

Jersey Foundations

What is a Foundation?

A Foundation is an alternative to a trust. Foundations have some features of a body corporate and some features of a trust. They have their own legal personality; they can sue and be sued, can enter into contracts with third parties and hold assets in their own name for the benefit of beneficiaries, as in the case of a trust. They do not have directors but a Council of members that manage the Foundation.

What are the benefits?

- ◆ Foundations have separate legal personality and unlimited life.
- ◆ There is no beneficial owner.
- ◆ The identity of the Founder is confidential.
- ◆ The Founder can be a company or individual.
- ◆ Beneficiaries can be individuals or companies
- ◆ They can be migrated to Jersey from other jurisdictions
- ◆ Disclosure of information to beneficiaries can be limited
- ◆ A company can convert to a Foundation.

How does it compare to a Trust?

- ◆ Formal application and name approval is required
- ◆ There is an annual fee payable to the Registrar thus the costs may be greater than those of establishing a trust;
- ◆ To redomicile, the process can be time consuming and more costly than that of changing the governing law of a trust;
- ◆ Should a Foundation become insolvent then the assets are held for the benefit of the Foundation's creditors;
- ◆ There are no specific provisions setting aside donations should there be a foreign law prohibiting the donation or due to certain heirship rights;
- ◆ The Council has unlimited capacity, however, it can only operate within the Foundations objectives whereas a trust can be more flexible as trustees can have unlimited capacity and discretion provided they act in the best interest of the beneficiaries.

What are the main Terms and Parties?

- ◆ Founder - the person who instructs the creation of the Foundation;
- ◆ Charter - will contain certain basic information- the name, objectives, initial endowment
- ◆ Regulations - is a private document which defines how the Foundation is administered and carries out its objectives;
- ◆ Council - will administer and carry out the objectives, their powers are defined in the Regulations
- ◆ Beneficiaries - are recorded in the Regulations;
- ◆ Guardian - ensures the Council carries out its functions
- ◆ Qualified person - must be a Council member, someone who is registered under the Financial Services (Jersey) Law 1998 to carry out trust company business

What are the uses?

- ◆ As an alternative to any type of trust;
- ◆ As an alternative to any use of a trust;
- ◆ Holding shares in private family companies;
- ◆ Owning aircraft or boats;
- ◆ Owning shares in private trust companies;
- ◆ All forms of asset holding and asset protection.

Conclusion

Foundations offer greater flexibility but at a higher cost than a trust. They can work very successfully in a family office scenario and Jersey now offers this opportunity to use a new vehicle with a number of interesting features which should appeal to clients from the many worldwide civil law jurisdictions wishing to have their affairs managed in a well regulated “white list” jurisdiction.