



Jersey: international centre for philanthropy

By Zillah Howard

Philanthropy is important for many families, with increasing numbers establishing new structures to support particular altruistic causes that they identify with, whether those causes are technically charitable or not.

Jersey is an attractive choice of jurisdiction in which to establish such structures for a variety of reasons. Chief among these are that the Island offers:

- stability (politically, economically and geographically);
- a robust and highly regarded regulatory régime;
- a well-respected and independent judicial system;
- a depth and breadth of experience amongst its professional advisers;
- legislation which places a strong emphasis on the importance of flexibility, allowing for the creation of structures tailored to individual client requirements.

Added to this list is the fact that Jersey is readily accessible from the UK (with several daily flight connections and a flying time to London of under an hour) so that, for those clients with business interests and/or family connections in London or elsewhere in the UK, choosing the Island also makes logistical and practical sense.





Trusts and foundations are the two key structures used for philanthropy in Jersey, with the Trusts (Jersey) Law (the ‘Trusts Law’) dating from 1984, and the Foundations (Jersey) Law (the ‘Foundations Law’) having been brought into force in the Island in 2009.

In addition to these two key pieces of legislation, the Charities (Jersey) Law 2014 (the ‘Charities Law’) has been enacted, as part of Jersey’s initiative to strengthen and develop the Island’s position as a centre of excellence for philanthropic wealth management. The Charities Law is being brought into force in stages and, when fully enacted, will complement the Trusts Law and the Foundations Law by offering a voluntary system of registration in Jersey, for those wishing to register structures as charities.

Trusts

The Trusts Law allows for the creation of both charitable and non-charitable purpose trusts. It is therefore possible to establish a trust for charitable purposes or, alternatively, for philanthropic purposes which may not be technically charitable, such as a trust for humanitarian, ecological or research purposes.

With a trust established under Jersey law, the following are key points to note:

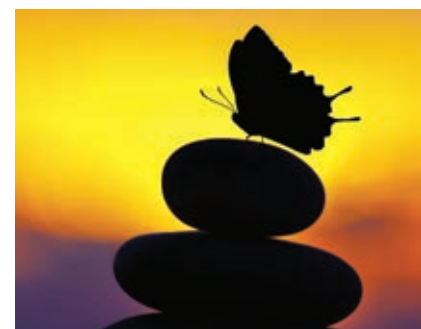
- **Duration:** The trust can be established for an unlimited period.
- **Registration:** There is no public registration of trusts in the Island and the establishment of a Jersey trust can therefore be attractive to those not wishing to have a public profile in relation to their philanthropy.
- **Enforcement:** The Attorney General in the Island enforces charitable trusts. A non-charitable purpose trust has an office holder known as an enforcer, to enforce its non-charitable purposes. The enforcer cannot also be a trustee of the trust but there are no other limitations with regard to the choice of the enforcer. An individual or a corporate entity can be appointed and there is no requirement for the enforcer to be resident in Jersey.
- **Taxation:** In relation to charitable trusts, the Income Tax (Jersey) Law 1961 (the ‘Income Tax Law’) provides an exemption from income tax in respect of income derived from the property of a trust established in Jersey for the advancement of education, the relief of poverty, the furtherance of religion, a purpose beneficial to the whole community, or the service of any church or chapel or any building used solely for the purpose of divine worship, in so far as the income is applied to those purposes. In relation to non-charitable purpose trusts, a concession provides that Jersey income tax is not payable on foreign income or Jersey bank interest in respect of non-charitable purpose trusts under which no resident of Jersey (other than a charity) has an interest or is intended to have an interest, whether during or at the end of the trust period.

Foundations

The Foundations Law is very flexible and allows for the creation of a foundation for purposes – known as objects – which are charitable, non-charitable, or both charitable and non-charitable. From its introduction in 2009, one of the most important uses for Jersey foundations has been in relation to philanthropy, with foundations being seen as an ideal vehicle for those keen to pursue particular philanthropic initiatives, some or all of which may not be strictly charitable.

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Key components of a foundation’s structure are as follows:

- **Founder:** The founder is the person upon whose instructions a foundation is incorporated. A founder need not endow assets upon the foundation and (unlike a trust) 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 are therefore private).
- **Council:** The council is similar to a company’s board of directors. Its 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 the appropriate regulatory licence pursuant to the Financial Services (Jersey) Law 1998: this member is known as the qualified member.
- **Guardian:** The guardian’s 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.

Some of the reasons for choosing foundations for philanthropy are as follows:

- **Choice of objects:** A foundation can be incorporated to pursue a client’s chosen causes – causes that he or she is passionate about – whether or not they are technically charitable. This flexibility is clearly attractive and significant numbers of Jersey foundations have been incorporated with philanthropic objects, either alone or in conjunction with objects for the benefit of people. Some examples to mention are of foundations incorporated with objects to hold heritage assets (such as artworks or buildings), to protect the environment, to provide funds for medical or scientific research and to support education.
- **Legal personality:** A foundation exists as a legal entity (without shareholders or any other form of owners) which holds assets and enters into contracts, in its own name. This contrasts with the position in relation to a trust (which is not a separate legal entity), where transactions are entered into in the names of the trustees. The ability to refer to a foundation as such – and, for example, to use the foundation’s name when distributions are made – can be important for clients when considering how their philanthropic giving will work in practice.
- **Ongoing involvement:** Another attraction of Jersey foundations is that they allow opportunities for ongoing involvement. For example, the founder can choose to be a council member (and so might participate in a giving committee, distributing the

foundation’s assets) or might be the guardian (with a monitoring role, to ensure that the council administers the assets and carries out its objects as required by the constitutional documents).

- **Open profile:** For some clients, it will be important that a foundation’s existence is a matter of public record and that its charter can be viewed by conducting a search of the register of foundations. Where a structure is being established for philanthropic purposes, it can often be appropriate to establish and maintain an open profile and relevant information can be included in a foundation’s charter (in addition to the mandatory provisions) to satisfy a client’s objectives in this regard.





- Choice of name: Another important factor is that there is considerable flexibility as to the choice of name for a foundation, provided that it ends with the word 'Foundation' or a foreign language equivalent. It is therefore possible to use a family name, or other name of personal significance, for a philanthropic foundation if that is desired or, alternatively, to choose a name which preserves the anonymity of the client.
- No *ultra vires*: The doctrine of *ultra vires* (i.e. beyond the powers) 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.
- Indefinite existence: As with Jersey trusts, foundations can continue to exist for an indefinite period or for a specified period, to suit a client's chosen objectives.
- Taxation: Whilst the exemption contained in the Income Tax Law which applies to charitable trusts does not apply expressly to foundations, an exemption from Jersey income tax will nevertheless be granted by concession to a foundation which is established solely for charitable purposes. Where a foundation is established for philanthropic purposes which are not strictly charitable, it is charged to income tax at the rate of 0% (save for a prescribed category of profits or gains deriving from land situated in Jersey in respect of which it is charged to income tax at the rate of 20%). If a Jersey resident has an interest in a foundation (directly or indirectly), an application should be made to the Comptroller of Taxes for pre-clearance prior to incorporation (to determine whether or not the statutory anti-avoidance provisions are relevant).

Charities Law

As mentioned previously, the Charities Law is being brought into force in stages, to allow for preliminary matters to be completed first, before it becomes fully effective. These preliminary matters include the appointment of a Charity Commissioner, the issuance of guidance by the Commissioner and the introduction of supporting regulations and orders.

During this initial stage, whilst only certain provisions are in force, the remainder of the Charities Law will effectively be dormant, so that the customary law of Jersey in respect of what is charitable will continue to apply and it will not be possible to register as a charity under the Charities Law.

The Charities Law, when fully enacted, will complement the Trusts Law and the Foundations Law by offering a system of registration in the Island, for those wishing to register structures as charities. Registration as a charity will be voluntary but will be relevant in determining entitlement to certain charitable tax reliefs and to the use of the term 'charity'.

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The Charities Law allows for ‘entities’ (including the trustees of a Jersey trust and Jersey foundations) which satisfy the new charity test in the Charities Law to apply for registration. An entity meets the charity test if:

- all of its purposes (as defined) are charitable purposes or purposes that are purely ancillary or incidental to any of its charitable purposes; and
- in giving effect to those purposes, it provides (or intends to provide) public benefit in Jersey or elsewhere to a reasonable degree.

However, an entity will not satisfy the new charity test for the purposes of the Charities Law if its constitution expressly permits its activities to be directed or otherwise controlled by (or any of its governors – i.e. its trustees if a trust, or its council members if a foundation – to be) Jersey’s Chief Minister, a member of the States Assembly, or someone holding an equivalent position in another jurisdiction, acting in his or her capacity as such.

The Charities Law contains an extensive list of charitable purposes including, for example, advancement of the arts, heritage, culture or science and also the advancement of public participation in sport (which is not currently charitable under Jersey’s customary law). It also provides for other purposes to be treated as charitable if they can reasonably be regarded as analogous to those which are listed and allows for the list of charitable purposes to be added to in due course.

There is to be no presumption that any particular charitable purpose is for the public benefit. The Commissioner must compare, as a consequence of the entity exercising its functions:

- the benefit gained or likely to be gained by the public; with

- any benefit gained or likely to be gained by members of the entity itself or any other people (other than as members of the public) and disbenefit incurred or likely to be incurred by the public.

If benefit is likely to be provided to a section of the public only, the Commissioner will also consider whether any condition on obtaining that benefit (including any charge or fee, such as a membership fee) is unduly restrictive.

An entity wishing to register will provide prescribed information to the Commissioner and, when registered, will be given a certificate of registration, confirming its registered name and number and the date of its registration. The register will be divided into general and restricted sections (for current registrations) and an historic section (for registrations which are no longer current).

The general rule will be that all of the information on the general and historic sections of the register will be publicly available but that only limited information will be publicly available in relation to the

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restricted section. In addition, the Commissioner will have the power to designate a specified matter – on any section of the register – as not being a public part of the register for that particular entity. This power will be available if the Commissioner considers that the safety or security of any person, property or premises would be significantly put at risk by public access to the specified matter.

It is envisaged that those wishing to register as a charity will choose:

- the general section if the intention is to raise funds from the public, to have full access to the Jersey charitable tax reliefs and to use the term ‘charity’;
- the restricted section if the intention is to fund a charity with the family’s own moneys and there are concerns in relation to privacy and confidentiality.

Taxation

Registered charities will be eligible for the full range of Jersey charitable tax reliefs, as follows:

- exemption from income tax;
- entitlement to recover income tax on certain donations received by way of a lump sum payment or pursuant to a deed of covenant;
- entitlement to reclaim any goods and services tax (GST) paid and exemption from the requirement to register for GST;
- entitlement to reduced rates of stamp duty and land transaction tax.

Once the Charities Law is fully enacted, it will still be possible for charitable trusts and foundations which are not registered to qualify for exemption from Jersey income tax on satisfaction of certain conditions. In addition, tax neutrality is to be preserved for structures with no beneficiaries in Jersey and no income deriving from land and buildings in Jersey.

Conclusion

With the introduction of the Charities Law to complement the Trusts Law and the Foundations Law, Jersey is well-positioned to operate as a centre of choice for philanthropic wealth structuring:

- The Trusts Law and the Foundations Law both place a strong emphasis on the importance of flexibility, so that each client can tailor a structure to pursue his or her chosen philanthropic goals, whether or not those goals are technically charitable.
- For those keen to have some form of public profile in relation to their giving, there is a choice in relation to registration options. For some clients, registration as a foundation will be appropriate; for

others, registration as a charity under the Charities Law, either on the general or the restricted section of the register, will be preferred.

- Jersey is a tax neutral environment in which to establish structures, with Jersey tax exemptions also available subject to compliance with relevant conditions.

It is therefore anticipated that the Island’s established position in relation to philanthropy will continue to strengthen as more clients choose Jersey structures to pursue their philanthropic giving.

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She provides Jersey law advice for high and ultra high net worth families in relation to trusts, foundations and philanthropy, and works with trust companies and leading law firms on estate planning issues. She advises extensively on the establishment and reorganisation of complex structures, the use of settlor reserved or granted powers, and the use of private trust companies.

Zillah is an active member of working groups which help to shape trusts, foundations and charities law in Jersey. She was recognised as ‘Best in offshore’ at the Europe Women in Business Law Awards in 2012, 2013 and 2014, and is included in Private Client Practitioner’s 2013 and 2014 lists of the UK’s 50 Most Influential Private Client Practitioners, the ‘Honours List’ in the ‘Leading Lawyers’ category of the 2012, 2013 and 2014 Citywealth Leaders Lists, in Citywealth’s 2013 list of the IFC Power Women Top 100 and in Citywealth’s 2014 list of the IFC Power Women Top 200.

This article is intended to provide a brief commentary in relation to the subject named. It is not intended to be comprehensive nor to provide legal advice and should not be acted or relied upon as so doing. Professional advice appropriate to the specific situation should always be obtained. zillah.howard@bedellgroup.com

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