

KEY FACTS

On 17 July 2009 the Foundations (Jersey) Law 2009 (“the Law”) came into force taking Jersey to the forefront of jurisdictions offering foundations. Jersey enjoys a stable economic and political environment and as a result the Island is attractive as an offshore jurisdiction.

Since the concept of a Jersey foundation combines many aspects of both a trust and a body corporate, foundations will have many uses for offshore planning, as well as being of particular interest and appealing to planners from civil law jurisdictions already familiar with foundations, and who may be looking for international variations on that theme.

In addition to the establishment of Jersey foundations, Jersey is anticipating the migration of many foundations currently domiciled in jurisdictions such as Liechtenstein and Panama or merger of them with Jersey foundations. Trident Trust Company Ltd office in Jersey is poised and equipped to cater for clients’ needs.

FEATURES OF A JERSEY FOUNDATION

- A Jersey foundation will be a body corporate registered with the Registrar of Companies and it is governed by the law, its Charter and its Regulations (if any).
- Name – A foundation’s name must end in the word “foundation” or an equivalent translation into a foreign language.
- All foundations have a Charter. The Charter is a public document which sets out the name and objects of the foundation. The detailed provisions applicable to the foundation can be included in the public Charter or in the Regulations, which is a private document. (The Charter, or any part of it, may be in any language. However it is important to note that a translation in English must be provided at the time the proposed Charter is submitted to the Companies Registry).
- Registration – The Charter must be lodged with the Registrar on incorporation, and must specify (i) the name of the foundation; (ii) the objects for which the foundation was established (which can be charitable or non-charitable or both and can be for the benefit of people or purposes or both); (iii) the names and addresses of the first members of the foundation’s council; (iv) the details of any initial endowment; (v) what will happen to foundation assets should the foundation be wound up and dissolved; and (vi) if it is to be wound up and dissolved upon the happening of an event or the expiration of a fixed period of time, details of the event or time.
- The regulations set out how the foundation’s assets are to be administered and how its objects are to be achieved. It is expected that the majority of foundations will have both a publicly registered Charter and a set of Private Regulations, though there may be cases, such as, for example, foundations established for wholly charitable purposes, where it is desirable for the entire constitution of the foundation to be public.

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- A foundation will be required to have a council which is the body responsible for fulfilling the aims of the foundation in accordance with the law, Charter and Regulations. The Council must have at least one “qualified” member (a person registered and registered with the Jersey Financial Services Commission to carry on trust company business – Trident Trust Company Ltd is registered to conduct these activities) and must also have a guardian who will oversee the work of the council and to whom the council will be accountable.
- A Jersey foundation has a separate corporate personality but unlike a company it has no Shareholders. It can sue and be sued in its own name and enter contracts in its own name. Like a company, the Regulations provide for most commercial transactions which a company can undertake such as winding up, dissolution, merger with other foundations or corporate bodies and migration from the Island to other jurisdictions. The Regulations may also set out the functions which may be delegated by the Council.
- The person or entity instigating the Jersey foundation is the Founder. The Founder instructs the qualified person to apply for the incorporation. The Founder need not be the same person who provides any endowment or financial contributions. The identity of the Founder need not be disclosed. If disclosed, Founder’s rights may be reserved to the Founder by appropriate provisions in the Charter and Regulations.
- No initial endowment – Unlike a trust, there is no requirement for an initial endowment to initiate its existence.
- A Jersey foundation cannot itself trade other than trading activities which are incidental to the attainment of its objects. (It can own interests in underlying trading entities).
- A Jersey foundation can hold foreign property, but cannot own property located in Jersey.
- A Jersey foundation can have any objects (including charitable or non-charitable objects, defined purposes or to benefit Beneficiaries) provided they are lawful.
- A foundation need not have Beneficiaries. If there are Beneficiaries, they have no interest in the foundation’s assets and Beneficiaries are not owed fiduciary duties by the foundation or the Council Members. Unless required by the Charter or Regulations a foundation is not required to provide any person (including a Beneficiary) with any information about the foundation or its administration.
- Guardian – A Jersey foundation must have a Guardian whose function is to ensure that the Council carries out its functions and administers the foundation’s assets in accordance with the objects of the foundation. The role of Guardian may be carried out additionally by the Founder or the qualified person, but no other Council Member can be the Guardian.
- There are no Jersey income or capital taxes for non-resident taxpayers.
- There are certain administrative requirements such as having a business address in Jersey, and ensuring the name and business address of the foundation appear on written communications. Statutory and financial books and records must be maintained at the business address. The business address will be the address of the locally regulated council member.
- Migration and merger – Re-domiciliation, continuance and merger provisions are similar to companies.

FLEXIBLE APPLICATIONS

- **“Corporate-like”** – A Jersey foundation may resemble a company by reason of its incorporation and registration; its constitution being similar to Memorandum and Articles of Association; the council members being akin to a Board of Directors; indefinite duration; and flexibility as regards provisions to cover such corporate actions such as re-domiciliation, continuance, merger, dissolution and winding up.
- **“Trust-like”** – A Jersey foundation may resemble a trust in many aspects. The Founder may resemble a “Settlor” (perhaps with certain powers reserved to him or her) who makes an endowment (settlement) for the benefit of Beneficiaries who cannot own the assets, but for whom the assets can be administered for their present or ultimate benefit. Alternatively the Founder may remain anonymous, so resembling a “declaration of

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trust". The Charter and Regulations may in many respects resemble a discretionary or fixed interest trust instrument. The Jersey foundation may also be created by will or other testamentary writing. The Guardian is similar to a Protector.

- **Charitable or Commercial Purposes** – The Jersey foundation may be established for purposes broadly “charitable” (e.g. cultural/philanthropic/scientific/educational/humanitarian/religious purposes) or “commercial” (non-trading) purposes in the same manner that a “purpose trust” and underlying companies may be applied (e.g. the holding of entities to carry out licensing of intellectual property/leasing/provision of benefits to incentivise employees/the holding of SPVs for capital market and financial structuring, etc.). A Jersey Foundation may be used instead of a non-charitable purpose trust to hold the shares of a Private Trust Company (“PTC”), which is set up to act as Trustee for one or more family trusts, the Board of Directors of the PTC comprising certain family members.

TYPICAL USES OF A FOUNDATION

- To act as a holding or investment vehicle to own and/or invest in shares, interests and stocks of private companies or other securities;
- To assist private individuals with global asset management;
- To deal with succession and inheritance planning and wealth preservation;
- To avoid probate requirements and forced heirship in certain countries;
- To protect persons at a disadvantage due to minority or incapacity who cannot manage their assets or risk losing the same;
- To protect against fragmentation and outsiders gaining control of family businesses which are passed down the generations;
- Asset protection.

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