



Foundations were introduced into Jersey law through the Foundations (Jersey) Law 2009. A number of additional regulations have since been implemented, which introduced rules governing the migration of foundations (in and out of Jersey), the merger of foundations and the winding up of foundations.

## What is a Jersey Foundation?

A Jersey foundation is designed to blend the highly attractive features of both [companies](#) and [trusts](#). Sometimes described as a hybrid structure, it provides Jersey with an alternative financial planning vehicle for wealth management and charitable purposes.

The Jersey foundation is an entirely new type of Jersey legal entity and is not an exact equivalent or copy of any foundation established in any other jurisdiction, as it has been modelled on the best features present in the laws of other jurisdictions, while also including unique Jersey features. Jersey foundations allow the founder the maximum possible freedom of choice whilst at the same time ensuring that the structure is not susceptible to abuse for money laundering or terrorist financing purposes.

The nature of a foundation is that it is incorporated and has separate legal personality. It is therefore able to contract with third parties, sue and be sued in its own name and hold its own assets. It is an orphan vehicle in the sense that it does not have shareholders and its assets will be held for the benefit of “objects” (i.e. beneficiaries and/or a specified purpose).

## Incorporation of a Jersey Foundation

The incorporation of a Jersey foundation is regulated under the Financial Services (Jersey) Law 1998 and only a qualified person (a “**Qualified Person**”) who is appropriately licensed under that law is able to apply for the incorporation of a foundation. The application for incorporation of a foundation must be accompanied by:

- a copy of the proposed charter of the foundation (but not the regulations which remain confidential), including an English translation of any sections if necessary;
- the published fee payable to the Jersey Financial Services Commission; and
- a certificate signed by the applicant confirming that (a) the Qualified Person will become the qualified member of the foundation, (b) the foundation regulations are held by the Qualified Person and have been approved by both the founder and the Qualified Person, (c) the address of the foundation is the same as the address of the Qualified Person and (d) that a guardian has been selected for the foundation (although the guardian’s identity does not need to be disclosed). There are a number of key features which this note will explore in more detail:

## Key Features

- The Founder
- The Objects



- The Charter
- The Regulations
- The Council
- The Guardian
- Merger, migration and dissolution
- Use of foundations

## The Founder

The founder of a foundation is the person who instructs the Qualified Person to apply for the incorporation of a foundation. The founder may be an individual or body corporate and can be both the guardian and a member of the council (including the Qualified Person). A person who donates assets to the foundation after it has been incorporated will neither be regarded as a founder nor receive founder's rights unless the regulations provide otherwise.

## The Objects

A foundation requires objects which may be to benefit a person or a class of persons or to carry out a specified charitable or non-charitable purpose. The foundation will hold assets in its own name which it will apply in accordance with its constitutional documents (the charter and the regulations) for the benefit of such objects.

A foundation does not need to have beneficiaries, and may be established solely for a particular purpose (whether charitable, non-charitable or a blend of both). In cases where there are beneficiaries, they have no interest in the foundation's assets nor are they owed a fiduciary or similar duty by the foundation or by a person appointed under the regulations of the foundation. However, if a beneficiary under a foundation becomes entitled to a benefit under the foundation in accordance with the charter or the regulations of the foundation and the benefit is not provided, the beneficiary may seek an order of the Royal Court ordering the foundation to provide the benefit. Nevertheless, the fact that the regulations can restrict the information that is provided to people who may benefit from the foundation allows the founder a high level of control and confidentiality. For instance, founders will be able to prevent their children from becoming aware of the existence of the foundation until they reach a certain age or even until the founder's death if the founder deems this appropriate.

## The Charter

The charter is a public document, which must be filed with the Jersey Registrar of Companies (the "**Registrar**") and available for public inspection at the Registry. It must include certain specified details about the foundation, including:

- The name of the foundation. This is not to be misleading or undesirable and is to end with the word "Foundation" or its equivalent in a foreign language;



- The objects for which the foundation is established;
- If there is any initial endowment or, most importantly, if there is to be the possibility of any further endowment, this must be stated in the charter;
- If the foundation is to terminate automatically upon a fixed date or upon the occurrence of a particular event, details of this must be stated in the charter; and
- If a right is conferred upon any person to wind up and dissolve the foundation, this must be stated in the charter.

The Registrar must be advised of any amendments to the charter. The detailed provisions applicable to the foundation can be included in either the public charter or in the regulations, which is a private document. There is, therefore, considerable flexibility as to the contents of both the charter and regulations. It is expected that the majority of foundations will have both a publicly registered charter and a set of private regulations, though there may be cases, such as foundations established for wholly charitable purposes, which may wish to adopt an open profile towards the public and publicly disclose both the charter and the regulations of the foundation. The charter does not need to specify or identify the founder, the council members or any people who will benefit from the foundation.

## The Regulations

Unless all of its governing provisions are contained in its charter, it is a requirement for every foundation to have regulations. The regulations are not filed with the Registrar and thus may be viewed by only those defined as “*persons appointed under the regulations of the foundation*”. The regulations are required to establish a council to administer the foundation’s assets and to carry out its objects. In particular the regulations must provide for the appointment, retirement, removal and remuneration (if any) of the council members and set out the decision making process of the council. The regulations must also provide for the appointment of a guardian to ensure the accountability of the council and to provide for the reimbursement of the expenses of persons appointed under the regulations. They may also contain other provisions, particularly concerning how the charter or regulations of the foundation may be amended or for the appointment of other persons (such as an auditor) to carry out functions for the foundation.

## The Council

The council exercises the power of the foundation. Council members only have duties towards the foundation itself; they have no fiduciary duty to individuals who may benefit from the foundation. The council may consist of one or more members but must include one Jersey-based finance professional, known as the qualified member and who is usually the Qualified Person, regulated under the Financial Services (Jersey) Law 1998. The council has the role of administering the foundation’s assets and carrying out the foundation’s objects.



## The Guardian

The principal role of the guardian is to ensure that the council carries out its functions. The requirement for a guardian ensures the proper administration of the foundation and the furtherance of its objects. No member of the council, with the exceptions of the qualified member and the founder, may become the guardian. The guardian may retain various executive powers, such as a veto over certain decisions of the council. Where the founder is the guardian he can, therefore, continue to exert considerable influence over the management of the foundation.

## Merger, migration and dissolution

Provisions regarding the migration of Jersey foundations are to be found in the Foundations (Continuance) (Jersey) Regulations 2009 (the “**Continuance Regulations**”).

The Continuance Regulations provide for the migration to Jersey of “recognized entities”, which will convert into a Jersey foundation. The procedure for migration is straightforward and is a popular method of moving the ownership of assets to Jersey in circumstances where it is recognised that the benefits of Jersey, and its well-regulated regime, outweigh those of the jurisdiction where the “recognized entity” is currently situated. Foundations may also be migrated out of Jersey.

The merger of Jersey foundations is dealt with in the Foundations (Merger) (Jersey) Regulations 2009 (the “**Merger Regulations**”).

In general, the Merger Regulations require a merger agreement to be entered into between the bodies intending to merge (whether foundations or “recognized entities”), which must include the proposed charter if the merged entity will be a foundation. An application to the Registrar is also required, identifying the qualified member of the council if the merged entity will be a foundation. Upon approval and completion of the merger (by registration of the relevant details by the Registrar), all of the property, rights and obligations of the merging entities will become property, rights and obligations of the newly incorporated merged entity.

In addition the Foundations (Winding Up) (Jersey) Regulations 2009 deal with the dissolution of foundations.

## Use of Foundations

Common reasons for the establishment of a foundation include:

- Carrying out charitable or philanthropic purposes (whether charitable or non-charitable);
- Wealth planning, including in place of (or as part of) a “*private trust company*” structure;
- Retaining and preserving specific assets, including art works or the holding of wasting assets;
- Estate planning purposes; and



- Holding assets off balance sheet in connection with the securitisation of mortgages, etc...

Foundations provide Jersey with an alternative financial planning vehicle to companies and trusts for wealth management and charitable giving. Many civil law jurisdictions do not recognise the concept of a trust, but are happy with the foundation. Jersey foundations may be used by those who require transparency, wish to control assets (rather than transferring the assets outright to the trustee of a trust), or who prefer a structure with which they are familiar. The flexibility available and the mixture of company and trust aspects will for many avoid the problems of understanding trusts and indeed, in some instances, may avoid the need to have both a company and a trust within the context of “*private trust companies*”, thus producing simplicity and cost savings.

For further information about setting up Jersey Foundations, please contact [Ian Strang](#) or [Jeffrey Giovannoni](#) of Voisin.

*This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.*