



Communicate.

An Introduction to Jersey Foundations

In October 2008, the States of Jersey approved The Foundations (Jersey) Law 2009 (the “Law”) which will come into force on 17 July 2009 following approval from the UK Privy Council. The Jersey foundation (the “Foundation”) will be a new type of entity offered by Jersey’s finance industry and it will have features similar to both companies and trusts. Within this Communicate we will introduce the particulars of a Foundation and outline the process for incorporating this type of entity. We will conclude by detailing the types of services which can be provided by Jersey Trust Company in relation to Foundations as well as listing their potential uses.

Incorporation

The person who requests for the Foundation to be incorporated is the ‘Founder’. The application made to the Companies Registry of the Jersey Financial Services Commission (the “JFSC”) must be lodged by a ‘Qualified Person’ (meaning a body such as Jersey Trust Company which is registered with the JFSC to carry on trust company business). The Founder instructs the Qualified Person to make the application and in doing so, the Qualified Person lodges a certificate containing various confirmations, the application fee and the ‘Charter’ with the JFSC.

The Charter

The Charter, which is available for public inspection, must contain information relating to:-

- the name of the Foundation (but not the Founder)
- the duration of the Foundation and its subsequent winding up and dissolution
- any initial endowment and, if appropriate, a statement that it may be endowed further (the Foundation is not obliged to have an initial endowment to be incorporated)
- the objects of the Foundation (Foundations have unlimited corporate capacity apart from holding Jersey property or conducting commercial trading that is not incidental to the objects stated in the Charter)
- the names and addresses of first Council Members

The Regulations

The Regulations are a private document setting out the administration of the Foundation and how its objects are to be carried out. These do not need to be filed on the public record. The Regulations will make reference to:-

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- establishing a Council
 - providing for the appointment, retirement, removal and remuneration of Council Members
 - how decisions are to be made by the Council
 - the identity of the Guardian and decisions which require approval from the Guardian
 - provisions relating to the appointment, retirement and remuneration of a Guardian

The Council

A Council administers the Foundation and carries out its objects. Each Council must have a Qualified Member and upon incorporation this will automatically be the Qualified Person. There is scope to change a Qualified Member following incorporation. The Founder can be a Member of the Council if this is desired and in keeping with any tax advice taken. The Founder can also retain an element of control should he reserve certain powers for himself (this would also more than likely depend on the tax advice taken).

Duties and Liabilities

Those persons who are appointed as Council Members under the Regulations of the foundation will not owe a fiduciary duty to the beneficiaries. In practice, this will give the Founder and the Qualified Person the ability to draft the constitution of the Foundation in any way they wish.

Beneficiaries

Unless the Charter or Regulations expressly provide, Beneficiaries have no interest in the Foundations assets and are not owed any duties by the Foundation Council.

A Founder can also be a Beneficiary and a Foundation can exist with no Beneficiaries.

Guardian

All Jersey Foundations will be required to have a Guardian who will oversee the administration of the Foundation and ensure that the Council carries out its functions properly. The Founder or the Qualified Person, but no other Council member, may be the Guardian. The Guardian may be a corporate entity.

Administrative Matters

A Foundation must include its name and business address on all written communications and maintain certain records at the Qualified Member's business address including:-

- Register of Council Members
- financial records
- names and addresses of those who have endowed the Foundation

An annual fee will also be payable to the Companies Registry of the JFSC.

A Foundation is under no obligation to disclose any information to any person unless required to do so by law, so disclosure to Beneficiaries is not

required unless provided by the Charter or Regulations.

Taxation

Foundations will be taxed in Jersey at 0% unless there is a Jersey resident beneficiary.

Services provided by Jersey Trust Company

We anticipate being able to provide the following services to those clients who wish to incorporate or transfer the administration of a Foundation:-

- acting as the Qualified Person with regards to the incorporation of the Foundation and submitting the relevant documentation to the JFSC
- coordinate communications between the Founder and the appointed legal and tax advisers with regards to the incorporation and ongoing administration of the Foundation
- carrying out the role of Qualified Member on the Council of Members and providing other Members if required
- acting as a Guardian to a Foundation when appropriate
- administering the Foundation in line with the Charter and Regulations and ensuring that management and control is exercised in Jersey when required by the tax advice provided

- preparing the financial accounts of the Foundation in addition to any bespoke reporting

Potential uses of a Foundation

Drawing on knowledge gathered from other jurisdictions it is broadly felt that Foundations will appeal to:-

- clients who are involved with jurisdictions where the concept of trusts is less well known
- clients who require a greater degree of confidentiality
- global charities who use Foundations for making donations
- clients who want to use Foundations within commercial transactions, particularly when an 'orphaned' special purpose vehicle is required

Conclusion

The Foundation is yet another offering of Jersey's finance industry which will complement the diverse range of vehicles which can be used for international structuring. The Jersey Foundation has been specifically designed in such a way that it differs from foundations offered in other jurisdictions giving the Jersey model its own unique characteristics. Moves are already afoot to further enhance the Foundations' legislation by including regulations which will enable Foundations to merge with other Foundations as well as merging with other corporate bodies.

Jersey Trust Company

Jersey Trust Company is one of Jersey's leading independent providers of private wealth, corporate and fund administration services. Our head office is located in Jersey's financial district of St. Helier and through our continued international expansion we have opened offices in jurisdictions such as London, Glasgow, the British Virgin Islands and Geneva. We have experience in administering and managing complex structures for our clients and we have approximately £11.6 billion in assets currently under administration.

Jersey Trust Company is regulated by the Jersey Financial Services Commission

This publication is intended to provide an overview of the subject matter and is not comprehensive in nature or to be construed as legal or tax advice. We recommend that clients seek professional advice on any particular matter.

Should you wish to discuss the contents of this briefing note in further detail please contact:-

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