

TRUSTS AND ESTATES

Foundations: popular addition to structuring opportunities in Jersey

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Introduction

The Jersey foundation was introduced in 2009 as a new form of incorporated vehicle.

From the beginning, three broad categories of use for the Jersey foundation — for succession planning, as orphan structures for specified purposes and for philanthropy — have been clearly identified and continue to grow and develop, utilising the flexibility offered by the Foundations (Jersey) Law 2009 (the 'Law'). Before looking at these, it is, perhaps, helpful to highlight some of the key features of the Jersey foundation and to outline the principal components of its structure, recognising that it is not an exact equivalent or copy of a foundation established in any other jurisdiction.

Key features

Some of the key features of the Jersey foundation are as follows:

- **Incorporated vehicle:** A foundation is an incorporated vehicle brought into existence following the completion of a registration process.
- **Legal personality:** A foundation is a separate legal entity that holds assets and enters into contracts in its own name.
- **Public record:** A foundation's existence can be determined as a matter of public record by conducting a search of the register of foundations. The entry of a foundation's name in the register is conclusive evidence that the foundation has been incorporated and that the requirements of the Law in that regard have been complied with.
- **No ultra vires:** The doctrine of ultra vires does not apply, and a foundation can exercise all the functions of a body corporate, save only that it cannot directly (a) acquire, hold, or dispose of immovable property in Jersey or (b) engage in commercial trading that is not incidental to the attainment of its objects. However, both of these restrictions can be overcome by interposing an underlying company so that the relevant activity is not undertaken directly by the foundation.
- **Orphan vehicle:** A foundation does not have shareholders or any other form of owner.
- **Indefinite existence:** Foundations can continue to exist for an indefinite period.

Structure

The principal components of a foundation's structure are outlined as follows:

- **Founder:** The founder is the person upon whose instructions a foundation is incorporated. A founder need not endow assets upon the foundation: it can come into existence without assets.



- **Constitutional documents:** A foundation's constitutional documents are its charter (which is registered and open to public inspection) and its regulations (which are not registered and, therefore, private).
- **Objects:** A foundation's objects can be charitable or non-charitable (or a combination of both) and can be to benefit a person or class of persons, carry out a specified purpose, or to do both.
- **Council:** A foundation has a council, which is similar to a company's board of directors. The council's function is to administer the foundation's assets and to carry out its objects. The council can have one or more members, with one member being a 'qualified person' with an appropriate regulatory licence: this member is known as the qualified member. Council members are required to act honestly and in good faith with a view to the foundation's best interests and to exercise the care, diligence, and skill that reasonably prudent persons would exercise in comparable circumstances.
- **Guardian:** Every foundation has a guardian whose role is to take such steps as are reasonable in all the circumstances to ensure that the council carries out its functions. The founder and the qualified member (but not others) may fulfil a dual role as both council member and guardian.

What are foundations being used for?

In view of the Law's flexibility, foundations are being used for a wide variety of reasons, and three broad categories of use stand out.