Jersey Finance
Delivering Insight • Driving Innovation

Jersey Foundations

Since the introduction of the Foundations (Jersey) Law 2009, more than 400 Jersey Foundations have been established.

Jersey Foundations are unique and do not have an exact equivalent in other jurisdictions but do offer certain benefits of traditional companies and trusts, whilst being constructed to eliminate some of the key constraints. It is similar to a company in that it has separate legal personality and has a Council to administer its business, just like a board of directors.

Unlike a company, a Foundation does not have shareholders or members and contrary to the position of a trust, there are no beneficiaries who have an interest in the Foundation's assets or who are owed a fiduciary duty. Consequently, a Foundation does not have any owners and is regarded as an 'orphan entity'.

What are they used for?

Private wealth management structures/philanthropy

Over a third of those established so far are understood to have charitable purposes.

Asset protection/succession planning

Families can use Foundations to ring-fence certain assets, avoid forced heirship rules or succession challenges and make provision for how family wealth should be disseminated.

Maintenance of corporate control

Family businesses are often led by elder members of the family and it can be beneficial for succession planning purposes to ensure the continuity of the family businesses that they be held by independent vehicles, such as a Foundation.

Ownership of private trust companies

As an alternative structure to family businesses being owned and directly held in a Foundation, the Foundation could instead own the shares in an SPV or a private trust company ("PTC") which would, in turn, own the family businesses through a conventional trust arrangement. This may also assist with the tax status of the PTC or SPV. A Foundation can also act as a PTC.

Separate ownership

The Foundation is a useful option as an 'orphan' entity for structures that require an SPV with no connected ownership. Foundations are also registered and identifiable which can provide third party certainty (as opposed to trusts which are unregistered).

Pensions/employee benefits

The benefit of a Foundation in this area can be the ability to own assets in its own name but also not have to overlay trust concepts to the holding of assets and beneficiaries.

Why do people use a Foundation?

Flexibility
They are very flexible in terms of their structure and internal arrangements as the Law permits a substantial degree of bespoke adaptation.

Corporate personality
They have legal personality and may contract or sue in their own name and the doctrine of ultra vires does not apply to Foundations.

Clear position for ownership/ beneficiaries
No fiduciary duties are owed to beneficiaries, the beneficiaries have no interest in the Foundation's assets and Foundations are not bound by trusts or corporate case law. They need not have beneficiaries and can be established for a beneficial (particularly charitable/philanthropic) purpose.

Corporate style duties
The Council members have duties that are similar (albeit not identical) to that in corporate law but those duties are owed to the Foundation itself (not beneficiaries). Constitutional documents can also provide for exoneration of Council members save where liability arises out of fraud, wilful misconduct or gross negligence.

Control/Reservation of powers
A significant degree of control and involvement can be retained by the founder.

Familiarity
As Foundations have their origins in civil law jurisdictions, they can be more familiar to those operating in those jurisdictions, particularly continental Europe.

Corporate certainty
Foundations have adopted certain useful corporate aspects such as the ability to migrate, continue, merge and wind up as well has having an indefinite existence if required (i.e. no fixed term). A Jersey company can also convert to a Foundation.

Control of information
The founder can restrict the flow of information regarding the Foundation and its property to beneficiaries. As they are private structures and although they require registration, only a limited amount of information needs to be placed in the public domain (with only the charter and abridged regulations being filed but information that can identify a person is not included – distinct from companies where memorandum and full articles of association must be filed publicly). However, a Foundation has a level of visibility/public record which can be required commercially.

Single or depreciating assets
Where the assets include planes, boats, volatile assets or certain types of family businesses, sometimes they do not sit comfortably within normal trusts law constraints and parameters, including traditional trustees' duties.

Foreign law firewall
The law governing Foundations has been drafted to prevent foreign law being used to circumvent Jersey law determination on matters relating to Jersey Foundations.

Oversight
A Foundation has a guardian to ensure the Council carries out its functions with related potential sanctions.

A Foundation will generally be taxed at 0% in Jersey and by concession, usually non-Jersey residents receiving an income distribution from a Jersey Foundation will not be taxed in Jersey. Tax may be payable by a Jersey resident individual who receives income from the Foundation. Tax advice should always be taken for individual circumstances.

Foundations do have certain restrictions as regards directly holding immovable property in Jersey or engaging in commercial trading that is not incidental to the attainment of its objects (albeit it could trade through an underlying company potentially) and advice is recommended in respect of those activities.

For more information, please contact a member of the Jersey Finance team on: +44 (0) 1534 836000 | jersey@jerseyfinance.je

www.jerseyfinance.je linkedin.com/company/jersey-finance @jerseyfinance youtube.com/jerseyfinance