



## AN INSIGHT INTO JERSEY FOUNDATIONS

*This guide will help you grasp the basic components of the Foundation (Jersey) Law 2009 as of 1 December 2020.*

*For further information, please contact your usual advisor at Lexstone Lawyers. We would be delighted to assist you.*

*Kindly note that this guide is intended to provide general guidance and does not represent Jersey legal advice.*

### OVERVIEW

The Foundations (Jersey) Law 2009 is now more than a decade old. It came into force on 17 July 2009 (the "**Foundation Law**"). A Jersey foundation is a hybrid vehicle which blends interesting characteristics from both a company and a trust. As a company, it is an incorporated entity having its own legal personality, which means it can hold assets, transact and sue in its name.

A Jersey foundation is a highly modern and flexible vehicle which can have many different uses.

### USES TO DATE

Historically, the foundation has proved popular for philanthropic, family wealth planning, succession and tax planning purposes. The Jersey foundation is currently an attractive vehicle for such objectives. It is also sufficiently flexible to hold structure for valuable assets such as fine art and vintage cars and wasting assets such as yachts.

The Jersey foundation can be an alternative to the Jersey trust in commercial transactions and investment fund structures.

### THE ACTORS

#### THE FOUNDER AND THE QUALIFIED PERSON

Unlike a trust, a foundation does not require any initial endowment to come into existence. Whilst the founder is free to donate assets to the foundation, there is no requirement under the Foundation Law that he must do so. The role of the founder is to instruct the qualified person to incorporate the foundation

A qualified person is a Jersey corporate service provider registered under the Financial Services (Jersey) Law 1998, as amended, and supervised by the Jersey Financial Services Commission (the **JFSC**) to carry on trust company business.

There is no requirement to disclose the founder's identity in the charter. The founder may be both a member of the council and the guardian (see below) and may reserve certain rights concerning the foundation and its assets.

## THE COUNCIL

The council is similar in many ways to the board of a company, with the council members being viewed as directors.

Council members must: -

1. act honestly and in good faith with a view to the best interests of the foundation; and
2. exercise the care, diligence and skill that reasonable prudent persons would exercise in comparable circumstances.

It is responsible for administering the foundation's assets and carrying out its objects (to benefit a beneficiary or to carry out a specific purpose that does not need to be charitable). Whilst the personal liability of the council members can be limited, there can be no exoneration for fraud, wilful misconduct or gross negligence.

A qualified person must be a member of the council. Individuals and companies can also be members as there is no limit on the number of members.

## THE GUARDIAN

A foundation must have a guardian. The guardian could be the founder, the qualified person or a committee of individuals. The guardian is responsible for ensuring that the council carries out its functions and, in doing so, may require the council to account for its administration of the foundation and furtherance of the foundation's objects.

The regulations may provide the guardian with the power to approve or disapprove specified actions of the council. Where the regulations do not permit an action, the guardian may sanction or authorise such action be taken by the council provided that it is in the best interests of the foundation to do so.

## THE BENEFICIARIES

A beneficiary has no interest in the foundation's assets and is not owed a fiduciary duty by the council. However, if the beneficiary becomes entitled to a benefit under the charter or the regulations and the benefit is not provided, within three years of the date of becoming aware of the beneficiary's entitlement, the beneficiary may apply to the Royal Court for an order ordering the foundation to give the benefit.

Unlike a trust, a foundation is not obliged to provide any information to beneficiaries unless specifically required by the Foundation Law, a court, the charter or the regulations.

## DOCUMENTATION AND INCORPORATION

The charter is the public document submitted by the qualified person to the JFSC when making an application for incorporation. It is a simple document listing basic information required by the Foundation Law that does not need to include the founder or the beneficiaries' name.

The regulations are a private document which is not filed with the incorporation application. It is comparable to the articles of association for a company but must deal, amongst other matters, with the establishment of the council and the guardian's appointment.

## TAXATION

In Jersey, the foundation is chargeable to tax at the rate of zero per cent (0%). For other jurisdictions, the tax treatment will depend upon how the relevant tax authority views the drafted foundation. A foundation's flexibility means it can be prepared to behave more like a company than a trust or vice versa, as shall be determined by the client's needs.

## ADVANTAGES OF A FOUNDATION

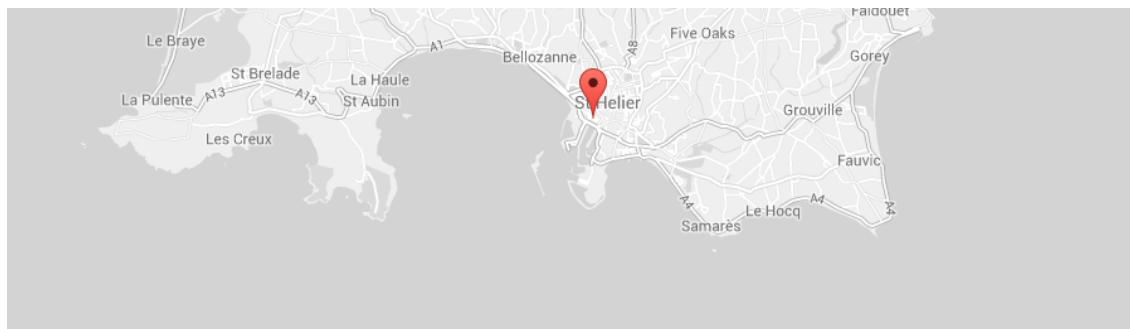
1. **Same day incorporation:** Foundations can be established on the same day.
2. **Drafting flexibility:** The Foundation Law permits flexibility regarding the precise terms of each foundation, such as who has the power to appoint and remove members.
3. **Protection of the Royal Court:** The Royal Court has powers to give directions, dismiss and appoint council members or the guardian, amend the charter or regulations. A person such as the foundation, the guardian, a beneficiary or the Attorney General may make applications in *locus standi* to the Royal Court.
4. **Appeal to civil law jurisdictions:** Foundations are a concept known to civil law jurisdictions.
5. **Separate legal personality:** Foundations can contract and sue, in their own name.
6. **No segregation of legal and beneficial title:** There is no segregation of legal and beneficial title.
7. **Restriction on information:** The founder can restrict information flow regarding the foundation and its property to the beneficiaries.
8. **Conversion:** A foundation may convert to a Jersey company.
9. **Migration:** A foundation can migrate to Jersey in certain circumstances.

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