

KEY FACTS

MIGRATION OF FOUNDATIONS TO JERSEY

On 17 July 2009 the Foundations (Jersey) Law 2009 (“the Law”) came into force.

A Jersey foundation combines many aspects of both a trust and a body corporate, and 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.

The Foundations (Continuance) (Jersey) Regulations 2009 (“the Regulations”) allows Jersey companies to continue in Jersey as foundations, and certain other “recognised entities” to migrate to Jersey and continue as foundations.

TARGET PROFILE FOR MIGRATION

Migration is suitable for any “recognised entity”, as defined in the Regulations. This definition means a body corporate incorporated or established outside Jersey which falls within a class of bodies corporate designated by the Minister.

The list of bodies corporate designated by the Minister as “recognised entities” currently include foundations in:

- Panama
- Liechtenstein
- Bahamas
- Liechtenstein Anstalts and Stiftungs,
- St Kitts Foundations, Nevis Multiform Foundations
- Malta Private Foundations

The application for a “recognised entity” (referred to in the following as “the Migrant”) to migrate to Jersey must be made to the Jersey Financial Services Commission (“JFSC”) by a “qualified person” (a person registered with the Jersey Financial Services Commission to carry on trust company business – Trident Trust Company Ltd in Jersey is so registered).

KEY FACTS
PRE-APPLICATION MATTERS

Prior to an application being made to the JFSC, the following requires to be carried out:

- A notice of intention to migrate (“the Notice”) must be published with copies sent to all creditors of the Migrant having a claim in excess of £5,000.00, as well as to the Registrar of Companies (“the Registrar”).
- The Notice must contain the following:
 - A statement that the Migrant is to continue as a foundation;
 - Specify the current jurisdiction in which the Migrant is established, the type of entity which the Migrant comprises;
 - A statement as to the solvency upon incorporation in Jersey as a foundation;
 - A statement that any person aggrieved by its incorporation as a foundation may apply to the Royal Court in Jersey within 28 days of publication of the Notice to restrain the proposed incorporation as a foundation. (The Royal Court would only grant the restraining order if the interests of the applicant were unfairly prejudiced by the incorporation).
- Where the Notice does not confirm solvency after incorporation as a foundation, an application to the JFSC cannot be made until the Royal Court orders that there would be prejudice to the interests of creditors by reason of the application.

THE APPLICATION

The qualified person will lodge the application together with a copy of the charter of the Migrant following its incorporation as a foundation and various supporting documents. The qualified person must also lodge a certificate confirming a number of matters including:

- The name of the qualified person named as the qualified member of the Migrant.
- The regulations of the proposed Migrant.
- The address in Jersey of the qualified member.
- That a guardian has been selected for the Migrant.
- That the laws under which the Migrant was established (“the Foreign Law”) allows the application to migrate.
- That all or any authorisations required under the foreign law or the constitution of the Migrant have been obtained.
- That the Migrant will cease to be subject to the foreign law following migration.
- That the interests of creditors will not be unfairly prejudiced by incorporation as a foundation in Jersey.

INCORPORATION

The JFSC may decline the application if it perceives that there is any risk to the integrity and reputation of Jersey in financial and commercial matters or if the objects of the Migrant appear to be unlawful. An applicant who has been declined may appeal to the Royal Court.

If the application is successful, the JFSC confirms to the Registrar that it may incorporate the Migrant as a Jersey foundation. The Registrar will then register the name, the business address of the qualified member, the jurisdiction under which the Migrant was previously established or incorporated, and will issue a registration number. The Registrar will also inform the relevant authorities of the foreign jurisdiction that the Migrant has been duly incorporated as a foundation in Jersey.

KEY FACTS

THE FUTURE

Once the Migrant has been incorporated as a foundation in Jersey, its existence is subject to:

- Continuance thereafter of the property and rights to which it was entitled immediately before incorporation as a foundation in Jersey.
- The foundation remains subject to any criminal or civil liabilities and to any contracts, debts and other obligations to which the Migrant was subject prior to its incorporation as a foundation in Jersey.
- All and any legal actions or proceedings which were pending by or against the Migrant prior to its incorporation as a foundation in Jersey may be continued by or against it following incorporation as a foundation in Jersey.

Please contact any Trident Trust office worldwide for further information about our services and fees. Office contact details are included on the following page.

Trident Trust Company Ltd
PO Box 398
11 Bath Street
St Helier, Jersey JE4 8UT
Channel Islands
Tel +44-1534-733401
Fax +44-1534-727195
jersey@tridenttrust.com

EUROPE
GUERNSEY

Trident Trust Company (Guernsey) Ltd
 Tel +44-1481-727571
 Fax +44-1481-723162
 guernsey@tridenttrust.com

ISLE OF MAN

Trident Trust Company (IOM) Ltd
 Tel +44-1624-646700
 Fax +44-1624-620588
 iom@tridenttrust.com

JERSEY

Trident Trust Company Ltd
 Tel +44-1534-733401
 Fax +44-1534-727195
 jersey@tridenttrust.com

LUXEMBOURG

Trident Trust Company (Luxembourg) S.A.
 Tel +352-95-05-74-74
 Fax +352-95-91-11
 luxembourg@tridenttrust.com

MALTA

Trident Trust Company (Malta) Ltd
 Tel +356 21 434 525
 Fax +356 21 434 595
 malta@tridenttrust.com

SWITZERLAND

Zurich
Trident Corporate Services AG
 Tel +41-44-396 1080
 Fax +41-44-396 1081
 switzerland@tridenttrust.com

Geneva

Integritas Trust S.A.
 Tel +41-22-715-2760
 Fax +41-22-732-3674
 switzerland@integritastrust.com
 www.integritastrust.com

UNITED KINGDOM

Trident Trust Company (UK) Ltd
 Tel +44-20-7935-1503
 Fax +44-20-7935-7242
 uk@tridenttrust.com

Trident Company Services (UK) Ltd

Tel +44-20-7487-0460
 Fax +44-20-7487-0461
 corpserVICES@tridenttrust.com

THE AMERICAS / CARIBBEAN
BAHAMAS

Trident Corporate Services (Bahamas) Ltd
 Tel +1-242-322-6154
 Fax +1-242-328-1064
 bahamas@tridenttrust.com

Integritas Trust Company Ltd

Tel +1-242-322-2200
 Fax +1-242-322-2030
 bahamas@integritastrust.com
 www.integritastrust.com

BARBADOS

Trident Corporate Services (Barbados) Ltd
 Tel +1-246-431-0760
 Fax +1-246-431-0591
 barbados@tridenttrust.com

BRITISH VIRGIN ISLANDS

Trident Trust Company (BVI) Ltd
 Tel +1-284-494-2434
 Fax +1-284-494-3754
 bvi@tridenttrust.com

CAYMAN ISLANDS

Trident Trust Company (Cayman) Ltd
 Tel +1-345-949-0880
 Fax +1-345-949-0881
 cayman@tridenttrust.com

NEVIS

Meridian Trust Company Ltd
 Tel +1-869-469-1333
 Fax +1-869-469-0968
 nevis@tridenttrust.com

PANAMA

Trident Trust (Panama) S.A.
 Tel +507-302-7494
 Fax +507-302-7497
 panama@tridenttrust.com

UNITED STATES

New York
Trident Corporate Services, Inc
 Tel +1-212-840-8280
 Fax +1-212-944-5923
 nyc@tridenttrust.com

Atlanta

Trident Corporate Services, Inc
 Tel +1-404-233-5275
 Fax +1-404-233-9629
 usa@tridenttrust.com

Sioux Falls

Trident Trust Company (South Dakota) Inc
 Tel +1-605-679-4355
 Fax +1-605-679-4357
 sd@tridenttrust.com

Miami

Integritas, Inc
 Tel +1-305-405-9006
 Fax +1-305-416-3143
 usa@integritastrust.com
 www.integritastrust.com

US VIRGIN ISLANDS

Trident Trust Company (VI) Ltd
 Tel +1-340-774-7322
 Fax +1-340-776-0651
 usvi@tridenttrust.com

ASIA / PACIFIC
HONG KONG

Trident Corporate Services (Asia) Ltd
 and **Trident Trust Company (HK) Ltd**
 Tel +852-2805-2000
 Fax +852-2850-4090
 hongkong@tridenttrust.com

NEW ZEALAND

Trident Trust Company (NZ) Ltd
 Tel +64-9-300-6067
 Fax +64-9-366-1482
 nz@tridenttrust.com

Integritas New Zealand Ltd

Tel +64-9-300-6067
 Fax +64-9-366-1482
 nz@integritastrust.com
 www.integritastrust.com

SINGAPORE

Trident Trust Company (Singapore) Pte Ltd
 Tel +65-6304 3288
 Fax +65-6491 1231
 singapore@tridenttrust.com

MIDDLE EAST / AFRICA
CYPRUS

Trident Trust Company (Cyprus) Ltd
 Tel +357-258-20-650
 Fax +357-253-61-857
 cyprus@tridenttrust.com

Trident Fiduciaries (Middle East) Ltd

Tel +357-253-53-520
 Fax +357-258-18-808
 fiduciariesme@tridenttrust.com

DUBAI

Trident Trust Company (UAE) Ltd
 Tel +971-4-423-9988
 Fax +971-4-450-4411
 dubai@tridenttrust.com

MAURITIUS

Trident Trust Company (Mauritius) Ltd
 Tel +230-210-9770
 Fax +230-210-1266
 mauritius@tridenttrust.com

SEYCHELLES

Trident Trust Company (Seychelles) Ltd
 Tel +248-4-422-000
 Fax +248-4-422-010
 seychelles@tridenttrust.com