

Foundations

In 2009, Jersey launched a financial structure called a Jersey Foundation. Since then, over 365 Jersey Foundations have been set up.

People can set up foundations in over a dozen places in the world. Here you will get an overview of a Jersey Foundation and will learn about:

- what a Jersey Foundation is;
- who's who when it comes to setting up a Jersey Foundation; and
- the reasons why people choose to set up a foundation and the different types of foundation

What is a Jersey Foundation?

Foundations are legal structures which help people or corporate bodies manage their wealth by holding assets or exercising functions.

They combine some of the best features of companies and trusts. Foundations can hold assets for the benefit of beneficiaries (such as individuals or corporate bodies) or for purposes, such as non-charitable, or charitable purposes or a mixture of any of the above.

The terms of a foundation are set out in their constitutional documents. There are two key documents: a public charter and a private set of regulations.

The charter can be publicly viewed on the registry section of the Jersey Financial Services Commission's (JFSC) website. It specifies:

- the name of the foundation, how much money – if any – was in the foundation when it was first set up (this is called the 'initial endowment'),

- whether it can accept further endowments,
- the purposes or objects of the foundation (if private beneficiaries they are usually referred to as being set out in the regulations),
- the duration of the foundation,
- who has power to wind up the foundation and
- how its assets are dealt with if it is wound up.

The private set of regulations usually contain a longer list of details such as:

- who makes decisions relating to the foundation's assets or exercise of functions and how these decisions are made,
- who the beneficiaries are,
- the nature of their beneficial interest,
- who has the power to add and remove beneficiaries,
- who the initial guardian is,
- the council and guardian's remuneration and exoneration rights, and
- how to change council members and guardian amongst other things.

The regulations are held by the qualified member on the executive board. There must always be one qualified member on the council of members.

Reasons for setting up a foundation

Foundations were designed to be attractive to people from civil law countries. Civil law countries have a system of codification of laws which judges must follow. In common law countries, such as Jersey, judges make decisional law which is observed as precedent.

Civil law is the most widespread system of law in the world, in force in various forms in about 150 countries. The concept of a trust is not well understood in most civil law countries because their codes do not recognise the existence of trusts and the separation of legal ownership from beneficial ownership that is, the formal owner and the person who benefits.

Foundations are not designed to compete in the same market space as trusts. That way foundations bring work to the Island that might otherwise not be administered here.

Foundations have a lot of positive features, including:

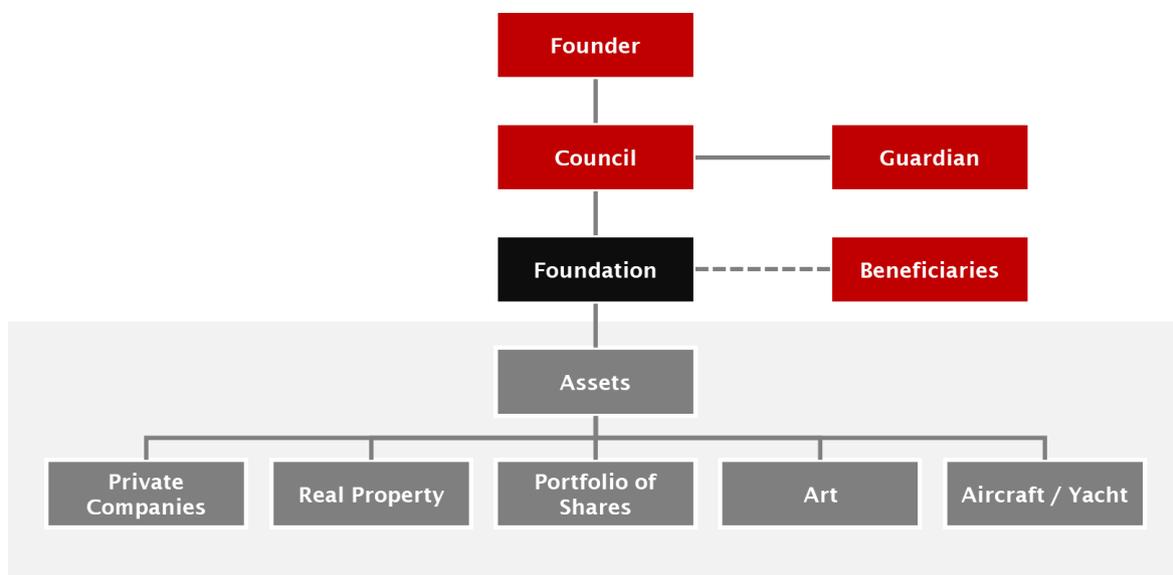
- Its own distinct legal existence. Like a company, it is separate from the identity of its instigator, anyone who works for it or anyone who performs a role under its constitutional documents
- It holds assets in its own name and can sue and be sued in its own name
- It does not rely on any separate individual or separate corporate entity to act as an asset holder; this is what makes it distinct from a trust
- It does not issue shares so it cannot be owned. For this reason the foundation is always at the top or 'ultimate' holding entity position of the ownership structure it's in
- It can last indefinitely or for a fixed period of time or can come to an end activated by a particular event, for example on the death of a founder.
- There is absolute certainty in the existence of a foundation.
- Foundations are not vulnerable to 'sham arguments' such as arguments about whether the structure accurately reflects the intended relationship between the asset holder and the beneficiaries.
- It can directly hold any asset, other than immoveable property in Jersey.
- It may not direct commercial trade, for example running a shop, unless it is incidental to its objectives (such as raising money for a charity).
- A foundation can get involved in any other form of legal activity.
- It is not restricted in the way it distributes assets by the forced heirship laws applicable to a founder or any economic contributor domiciled outside of Jersey.
- Similarly to a trust, it is possible for persons (in the case of a foundation the founder, an endower, a creditor, the Attorney General, a foundation itself, or its council members, guardian or any beneficiary), to apply to the Royal Court for directions in relation to the administration of a foundation, the function of the council, whether a person is a beneficiary, the rights of beneficiaries or any other matter of relevance to a foundation. This cannot be done with a company.
- A foundation may be migrated or "continued" to another jurisdiction the laws of which recognise foundations. Certain foreign foundations can be continued to Jersey.
- A foundation may be merged with another foundation.

- There is a wide degree of flexibility provided in the Law to draft the regulations of a foundation which makes them attractive for a myriad of purposes. Like a trust, you can have a discretionary foundation where wide discretionary powers (including powers over who gets what assets and when) are exercised by its executive body or you can have a completely fixed interest foundation (where the interests of recipients are set in stone from the outset) or anything in between.
- A power of variation may be included in the regulations allowing the foundation's constitutional documentation to be modified to take into account future changes in family circumstances or law.

It can thus be seen as an attractive, flexible form of private structuring architecture to hold a family's wealth.

Who's who in a foundation?

Example Foundation Structure



Founder

The person, people or corporate entities who instigate the creation of the foundation are known as the founder. A founder can be resident anywhere in the world.

Endower

If a person contributes assets to the foundation they are referred to as an endower. The founder could be a different person from the endower, although commonly they are the same.

Council Member

The foundation must have an executive body (made up of council members) to make decisions with respect to the assets it holds. They are the equivalent of directors to a company. They owe statutory duties to act honestly, in good faith with a view to the best interests of the foundation and exercise the care, diligence and skill, just as company directors do to Jersey companies. All council members have responsibilities and nothing in the charter or regulations may relieve, release or excuse a member (or any other person appointed under the regulations) from any liability for such person's fraud, wilful misconduct or gross negligence. The council must have at least one member who is known as the qualified member.

Qualified Member

The qualified member must hold a licence, issued by the Jersey Financial Services Commission, to conduct business related to foundations. The qualified member is responsible for ensuring anti-money laundering procedures and processes are followed, the foundation is compliant with all relevant rules and regulations and records are maintained, including accounts connected with the foundation.

Other Members

The council may include other members who are over 18 years old or corporate entities of any number. Other members can be resident in any part of the world. This allows a degree of direct involvement and participation by family members on the foundation's executive committee to the extent it is appropriate to do so from a legal and tax perspective.

Guardian

A foundation must have a guardian who acts in the role of a sentinel or enforcer, overseeing the council members and ensuring that they pursue the objectives set out in the charter and regulations. Because the guardian performs this role the regulations of a foundation typically do not confer rights to information about the

foundation to the beneficiaries, but they can do generally or selectively, if that is intended. Some foundations require full and regular management accounts to be shared with adult beneficiaries.

Beneficiaries

A foundation may have private individuals as beneficiaries, typically they are members of the founder's family (both presently alive and a class of future unborn family members). That makes the structure ideal for preserving family wealth down the family line. It may also have charities or non-charitable purposes as objects to benefit either concurrently alongside the private beneficiaries or consecutively, in default of them, should there be no individual beneficiaries alive at some point in the future.

Why people set up foundations and the different types

Foundations can be used for the following purposes:

Private family benefit foundations

Foundations can act as private wealth holding vehicles with their own mechanisms for making decisions on how and when to make distributions, what to invest in and how to manage the property they hold.

A foundation cannot be used for commercial trading, but it can own the shares in a company or other structure that is trading.

An advantage of using a foundation structure is that in respect of the assets in a discretionary foundation you remove the need for a 'grant of probate' or 'letters of administration' when the endower dies. If the wealth was in the endower's personal name, and not in a foundation, then getting those grants would take time, incur cost and might interrupt or suspend the control of an underlying trading company to the detriment of its share value.

A foundation can help ensure assets are managed in the same way, continuously. It is a clearer and more certain process compared to using probate, will registration or forced heirship processes.

Foundations typically hold one or more of the following types of asset:

- private companies;
- real property;
- portfolios of shares;
- bank accounts;
- art;
- private aircraft; and yachts.

Example: A Middle Eastern family wanted to ensure future generations of the family benefitted from private assets held in an industrial trading company.

They wanted to avoid the risk of their assets losing value if the business became fragmented, or the business owners changed through sales of part of the business – leaving the family with less collective control over the private assets.

So, they decided to pool all of their assets into a foundation.

Charitable foundations

Foundations can act as charitable entities; collecting donations and performing charitable work in any part of the world. One example is for the relief for orphans of the Gaza strip conflict.

Example One: Gaza Strip / West Bank Foundation

The purpose of this foundation was:

- prevention or relief of poverty;
- advancement of education and advancement of health;
- advancement of conflict resolution or reconciliation;
- advancement of equality; and
- to provide recreational facilities and activities organised for Palestinian families located in the area of the Gaza Strip and West Bank who are dealing with personal loss, displacement, political repression and violence. A particular focus was to assist children orphaned by the loss or incapacitation (whether whole or partial) of one or more parents.

In even more detail, the foundation was set up to:

- Fulfil the rights of orphaned children in the Gaza Strip and West Bank to an adequate standard of living, healthcare, education, and the protection from abuse and exploitation
- Provide support to young orphans in the Gaza Strip and West Bank so they could be self-sufficient, look after themselves and eventually pursue a career
- Benefit or give hope to every child in the Gaza Strip and West Bank that has been orphaned as a direct consequence of the war, through education, healthcare, and career development

The founders set it up to achieve the following results:

- Education: to provide students with full educational scholarships, educational supplies such as uniforms, books and stationery, access to remedial and education support classes and extra-curricular activities that foster creativity, leadership and citizenship
- Health: to enhance the physical and mental wellbeing of those afflicted by the war through psychosocial support and counselling, specialised medical services, rehabilitation therapy and health awareness sessions
- Career development: to work towards empowering young people with the skills required to enter the labour market or to lead entrepreneurial lives through career counselling and career guidance

The foundation tracked the evolution of each specific child, year after year, continuously addressing and nurturing their educational, psychosocial health and professional career development needs until they reach 22 years of age. The aim is to cherish these children and young adults, so they regain their dignity and become positive contributors to their families, their local communities and to their nation.

Example Two: Rainforest and Ocean Preservation

For environmental protection, this foundation buys tracts of the rainforest in South America to prevent them from being deforested and commercially

exploited. This was motivated by a desire to help preserve an oxygen lung for the planet.

The objects of the foundation are:

1. to protect the environment in any part of the world including:
 - a. the mitigation and prevention of environmental damage and degradation;
 - b. the maintenance and improvement of the health of the oceans; and
 - c. the acquisition holding and management of immovable property in any part of the world and the protection of such immovable property from environmental damage and degradation;
2. to establish develop and promote environmentally friendly practices and technologies in any part of the world;
3. to promote the conservation of wildlife in any part of the world;
4. to advance education and research in relation to environmental and wildlife matters generally in any part of the world (including acquiring holding and operating a vessel for educational or research endeavours);
5. to advance the education and health of children and alleviate poverty of children in any part of the world;
6. to advance culture and the arts in any part of the world including through the construction development and maintenance of museums and through the acquisition and preservation of art and artefacts;

Non-charitable purpose foundations

A typical example of this is a foundation to act as the orphan owner of the shares in a private trustee company. A private trust company (PTC) is a company that performs the role of trustee to one or more family trusts. This work means the trustee is potentially exposed to breach of trust claims. Placing the ownership and control of the trustee outside the hands of an individual or corporate owner into a purpose foundation is therefore advantageous.

People may choose a PTC instead of a retail trust company because they may want family members on the board of the PTC; this would not be possible in the case of a retail trust company.

The family might have particular expertise in the asset class the PTC holds, so it makes sense that control exists at a family level.

As the foundation owns all of the shares of the PTC, the foundation's regulations can be adapted to determine who can appoint and remove directors from the board of the PTC. A purpose foundation is well suited to address that need.

A foundation can also be used for many different types of function: such as to provide a Protector to a trust. The foundation's regulations may include a balanced and democratic family decision-making mechanism to avoid or mitigate deadlocks in the future exercise of Protector powers.

Alternatively, a foundation might act as an off-balance sheet asset holding vehicle for assets which are risky or onerous. For example, a foundation might hold a private jet or ship or other assets carrying the risk of environmental liabilities or high value law suits. Such risks would be insured against in the usual way of course to the best extent possible. However, segregating such assets from the ownership of a family business makes good sense from a risk containment point of view.