protectors can be appointed through a Private Protectorate Document, and the Beneficiaries can be appointed through a Private Letter of Wishes, written and signed by the Private Protector.
Publishing of information/ annual tax filings	Foundations are exempt from any Cayman Islands income or gains taxes and able to obtain a tax undertaking certificate from the Cayman Islands government guaranteeing no change to their tax status for a period of up to 50 years from the date of the undertaking.	No filing of annual profit tax return.	Annual profit tax returns need to be filled only if there is Guernsey-sourced revenue and profits.	The annual profit tax return needs to be filled. This document is not however, a matter of public record.	Annual profit tax returns need to be filled only if there is Jersey source revenue and profits (excluding bank deposit interest and investment returns).	No filing of an annual profit tax return. ²¹	Panama does not impose any reporting requirements or taxes for Panamanian Foundations.

21. Only if the Liechtenstein Foundation is subject to the regular Liechtenstein corporate income tax.

Countries	Cayman Islands	Curacao	Guernsey	Isle of Man	Jersey	Liechtenstein	Panama
Publishing of information / annual financial statements	The Companies Law requires every company to keep proper books of account. There is no statutory requirement under the Foundation Companies Law or the Companies Law for a foundation company to file or audit its company account, although audited accounts may be required if a foundation company is regulated in the Cayman Islands under other regulatory laws.	Annual financial accounts need to be prepared.	Annual financial accounts have to be prepared.	Annual financial accounts need to be prepared.	Annual financial accounts need to be prepared.	Liechtenstein Foundations that qualify as Private Asset Structures are not required to keep Financial accounts.	Foundations books are maintained 100% private and confidential by law. No annual financial accountant filing is needed.
Client acceptance requirements	Required to undertake detailed customer due diligence documentation.	Required to undertake detailed customer due diligence documentation.	Required to undertake detailed customer due diligence documentation.	Required to undertake detailed customer due diligence documentation.	Required to undertake detailed customer due diligence documentation.	Required to undertake detailed customer due diligence documentation.	Required to undertake detailed customer due diligence documentation.
Official language documentation	English	English Dutch Spanish Standard Mandarin	English ²²	English	English ²³	German ²⁴	Spanish English

22. The official version of the charter and rules of the foundation must be in English. Advice and documents can be provided in Standard Mandarin or other recognized languages.

23. The documents can be translated in any language at the client’s expense.
24. Documentation can also be made available in English. Standard Mandarin documentation will have to be translated and legalized.

Countries	Cayman Islands	Curacao	Guernsey	Isle of Man	Jersey	Liechtenstein	Panama
Required third party services in the country/ Local representation requirements	Accounting Taxes Legal advice	Accounting ²⁵ Taxes Legal advice	Accounting ²⁶ Taxes Legal advice	Accounting ²⁷ Taxes Legal advice	Accounting ²⁸ Taxes Legal advice	Accounting Taxes Legal advice	Accounting Taxes Legal advice
CRS affiliation ²⁹	YES	YES	YES	YES	YES	YES	YES
UBO registration ³⁰	YES, in central register but not yet publicly available.	YES, at address of Foundation, no central registry.	YES, in central register but not yet publicly available.	YES ³¹	YES, in central register but not yet publicly available.	Not yet ³²	YES, at address of Foundation, no central registry.
Highest Appeal Court	The Grand Court of the Cayman Islands ultimately Privy Council London.	High Appeal Court in The Hague, The Netherlands.	Privy Council, London.	Privy Council, London.	Privy Council, London.	Liechtenstein Supreme Court or Liechtenstein Constitutional Court.	Corte Suprema de Justicia in Panama.

25. Clients may use their own preferred parties abroad, but specific things need to be done according to Curacao rules and regulations.

26. Clients may use their own preferred parties abroad, but specific things need to be done according to Guernsey rules and regulations.

27. Clients may use their own preferred parties abroad, but specific things need to be done according to Isle of Man rules and regulations. Every Isle of Man Foundation must have a Registered Agent who must be the holder of an appropriate license and require the engagement of an Isle of Man Advocate for drafting of the Foundation Rules.

28. Clients may use their own preferred parties abroad, but specific things need to be done according to Liechtenstein rules and regulations.

29. Common Reporting Standard.

30. Ultimate Beneficial Ownership.

31. Although only information regarding anyone with more than 25% ownership or control is filed at the Registry.

32. The Liechtenstein UBO register will presumably be introduced in Liechtenstein in the course of 2018 or 2019.

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