

Guernsey: Foundations

Last reviewed: March 2023

The Foundations (Guernsey) Law, 2012 (the **Law**), which introduced the possibility of creating foundations under Guernsey law, came into force with effect from 7 January 2013.

What is a Guernsey foundation?

The basic structure of a Guernsey foundation may feel very familiar to those accustomed to dealing with private foundations in other jurisdictions. A Guernsey foundation has some of the characteristics of a company (such as separate legal personality) and some of the characteristics of a trust (such as the ability to hold assets for the benefit of others). It must, however, be considered as a separate type of entity in its own right which cannot be fully defined by reference to a traditional trust or company structure.

Key features

A Guernsey foundation will have the following key features:

- a constitution made up of a charter and a set of rules
- a council to administer the foundation
- a founder to provide the initial endowment, and
- depending on the terms of the foundation, a guardian.

Charter

A Guernsey foundation must have a charter which will state:

- its name
- its purpose
- its initial endowment, and
- its duration (but only if it is to have a limited duration).

The charter may also contain other matters which the founder wishes to include. Whilst the charter must be filed with the Guernsey Registrar of Foundations (the **Registrar**), it is not available for public inspection.

Rules

The rules must:

- prescribe the functions of the council
- detail the procedure for the appointment, resignation and removal of councillors and the guardian (if any), and
- if the councillors or guardian are to be remunerated, make provision for such remuneration.

If the obligatory aspects in the rules are instead included in the charter, it is not necessary to have separate rules for the foundation. The rules may provide for such other matters as the founder thinks fit, such as the addition or removal of beneficiaries and the manner in which the property of the foundation may be distributed or applied. The rules are not filed with the Registrar and are not publicly available.

Council

The council administers the foundation. The councillors have a duty to the foundation to act in good faith in the exercise of their functions. This contrasts with a trust where the trustee's duties are to the beneficiaries. A foundation may have a sole council member provided this is specified in the constitution. It is not necessary for there to be a licensed fiduciary in Guernsey on the council.

Founder

The founder provides the initial endowment to the foundation and must, either personally or through an agent, sign the charter. The initial endowment may be of any type of property and of any value. It is possible for the founder to reserve the power to amend, revoke, vary or terminate the foundation (provided that such power is set out in the charter) but such powers may only be reserved during his/her lifetime (if a natural person) or for a period of up to 50 years from the date of establishment of the foundation (if the founder is not a natural person). The founder may be a councillor or the guardian (but not both) of the foundation and may also be a beneficiary.

Beneficiaries and/or purposes

A foundation must have a purpose but need not have beneficiaries. It can be for charitable or non-charitable purposes.

Perhaps the most innovative feature of the Law is the distinction between 'enfranchised' and 'disenfranchised' beneficiaries. The former are entitled to certain information about the foundation (such as copies of the constitution and its records and accounts) and have standing to apply to the Royal Court to enforce its terms. In contrast, disenfranchised beneficiaries have no such rights and accordingly the Law requires that a guardian be appointed to supervise the council and to represent the disenfranchised beneficiaries.

Guardian

A Guernsey foundation is only required to have a guardian if it either has 'disenfranchised' beneficiaries or has been established for a purpose without beneficiaries. The guardian's function is to enforce the purpose of the foundation. The guardian may not be a councillor.

A company or other corporate body may act as a guardian, founder, or member of the council.

Resident agent

A Guernsey foundation must adhere to the requirements in the Law in respect of the appointment of a resident agent in Guernsey. A resident agent will usually be a Guernsey corporate services provider (ie a Guernsey licensed fiduciary). The resident agent has duties in relation to the beneficial ownership regime in Guernsey (including obtaining and disclosing information as required) and has the right to obtain copies of the foundation's records and other information or documents necessary for the resident agent to comply with its duties as a licensed fiduciary. The foundation is required to have a registered office in Guernsey at which all of its records are to be kept.

Registration

To establish a foundation in Guernsey, an application must be made by a Guernsey licensed fiduciary to the Registrar. The application must include:

- the charter
- a declaration signed by the founder or resident agent that the details in the charter are correct
- a declaration as to whether there are to be any disenfranchised beneficiaries
- the names and addresses of the first councillors
- the name and address of the proposed guardian (if any)
- a statement by the resident agent, comprising the name and address of the resident agent and confirmation that they have complied with their obligations in relation to the identification of beneficial owners
- the address of the foundation's registered office, and
- the registration fee.

Once a foundation has been registered, its name will be entered in the register of foundations and it will be issued with a registration number.

Register

The register of foundations maintained by the Registrar is divided into Part A, which is open to inspection by the public (including via the Guernsey Registry portal on www.greg.gg), and Part B, which is not. The information which is publicly available in Part A of the register is limited to:

- the name and registered number of the foundation
- the names and addresses of the councillors
- the name and address of any guardian, and
- the details of the registered office.

Why a Guernsey foundation?

Foundations in Guernsey appeal particularly to clients from civil law jurisdictions who are uncomfortable or unfamiliar with trusts. However, the flexibility that is afforded by the Law permits foundations to be used for a myriad of purposes ranging from traditional wealth and philanthropic structures (including holding or acting as a private trust company) to commercial and finance transactions.

Contacts

A full list of contacts in our International Trusts & Private Client team who specialise in this area can be found [here](#).