

# Foundations in the wild west: the Wyoming Statutory Foundation Act

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## Abstract

Traditionally a civil law concept, the use of foundations as wealth management and succession planning vehicles is gaining popularity in common law jurisdictions. Wyoming is the second state in the USA to adopt common law foundation legislation that will allow for the formation and administration of statutory foundations. The Wyoming Statutory Foundation Act, effective 1 July 2019, combines elements of well-established trust and corporate law in Wyoming with classical elements of foundation legislation found in civil law jurisdictions, while also providing access to Wyoming's privacy and asset preservation laws.

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## Big picture

Foundations have historically been used by wealthy families in civil law jurisdictions to hold and protect a family's wealth. In this sense, foundations have been employed for similar purposes as trusts in common law jurisdictions—as succession planning and asset preservation vehicles that enable effective family governance. Until recently, foundations, a civil law structure, were not developed or fully understood in common law jurisdictions such as the USA or the UK. This is changing, as demonstrated by the 2019 enactment of the Wyoming Statutory Foundation Act (the WYSFA).<sup>1</sup> The phrase 'statutory foundations' was purposefully used in the WYSFA to clearly mark the difference between this notion, which is based on the civil law tradition, and 'private foundations', which are

## Introduction

Traditionally a civil law concept, the use of foundations as wealth management and succession planning vehicles is gaining popularity in common law jurisdictions. Wyoming is the second state in the USA to adopt common law foundation legislation that will allow for the formation and administration of statutory foundations. The Wyoming Statutory

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1. 2019 Wyo Sess Laws Ch 190 (H.B. 236). The recent passing of this legislation makes Wyoming the second state in the USA to enact statutory foundation legislation, traditionally a civil law concept, with New Hampshire being the first to do so in 2017.

recognized as charitable entities under federal law in the USA.<sup>2</sup>

From a global perspective, the evolution of foundation law has resulted in three distinct approaches: the classic, Dutch, and common law models.<sup>3</sup> Classic foundations, originating with Liechtenstein's version, are rooted in the Germanic legal system. This model differs from the 'stichting', or the Dutch model,<sup>4</sup> and from the common law model, which developed as a result of foundation legislation in common law jurisdictions mainly as a blend of company law and trust law concepts.

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As a common law jurisdiction that recognizes trusts and has a well-developed statutory framework for corporations and limited liability companies, Wyoming's enactment of the WYSFA, and the formation and governance of statutory foundations thereunder, fits the common law model. The WYSFA combines wealth preservation elements of trust law and governance fundamentals of corporate law with features typical of civil law foundations. The result in Wyoming is a type of entity that will be familiar to residents of onshore and offshore common law jurisdictions as well as to those residing in civil law jurisdictions.

The principal advantage of a statutory foundation is that it exists as a separate entity—which is similar to a corporation but unlike a trust. Moreover, a statutory foundation is a separate entity without shareholders. The resulting benefits are threefold. First, a statutory foundation benefits from its trust-like structure in common law jurisdictions but is recognized in civil law jurisdictions as a separate entity, thereby

enjoying the benefits of legal personality in those jurisdictions. Secondly, because a statutory foundation does not have shareholders, the controlled foreign company rules that may pertain to its beneficiaries are of no effect. Thirdly, unlike trusts in many jurisdictions, a statutory foundation may exist in perpetuity.

Accordingly, a statutory foundation may hold a variety of assets, including, without limitation, financial investments, funds, real estate, business assets (foundations are commonly used in Europe to hold substantial businesses—Ikea, for example, is held in a family foundation), collections, or intellectual property, in a structure recognized around the globe as legally and fiscally effective. The flexibility of a statutory foundation's governing documents enable it to be created for whatever specific purpose best meets each family's or founder's needs.

Additionally, a statutory foundation may be used as a holding vehicle in other structures—as a shareholder of a private trust company, as a protector of a trust, or as a member of a limited liability company. A statutory foundation could be a holder of public or private company shares, a general or a limited partner of a limited partnership, a beneficiary of a trust, or a beneficiary of another statutory foundation. All of this while providing exceptional flexibility, privacy, and protection to the families or individuals by and for whom a statutory foundation is established.

## Wyoming Statutory Foundation Act

The WYSFA will become law in the USA State of Wyoming on 1 July 2019. The WYSFA allows for the formation and governance of statutory foundations, features distinct elements from the Wyoming Uniform Trust Code,<sup>5</sup> the Wyoming Business Corporation Act, the Wyoming Limited Liability

2. IRC s 501(a) and (c)(3).

3. P Panico, 'Private Foundations and Trusts: Just the Same but Different?' (2016) 22(1) *Trusts & Trustees* 132–39, at 132.

4. See *ibid* for a more robust history and discussion of the 'classic' and 'Dutch' models of foundations.

5. See AM Staehr, 'The Discovered Country: Wyoming's Primacy as a Trust Situs Jurisdiction' (2018) 18 *Wyo L Rev* 283, 290–308, 310–16; CM Reimer, 'The Undiscovered Country: Wyoming's Emergence as a Leading Trust Situs Jurisdiction' (2011) 11 *Wyo L Rev* 165, 172–86, 193–97.

Company Act,<sup>6</sup> and incorporates foundation legislation from offshore jurisdictions such as the Bahamas, Panama, and Liechtenstein.<sup>7</sup> All in all, this new Wyoming entity will operate much like a trust while being recognizable by civil law jurisdictions, thereby giving USA residents an alternative structure that may be just as appealing—or more so—than a trust, and providing residents of civil law countries interested in the USA as an asset situs jurisdiction a viable new option.

### Parties

Typical parties to a foundation in civil law jurisdictions include its founder (or founders), foundation council, beneficiaries, and, in certain instances, a protector or guardian, or a contributor (or contributors). In corresponding order, parties to a Wyoming statutory foundation include its organizer, founder (or founders), board of directors, beneficiaries, and, in certain instances, a protector or a contributor (or contributors). This nomenclature is intentional and is derived from company and trust law familiar to many jurisdictions within the USA. In other words, the Wyoming legislator intentionally avoided certain words which appear to have been invented in the English language foundation legislation of many offshore jurisdictions, such as ‘council’, ‘guardian’, ‘qualified recipients’,<sup>8</sup> and maintained the usual words of company and trust law, such as ‘board of directors’, ‘protector’, and ‘beneficiaries’.

Each party to a statutory foundation under Wyoming law must be a ‘person’. Under the WYSFA, a ‘person’ is defined as ‘an individual, partnership, corporation, joint stock company or any other association or entity, public or private’.<sup>9</sup> The

same definition is used under the Wyoming Limited Liability Company Act, and the parties to a limited liability company must also each be a person.<sup>10</sup> As a result, a trust or entity satisfies the definition of a person and, therefore, may serve as a party to a statutory foundation.

Either the organizer or founder may form a statutory foundation by signing and delivering the articles of formation to the Wyoming Secretary of State.<sup>11</sup> For privacy, convenience, or other reasons, a founder may prefer to have an organizer sign and deliver the articles of formation, which are of public record once filed by the secretary of state. The organizer is usually unknown in civil law jurisdictions, although Liechtenstein law recognizes the possibility for an ‘indirect representative’ (ie a nominee) for the founder.<sup>12</sup> The Wyoming approach provides for a different person, usually a professional, to sign the documents required to form a statutory foundation.

Under the WYSFA, a founder is the person who contributes property to a statutory foundation. The founder’s intent, like the intent of the settlor of a trust, is a fundamental aspect of any statutory foundation, and the purpose for which the statutory foundation is created as well as its resulting management are derived from this intent. If permitted by the operating agreement, additional property may be contributed to a statutory foundation by its founder or a contributor.<sup>13</sup>

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6. See DW Cottam and others, ‘The 2010 Wyoming Limited Liability Company Act: A Uniform Recipe With Wyoming “Home Cooking”’ (2011) 11 Wyo L Rev 49, 51 (noting that Wyoming became the first state to authorize limited liability companies in 1977).

7. See above (n 3) and accompanying text.

8. The phrase ‘qualified recipients’ is used only in the foundations law of the Dubai International Financial Centre (DIFC). cf DIFC Foundations Law, art 29.

9. Wyo Stat Ann s 17-30-102(a)(xiii) (effective 1 July 2019) (citing to Wyo Stat Ann s 8-1-102(a)(vi)).

10. *ibid* s 17-29-102(a)(x), (xii) and (xvi).

11. *ibid* s 17-30-303(a) (effective 1 July 2019); see also *ibid* s 17-30-102(a)(x) (effective 1 July 2019).

12. Liechtenstein, PGR, art 552 s 4(3).

13. A ‘contributor’ is defined as ‘any person, excluding a founder, who contributes property to a statutory foundation’. *ibid* s 17-30-204(b) (effective 1 July 2019).

*rendered ineffective for reasons including that such transfer or distribution 'avoids or defeats any forced heirship or legitimate right, claim or interest under the law of a foreign jurisdiction'*

Property contributed to a Wyoming statutory foundation is considered property of that foundation, resulting in protection against claims of a founder's and, if applicable, a contributor's creditors, including any forced heirship or legitimate right claims.<sup>14</sup> The governing law section of the WYSFA, similar to the recently amended governing law section of the Wyoming Uniform Trust Code, further prohibits transfers and distributions of property to a statutory foundation from being rendered ineffective for reasons including that such transfer or distribution 'avoids or defeats any forced heirship or legitimate right, claim or interest under the law of a foreign jurisdiction'.<sup>15</sup>

The WYSFA requires a statutory foundation to have a board of directors consisting of at least one person, and permits a founder to serve as a director.<sup>16</sup> Directors are not personally liable for the statutory foundation's acts, omissions, obligations, or debts, whether arising in contract, tort, or otherwise, which is consistent with foundation legislation in offshore common law jurisdictions such as the Bahamas.<sup>17</sup> As with a corporation, the board of directors manages the affairs of a statutory foundation unless its governing documents provide otherwise.<sup>18</sup> The board of directors is responsible for carrying out the founder's intent by managing the affairs

of the statutory foundation in accordance with its governing documents, which should reflect that intent.<sup>19</sup>

An important feature of the WYSFA is the distinction between the duties owed by a director of a statutory foundation and the duties owed by a trustee of a trust or a director of a corporation. Under the Wyoming Business Corporation Act, each director has a duty to act in a manner the director reasonably believes is in the best interest of the corporation and, in so doing, must consider the shareholders' interests.<sup>20</sup> A trustee, under the Wyoming Uniform Trust Code, has a duty of loyalty that requires the trustee to administer a trust solely in the beneficiaries' interests.<sup>21</sup> In contrast, under the WYSFA, a director of a statutory foundation must act in good faith; and, while a director of a statutory foundation must also act in 'a manner not opposed to the best interests of the statutory foundation', the director is not required to consider the beneficiaries' interests in so doing.<sup>22</sup> This distinction is not present in the foundation legislation of civil law jurisdictions, many of which do not recognize trusts, but is consistent with the enactments of some leading common law jurisdictions, such as Jersey.<sup>23</sup>

A statutory foundation formed for a charitable purpose must have a protector; however, a protector is optional if the statutory foundation is formed for a private purpose.<sup>24</sup> A founder may serve as a protector, but no person may simultaneously serve as a protector and a director.<sup>25</sup> Similar to a trust instrument, an operating agreement may grant a protector the

14. Wyo Stat Ann s 17-30-801 (effective 1 July 2019).

15. *Ibid* s 17-30-103(b) (effective 1 July 2019); see also Wyo Stat Ann s 4-10-107(c) as amended by 2019 Wyoming Session Laws Ch 44 (H.B. 56), which now prohibits a trust, or any distribution from a trust in accordance with its terms, from being 'void, voidable, set aside or deemed defective in any manner' for reasons including that a forced heirship or legitimate right, claim or interest under the law of a foreign jurisdictions are avoided or defeated.

16. *Ibid* s 17-30-501(a) (effective 1 July 2019).

17. *Ibid* s 17-30-502 (effective 1 July 2019). Ch Bahamans, Foundations Act 2004, s 33(1).

18. Wyo Stat Ann s 17-30-501(a) (effective 1 July 2019).

19. *Ibid* s 17-30-501(c) (effective 1 July 2019).

20. *Ibid* s 17-16-830.

21. *Ibid* s 4-10-802(a).

22. *Ibid* s 17-30-501(d) (effective 1 July 2019).

23. Foundations (Jersey) Law 2007, art 25(1)(b). A beneficiary under a foundation ... is not owed by the foundation or by a person appointed under the regulations of the foundation a duty that is or is analogous to a fiduciary duty.

24. Wyo Stat Ann s 17-30-503(b) (effective 1 July 2019).

25. *Ibid* ss 17-30-503(c) and -501(a)(iv) (effective 1 July 2019).

authority to approve or disapprove actions taken by the board of directors.<sup>26</sup>

The articles of formation or the operating agreement of a statutory foundation may, but neither is required to, name beneficiaries or include terms providing for the distribution of statutory foundation property to certain persons or in certain amounts. A beneficiary of a statutory foundation does not have a right to, or interest in, the property of a statutory foundation unless a right or interest arises by express terms in the operating agreement.<sup>27</sup> As a result, care should be taken when drafting the articles of formation or the operating agreement and terms included therein regarding beneficiaries' right to or interest in property of a statutory foundation.

## Recognizable features

As a separate and distinct legal entity with perpetual duration,<sup>28</sup> a statutory foundation:

has the capacity to sue and be sued in its own name and has the power to take all actions necessary or convenient to carry on the activities of the foundation.<sup>29</sup>

These powers and the parties that may take or benefit from such actions are set forth in the statutory foundation's articles of formation and operating agreement. Again, the Wyoming legislator has intentionally used the same terms which apply to a corporate entity established in Wyoming instead of trying to coin new terms based on an alien legal tradition, such as the phrase 'declaration of establishment' which is used in some common law offshore centers after the German notion of *Stiftungserklärung*.

## Articles of formation

A statutory foundation is created when articles of formation (known as the 'charter' in some offshore jurisdictions) are filed by the Wyoming Secretary of State, resulting in 'conclusive proof that the organizer has satisfied all conditions required for the formation of a statutory foundation'.<sup>30</sup> This requirement, for those who have formed limited liability companies or corporations in Wyoming or other USA jurisdictions, is akin to a filing requirement and, for those familiar with foundation legislation in offshore jurisdictions, to a registration requirement.<sup>31</sup>

When forming a statutory foundation, the articles of formation must designate a registered office and name a registered agent within Wyoming. This ensures that those availing themselves of the benefits of the WYSFA maintain an address and point of contact within the state to receive certain information, such as service of process, if necessary. There is no need to name the founder, directors, any beneficiary, or protector in the statutory foundation's articles of formation, thereby resulting in the sort of privacy available to settlors of a Wyoming trust or organizers of a Wyoming limited liability company.

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The articles of formation may also include the reservation of a founder's right to amend or restate the articles of formation and/or amend the purpose of the statutory foundation.<sup>32</sup> In this respect, the WYSFA distances itself from the approach taken in the New

26. *ibid* s 17-30-503(d) (effective 1 July 2019).

27. *ibid* s 17-30-601 (effective 1 July 2019).

28. *ibid* s17-30-201(b) (effective 1 July 2019). The articles of formation may limit the duration of a statutory foundation, but the default is perpetual duration.

29. *ibid* s 17-30-203 (effective 1 July 2019).

30. *ibid*s17-30-303(d) (effective 1 July 2019). Creation of a statutory foundation as described is conclusive proof that the organizer has satisfied all conditions required for formation of the statutory foundation, except in a civil action commenced by the state of Wyoming to terminate the statutory foundation. In that case, a court may require other, additional evidence as it determines is appropriate.

31. For example, there is a registration requirement for establishing a foundation in Antigua and Barbuda, forming a foundation in the Bahamas, obtaining legal personality for a foundation in Guernsey, and formally incorporating a foundation in Jersey.

32. Wyo Stat Ann s17-30-401(b) (effective 1 July 2019). The articles of formation must include an express statement that a founder wishes to reserve the right to amend the purpose of a statutory foundation, if the founder wishes to retain such power. The words 'may be amended', 'may be restated', or other words of similar import are required in any express statement of a founder's reservation of such rights in the articles of formation. *ibid* ss 17-30-201(f) and -303(c)(iii)(B) (effective 1 July 2019).

Hampshire Foundation Act, where the founder retains certain significant powers by default.<sup>33</sup> Statutory foundations under the WYSFA are similar in this respect to the original civilian or ‘classic’ model foundations adopted by Liechtenstein and Austria, where such powers may be retained by the founder only on the grounds of express provisions to this effect in the constitutive documents.<sup>34</sup> Under the WYSFA, any such power reserved to a founder lapses on the death, termination, or dissolution of that founder unless the statutory foundation’s articles of formation or operating agreement provide otherwise.<sup>35</sup> The WYSFA does provide a mechanism for amending the purpose of a foundation in certain instances if no express power to do so was reserved by a founder. In all cases, a founder’s heirs, spouse and, more significantly, creditors are prohibited from amending or restating the articles of formation, amending the purpose of, or terminating, a statutory foundation.<sup>36</sup> This language in the WYSFA was crafted after Article 40(5) of the Second Schedule to the Maltese Civil Code<sup>37</sup> in order to mitigate the risk that any reserved powers, namely a power to terminate or revoke the statutory foundation, may be taken in execution by the founder’s creditors.<sup>38</sup>

Aside from those items noted above, the WYSFA permits a founder to include additional information, such as the names and addresses of the initial directors or the statutory foundation’s purpose, in the articles of formation so long as that information is consistent with and permitted by law. As a reminder, however, the articles of formation for any statutory foundation formed or registered in Wyoming are a

matter of public record so thoughtful attention to the information included in the articles of formation rather than in the operating agreement is crucial when maintaining privacy is a primary objective of the parties involved.

### Operating agreement

Just as the articles of formation are analogous to a charter or declaration, the operating agreement is analogous to bylaws or regulations of a foundation in offshore jurisdictions. Either a founder or the board of directors may adopt an operating agreement, but in all cases an operating agreement must be adopted.<sup>39</sup> The operating agreement is an internal, private document that sets forth the intent of a founder with respect to the management of the business and regulation of the affairs of the statutory foundation.<sup>40</sup> In this respect, the operating agreement of a statutory foundation serves the same purpose as a trust instrument under Wyoming law and in other USA jurisdictions. Great weight is given to the intent of a founder, just as great weight is given to the intent of a settlor with respect to a trust in Wyoming and other common law jurisdictions that recognize trusts.

Allowing for flexible governance is a hallmark of foundation legislation from common and civil law jurisdictions alike, and the WYSFA is no exception. Another hallmark of foundation legislation across jurisdictions is the ability to form a statutory foundation for a private or charitable purpose. The WYSFA permits the formation of a statutory foundation for any

33. NH Rev Stat s 564-F:7-702(b) Unless the governing documents provide otherwise, the founder retains the following powers, rights, and interests:

- (1) The power to amend or restate the foundation’s certificate of formation
- (2) The power to amend, restate, or revoke the foundation’s bylaws
- (3) The power to direct the directors concerning distributions of the foundation’s property
- (4) The right to receive distributions from the foundation; or
- (5) The power to dissolve the foundation.

34. Liechtenstein, PGR, art 552 s 30(1); Austria, PSG, s 33(2) and s 34.

35. Wyo Stat Ann ss17-30-401(b), -201(f), -303(c)(iii)(B), and -1002(b) (effective 1 July 2019).

36. *ibid* s 17-30-402 (effective 1 July 2019).

37. Malta, Civil Code, Second Schedule, art 40(b) The express reservation by the founder of the right to revoke a foundation shall not be exercisable by the heirs or spouse of such founder unless expressly provided otherwise in the deed of foundation. Without prejudice to any other remedies available at law, creditors of the founder may not exercise the right to revoke a foundation.

38. cf P Panico, ‘Founder’s Creditors and Reserved Powers – Some Cautionary Tales’ 20 (6) *Trusts & Trustees* 520–524 (discussing the risk of a founder’s reserved powers being taken in execution by the founder’s creditors).

39. Wyo Stat Ann s 17-30-309 (effective 1 July 2019).

40. *ibid* s 17-30-309 (effective 1 July 2019).

lawful purpose, including a private (ie for-profit) or charitable purpose, by one or more founders or an organizer.<sup>41</sup> Whatever the lawful purpose, a statutory foundation must confer a benefit on at least one person.<sup>42</sup> In other words, some form of ‘beneficiary principle’ is not the exclusive remit of English law trusts but also of Liechtenstein and Austrian foundations<sup>43</sup> and the resulting language in the WYSFA reflects this approach.

### Rights to information

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The WYSFA not only limits the information available to the public, but also to the statutory foundation’s beneficiaries and third parties. Unlike with a trust, a beneficiary of a statutory foundation has limited statutory rights to access foundation information. In jurisdictions with foundation legislation, a beneficiary’s right to information has historically been regarded as in no way necessary or even pertinent to the business and affairs of the foundation. The WYSFA treats beneficiaries in a similar manner

but with one notable exception addressed below.<sup>44</sup> The founder, board of directors, and protector, if any, are responsible for ensuring the proper management of the statutory foundation, and a beneficiary has no right to participate in or even access information related to such management except in certain circumstances. These provisions are similar to those that shape foundations in civil law jurisdictions, which ignore equity in the Anglo-American sense, and where the rights and powers of the beneficiaries are therefore limited to what is expressly provided under the statute and the constitutive or governing documents.<sup>45</sup>

Access to certain records of a statutory foundation is limited depending on the party seeking to obtain such records and the terms of the operating agreement. A protector is entitled to request in writing and receive all information regarding a statutory foundation. A beneficiary, however, is only entitled to request in writing and receive all information regarding a statutory foundation if there is no protector or after the death of the founder (or the last founder if there is more than one). While a protector is serving, or while a founder is living, a beneficiary is only entitled to request in writing and receive a copy of the operating agreement, and information regarding other beneficiaries may be redacted.<sup>46</sup>

The WYSFA also allows for the sealing of records in certain judicial proceedings involving a statutory foundation.<sup>47</sup> This provision is based on the similar

41. A ‘charitable purpose’ is defined in the WYSFA as ‘the relief of poverty, the advancement of education or religion, the promotion of a health, governmental or municipal purpose or the achievement of other purposes which are beneficial to the community’. Wyo Stat Ann s 17-30-102(a)(v) (effective 1 July 2019). A lawful private purpose includes ‘holding or investing in other entities or assets, including those entities or assets that are the property of the statutory foundation’. ibids 17-30-201(c) (effective 1 July 2019). A statutory foundation is prohibited from acting as a financial institution or an insurer. ibid s 17-30-201(e) (effective 1 July 2019).

42. Wyo Stat Ann s 17-30-201(c) (effective 1 July 2019).

43. P Panico, ‘Private Purpose Foundations: From a Classic “Beneficiary Principle” to Modern Legislative Creativity?’ (2013) 19(6) *Trusts & Trustees* 542–50, at 542.

44. Wyo Stat Ann s 17-30-701(b) (effective 1 July 2019) provides ‘[a]fter the death of the last founder of a statutory foundation or if there is no protector, the foundation shall provide all information requested by a beneficiary within a reasonable time, upon written request by a beneficiary’. Therefore, a beneficiary’s right to certain information depends, at least in part, on whether or not a statutory foundation has a protector.

45. By way of example, cf the Austrian Supreme Court judgments OGH, 2.7.2009, 6 Ob 101/09 k (discretionary beneficiaries have no right to information) and OGH 15.12.2004, 6 Ob 180/04w (contingent beneficiaries have no right to information) or Liechtenstein, PGR, art 552 s 11(1) (the beneficiaries’ rights to information are significantly reduced if there is a controlling body such as a protector).

46. Wyo Stat Ann s 17-30-701(b) (effective 1 July 2019) currently reads in relevant part ‘[a]fter the death of the last founder of a statutory foundation or if there is no protector, the foundation shall provide all information requested by a beneficiary within a reasonable time, upon written request by a beneficiary’.

47. ibid s 17-30-701(a) (effective 1 July 2019). The WYSFA provides that ‘[a] filed document or court order issued shall be available to the court, a founder, the board of directors, a protector, the attorney of any of the persons specified . . . and any other interest person as the court may order upon a showing of need’. ibid s 17-30-1003 (effective 1 July 2019).

provision found in the Wyoming Uniform Trust Code.<sup>48</sup>

### **Limits on judicial supervision**

Just as the Wyoming Uniform Trust Code limits judicial supervision of trusts in Wyoming, the WYSFA limits judicial supervision of statutory foundations. Specifically, a statutory foundation is not subject to continuing judicial supervision in Wyoming unless ordered by a court.<sup>49</sup> A Wyoming court may intervene in the administration of a statutory foundation, but only to the extent its jurisdiction is invoked under the WYSFA or as otherwise provided by law.<sup>50</sup>

In addition to adopting the WYSFA in 2019, the Wyoming legislature also enacted legislation creating the Chancery Court of the State of Wyoming.<sup>51</sup> This court will likely have jurisdiction over disputes involving statutory foundation related issues.

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### **Unique outcome**

The WYSFA has been deliberately crafted to encapsulate the qualities of classical foundation legislation and common law trust principles. A statutory foundation will enjoy the advantages of its Wyoming

domicile, including Wyoming laws that allow for succession planning, asset preservation, and effective family or entity governance as well as an efficient regulatory system further enhanced by the newly created Chancery Court of the State of Wyoming.

Some of the most interesting aspects of the WYSFA arise from its governing documents. As can be seen above, a founder or an organizer may form a statutory foundation and the governing documents may establish and limit the founder's powers as needed. Similarly, the governing documents may freely define the rights and powers of beneficiaries and protectors. This, plus other benefits afforded under the WYSFA, provides flexibility for each founder or family to form a statutory foundation that fits its unique circumstances.

Governance of a statutory foundation under the WYSFA is simple. A board of directors, with a one director minimum, is required and a founder is permitted to serve as a director. Unless a statutory foundation has a charitable purpose, naming a protector is optional. Again, the WYSFA provides for flexibility with specific management objectives achieved through the governing documents of each statutory foundation. The WYSFA avoids cumbersome management and regulatory requirements while still ensuring the integrity of this unique structure under Wyoming law.

The WYSFA becomes effective on 1 July 2019, but interest in statutory foundations is already great. The expectation is that this new, flexible, and efficient structure will be used for a variety of purposes, adding positively to Wyoming's reputation as an innovative wealth planning and asset situs jurisdiction.

48. See Wyo Stat Ann s 4-10-205 (regarding the sealing and availability of documents in judicial proceedings involving the administration of a trust in Wyoming).

49. Wyo Stat Ann s 17-30-1001(b) (effective 1 July 2019).

50. *ibids* 17-30-1001(a) (effective 1 July 2019).

51. 2019 Wyo Sess Laws Ch 200 (SF 104); Effective as of 15 March 2019, Wyo Stat Ann s 13-15-115 provides that the chancery court 'shall be a court of limited jurisdiction established for the expeditious resolution of disputes involving commercial, business, trust and similar issues. The chancery court shall employ nonjury trials, alternative dispute resolution methods and limited motions practice and shall have broad authority to shape and expedite discovery as provided in the rules adopted by the supreme court to govern chancery courts'.

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