



Foundations

Hawksford International is delighted to announce the introduction of The Foundations (Jersey) Law 2009 (the "**Law**") which came into effect on 17 July.

This Law enhances Jersey's range of financial planning vehicles to complement trusts, companies, cell companies and limited partnerships for the provision of financial planning and private wealth management strategies.

Jersey is recognised globally as a premier offshore finance centre. For those with structures on OECD grey or black-listed countries, Jersey's presence on the OECD white list makes it an attractive place to do business. The fact that Panama Private Interest Foundations, Bahamas Foundations, Liechtenstein Stiftungs, Liechtenstein Anstalts, St. Kitts Foundations and Nevis Multiform Foundations can be transferred to Jersey and continued as Jersey Foundations has produced a flurry of activity in anticipation of the implementation of the Foundations (Jersey) Law. It is anticipated that a significant number of structures will be transferred to Jersey in the coming months and that this, along with the establishment of brand new structures, will encourage advisors to work with foundations in a traditional trust stronghold.

The concept of foundations is familiar to practitioners and clients from civil law jurisdictions accustomed to their versatility and simplicity. Being contractual in nature, foundations are often easier to understand than trusts and they are not burdened by the hundreds of years of case law attaching to the latter. Whilst trusts are settled for the benefit of beneficiaries, foundations are created for the wants and needs of the founder. For these and other reasons foundations have perhaps become the structure of choice for wealth preservation and asset holding for those based in Europe, Asia and the Middle East (although trusts are still equally popular for certain tax planning strategies), with increasing activity now being seen from traditional trust strongholds.

Experienced practitioners based in civil law jurisdictions have reported almost equal usage of trusts and foundations over the years with a key criterion in deciding between the two being the culture and background of the client - i.e. which system gives the greater degree of comfort or familiarity.

We see obvious opportunities for foundations in the orderly management and preservation of family wealth, as a means of succession planning or for philanthropic purposes, as a possible replacement for non-charitable purpose trusts and in connection with or perhaps in place of private trust companies in appropriate cases.

Given the limited rights conferred on beneficiaries and the possibilities for confidentiality and discretion, there is likely to be an important role for foundations in protecting family wealth against divorce and other family disputes. Indeed there may be special opportunities in Jersey for coupling foundations with pre-nuptial agreements which have long been recognised in Jersey Law.

Accordingly, the Law offers an additional choice for clients and their advisers and presents great opportunities for Jersey both in terms of new structures and for existing foundations that can be migrated from other jurisdictions. We have already seen significant interest in this area.

A Jersey foundation is an incorporated body, which unlike a trust, has its own legal personality. It therefore has the ability to hold legal and beneficial title to assets and is capable of transacting in its own name. There has been a lot of soul-searching, mainly in the context of UK tax planning, as to whether a Jersey foundation is a type of 'incorporated trust' or a company. A foundation is neither: It stands on its own merits, enhancing Jersey's ability to offer the most sophisticated range of wealth management structures available.

A foundation does not have share capital or shareholders but instead is formed by a founder for a specific purpose or purposes. Such purposes could include the maintenance, education or benefit of a class of beneficiaries, charitable purposes or to act in a corporate capacity, for instance, as a corporate director for underlying companies, or to act as a private trust company. The founder is the person who instructs the service provider in Jersey to set up the foundation and has certain rights, which are capable of being transferred. It does not follow automatically that any person who subsequently endows the foundation is a founder.

A key distinction between trusts and foundations arises from the beneficiaries of a foundation having no interest in its assets. The focus of trusts is on the beneficiaries' rights, with the settlor only being able to give non-binding guidance, or having limited rights reserved. Foundations are much more the creature of the founder, with the governing documents tailored to his or her needs.

A Jersey foundation is able to do anything that a body corporate can do (except that it cannot acquire or hold Jersey immovable property) and can engage in commercial trading incidental to the attainment of its objects. It has regulations similar to the articles of association of a company and a council with similar duties and obligations to those of directors.

The only public record is the charter, which will be lodged with the registrar of companies. The charter can be very brief and leave the governance of the foundation with the confidential regulations. As beneficiaries have no rights against the foundation, the role of a guardian has been created (which is similar to that of an enforcer of a purpose trust) to ensure that the council remains fully accountable for its activities.

For more information on setting up a Jersey foundation, or to discuss other structures appropriate to your own needs and circumstances, please get in touch with your usual Hawksford International contact or speak to a member of our Private Client department:

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