

Jersey: Foundations

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The Foundations (Jersey) Law 2009 (the **Law**), which introduced the possibility of creating foundations under Jersey law, came into force with effect from 17 July 2009.

What is a Jersey foundation?

The basic structure of a Jersey foundation may feel very familiar to those accustomed to dealing with private foundations in other jurisdictions. A Jersey 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 Jersey foundation will have the following key features:

- a constitution made up of a charter and a set of regulations
- a council to administer the foundation
- a founder who may, but is not obliged to, provide an initial endowment, and
- a guardian.

Charter

A Jersey foundation must have a charter which will state:

- its name
- its objects
- its initial endowment (if any), and
- information concerning winding up, dissolution and the term (if any) of the foundation.

The charter may provide for any other matter in respect of the foundation. It may, in particular, provide for the manner in which the charter or the regulations of the foundation may be amended and contain any provisions that must or may be included in the regulations of the foundation.

The charter and the regulations are filed with the Jersey Registrar of Companies (the **Registrar**). The charter is available for public inspection on the website of the Registrar.

Regulations

The regulations must:

- establish a council to administer the foundation's assets and to carry out its objects
- provide for the appointment, retirement, removal and remuneration (if any) of its members
- set out how the decisions of the council are to be made and, if any decision requires the approval of any other person, specify the decisions and the person

- set out the functions of the council, and, if they must or may be delegated or exercised in conjunction with any other person, the extent to which this must or may be done, and
- set out a procedure that ensures that a 'qualified person' (being a person registered under the Financial Services (Jersey) Law 1998 to conduct financial services business of the relevant type) is appointed to be the qualified member of its council as soon as reasonably practicable if its qualified member (a) dies, (b) retires or (c) otherwise ceases to act or to be able to act.

If the obligatory aspects of the regulations are instead included in the charter, it is not necessary to have separate regulations for the foundation.

An abridged version of the regulations (being one not including any information from which a person can or may be identified) is available for public inspection on the website of the Registrar.

Council

The council's role is to administer the assets of the foundation and carry out its objects. The council members have a duty to the foundation to act in good faith with a view to the best interests of the foundation. This contrasts with a trust where the trustee's duties are owed to the beneficiaries. The council of a foundation may have one or more members but must always include a qualified person.

Founder

The founder is the person who gives the instruction to the qualified person to apply for the incorporation of the foundation. The founder doesn't have to, but may, provide an initial endowment to the foundation. The initial endowment (if any) 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 and may have such rights (if any) in respect of the foundation and its assets as are provided for in its charter and regulations. The founder may assign any such rights to any other person at any time during the lifetime of the founder or by will. The founder may be both a member of the council and the guardian.

Objects

The charter of a foundation must specify the objects for which the foundation was established, which may be to benefit a person or a class of persons or to carry out a specific purpose, or to do both.

Guardian

A foundation must have a guardian. The guardian's role is to take such steps as are reasonable in all the circumstances to ensure that the council carries out its functions. The guardian may not also be a council member, unless the guardian is the founder of the foundation or the qualified member of its council. A company or other corporate body may act as a guardian, founder or member of the council.

Nominated Person

Under the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020, every Jersey foundation must appoint a 'nominated person' who acts as the main interface with the Jersey regulator (the Jersey Financial Services Commission (JFSC)). The nominated person is authorised by the foundation to provide the information required under the law to the JFSC. Essentially, the law requires information relating to a foundation's beneficial owners to be disclosed to the JFSC.

Incorporation

To establish a foundation in Jersey, an application must be made to the Registrar by a qualified person. The application must be accompanied by a copy of the proposed charter and abridged regulations of the foundation and a certificate signed by the qualified person making the application certifying that:

- a qualified person will become the 'qualified member' of the council on incorporation
- the qualified person making the application is in possession of regulations approved by both the founder and the qualified person
- the address in Jersey, specified in the certificate, is the business address in Jersey of the qualified person, and
- a person has been selected to become the guardian of the foundation on its incorporation.

Once a foundation has been registered, it will come into existence and its name and registration number will appear on the website of the Registrar.

Why a Jersey foundation?

Foundations in Jersey 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. It should be noted however that Jersey foundations may not directly hold immovable property in Jersey (i.e. land or buildings in Jersey) or engage in commercial trading.

Contacts

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

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