

## Jersey Foundations

Traditionally the brainchild of civil law jurisdictions, Jersey was the first common law jurisdiction to adopt Foundations. Since introducing The Foundations (Jersey) Law 2009 (the 'Foundations Law') and Foundations (Continuance) (Jersey) Regulations 2009 (the 'Continuance Regulations'), Jersey has become a hive of activity with the creation of over 200 foundations and the importation of many more. Foundations are quite different to trusts and have a strong appeal as an additional tool when structuring for private wealth management and succession planning purposes. Jersey's international reputation as a high quality international finance centre with a well respected legal system has proven to be an attractive combination for private client advisors who recommend foundations to their clients.

### What is a Foundation?

As a concept, a Foundation originates from civil law, and is likely to be familiar to persons based in continental Europe whose preferred choice of structure falls naturally to a Foundation rather than the 'Anglo-Saxon' concept of a Trust with which they may be less familiar.

A Foundation may be described as a hybrid of a Trust and a Company. A Foundation resembles a Company in that it is a body corporate (although without shareholders) and, in the same way that a Company is managed by its board of directors, a Foundation is governed by a Council in accordance with its Charter and Regulations. Foundations have their own legal personality, they may sue and be sued, may enter into contracts with third parties and may hold assets in their own name for the benefit of beneficiaries, as in the case of a Trust. In essence, a Foundation is akin to a corporate entity but with prescribed rules for the administration of assets and who is to benefit from them.

### What are the benefits of a Jersey Foundation?

- ◆ Foundations have separate legal personality;
- ◆ The duration of a Foundation may be unlimited;
- ◆ There is no beneficial owner;
- ◆ They may be used for charitable and non charitable purposes;
- ◆ The identity of the Founder is confidential;
- ◆ The Founder may be a Company or an individual;
- ◆ Beneficiaries may be individuals or companies;
- ◆ Disclosure of information to beneficiaries may be limited;
- ◆ A Company may convert to a Foundation.

## How does a Jersey Foundation compare to a Trust?

- ◆ Foundations have separate legal personality, whereas Trusts have no legal personality of their own but the Trustees are the legal owners of the assets, and the Trustees contract and are responsible for the liabilities of the Trust;
- ◆ Foundations are incorporated and must register in the Public Registry of the Jersey Financial Services Commission, although minimal information is available for Public inspection. There is no registration of Trusts in Jersey;
- ◆ There is an annual fee payable to the Registrar thus the costs may be greater than those of establishing a Trust;
- ◆ Foundations need not have any initial endowment donated by the Founder whereas a Trust must have initial settled funds;
- ◆ Foundations allow extensive rights to be reserved to the Founder and the role of the beneficiaries of a foundation, if indeed there are any beneficiaries, is much more restricted than is the case with Trusts;
- ◆ The process to redomicile a Foundation may be time consuming and more costly than that of changing the governing law, Trustees or place of administration 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 by a Jersey Foundation should there be a foreign law prohibiting the donation or due to certain heirship rights;
- ◆ The Council has unlimited capacity, however, it may only operate within the Foundations objectives whereas a Trust may be more flexible as Trustees may have unlimited capacity and discretion provided they act in the best interest of the beneficiaries;
- ◆ Unless otherwise specified Jersey Foundations are not required to provide any person (including beneficiaries) with any information concerning the Foundation. Beneficiaries of a Trust (with full legal capacity) have a right on demand to receive information, including a copy of the Trust Instrument and the financial details of the Trust.

## What are the main Terms and Parties of Jersey Foundation?

- ◆ Founder - the person who instructs the creation of the Foundation;
- ◆ Charter - will contain certain basic information- the name, objectives, initial endowment
- ◆ Regulations -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 and licensed to provide Foundation services.

## What are the uses of a Jersey Foundation?

- ◆ As an alternative to any type of Trust in a private family wealth holding structure;
- ◆ As an alternative to any use of a Trust where the person providing the assets wishes to maintain an element of control;
- ◆ Holding shares in private family companies allowing protection against fragmentation of family businesses by outside parties gaining control and enable them to be passed down through future generations;
- ◆ May hold wasting assets such as aircraft or yachts;
- ◆ May hold single assets without the over-riding obligation to diversify;
- ◆ Owning shares in Private Trust Companies where family members may sit on the Council or, alternatively, acting directly in its own capacity as a Private Trustee;
- ◆ Acting as a special purpose vehicle such as to licence intellectual property, provide incentivisation benefits to employees, or for capital market, collateralisation or financial structuring purposes;
- ◆ May be considered as a possible substitute for a pre or post nuptial agreement;
- ◆ May be established for charitable or other philanthropic purposes, including cultural, educational, humanitarian, scientific or religious purposes.

## Conclusion

Foundations offer flexibility and retention of control. They may work very successfully in a family office scenario and Jersey offers this opportunity to use foundations 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 modern international finance centre and “white list” jurisdiction.