

Introduction to foundations

What is a foundation?

The Foundations (Jersey) Law 2009 introduced a new entity to the Jersey product list with similar attributes to both a trust and a company. A Jersey Foundation is a corporate entity (although it does not have shareholders) and is governed by a council under its charter and regulations, in a similar fashion to a company and its directors. With similarities to a trust, it must have a purpose (charitable or non-charitable) and/or be for the benefit of one or more beneficiaries, referred to as the Foundations objects. As a distinct legal structure, it nonetheless has the benefit of flexibility both in terms of ownership, control and purpose, which make it ideally suited to the provision of wealth management, succession planning and charitable solutions.

What are the Roles?

Founder

The founder is the person who instructs the establishment of the foundation. Unlike a trust, they need not contribute assets to the foundation, nor are assets required at the outset - they can come later.

The founder may be appointed to the council.

The qualified member and the founder can be the same person.

Charter and regulations

A Jersey foundation's constitutional documents consist of its charter and its regulations which must include certain information in connection with the foundation, as defined within the Foundations (Jersey) Law, 2009.

The charter is a publically available document which sets out certain details in relation to the foundation such as: the name whether it is charitable or not, the objects of the foundation and what the initial endowment to the foundation was.

The regulations outline the manner in which the foundation should be managed and may be tailored specifically to meet the objectives of the foundation. They must:

- ① establish a council to administer the foundation
- ① detail the mechanism for the appointment, removal and remuneration of the council
- ① set out how decisions must be made
- ① detail the procedure for ensuring that a qualified member is appointed.

An abridged version of the regulations must be filed with the Jersey Financial Services Commission, on establishment of the foundation, which provide certain information however, the regulations are principally a private document.

Council

Similar to that of a board of directors, the council is responsible for administering the foundation and carrying out its objects. The council can have one or more members and,

subject to the relevant tax and legal advice, can be made up of the family and/or their trusted advisers.

Guardian

All Jersey foundations must have a guardian appointed, whose role is to ensure that the council carries out its function. There is no regulatory requirement in relation to who the guardian should be and is often a role carried out by a trusted family adviser.

Qualified Member

In accordance with the Foundations (Jersey) Law 2009, a Jersey foundation must have a qualified member appointed to the council at all times. The qualified member is a person, or entity, regulated by the Jersey Financial Services Commission.

Foundation objects

This objects are the person, class of people, or specific purpose that the foundation has been established to benefit. The objects are not owed fiduciary obligation in the same way that the beneficial class of a trust would be.

Affinity's role in a foundation

- ④ To act as the qualified member, a role required to be provided by a regulated service provider in Jersey, under the Foundations Jersey Law, 2009
- ④ To provide administration services including: bookkeeping, annual accounts, statutory filings, and minutes of council meetings
- ④ To act as council member if required by the family
- ④ To be in attendance at council meetings, in their capacity as a qualified member, and to record decisions, implement actions and ensure an efficient flow of information
- ④ To assist with regular dialogue with the family, lawyers, accountants and trusted advisors
- ④ To ensure compliance with the local regulatory requirements for a foundation, such as ensuring it remains in good standing, and that regulatory filings are completed
- ④ Investment oversight
- ④ Wealth reporting service – to provide a consolidated picture of assets whether that be in relation to only the trust or for the wider family wealth, if required, which may be tailored to meet the family's needs and can include:
 - Portfolio risks: liquidity, diversification, shortfall
 - Single holding and sector research
 - Forecasts (return, income) and recommendations
 - Ongoing monitoring.

Why establish a foundation?

Protection

A foundation can protect the family wealth from divorce, bloodline dilution, via restrictions on who can receive distributions of wealth. Particular assets, such as shares in a family business, are also protected as the council can only make decisions in line with the charter.

Control

By acting as council members, the family can retain certain decision-making power around distributions, investment management and the sale and purchase of assets.

Education

The council can consider appointing the next generation onto the council to sit alongside the older generations, giving the opportunity to understand how the wealth is generated, what it is used for, how it is managed and what the family wishes and objectives are.

Philanthropy

Foundations are an ideal vehicle to facilitate philanthropic objectives.

Similarities between trusts and foundations

Trusts and foundations are similar in many ways. The key parallels are:

- ⌘ Assets can be transferred or gifted to both
- ⌘ Both can be revocable
- ⌘ Both can be created during the settlor's / founder's lifetime or on death
- ⌘ Both can be unlimited in duration
- ⌘ Both can provide for the appointment of a protector or enforcer
- ⌘ The foundation's founder can be a member of the council and can exercise control over the assets of the foundation. The settlor of a trust can also retain certain powers to direct over investments although this is more unusual.

The key differences

Feature	Trust	Foundation
Legal personality	Does not have a separate legal identity, cannot sue/be sued	Own independent legal personality, can sue/be sued
Who establishes the entity?	The settlor	The founder
How is the entity funded?	Assets are settled by the settlor	Endowed by the founder
Registration	Documents are private – no register and no registration fees payable	Foundation Charter and a shortened version of the regulations are public documents.
Origins	Common Law	Civil Law
Controls	Under the power of the trustee	Belongs to the foundation council
Who runs the entity?	Administered by a professional trustee	The foundation council
What duties do the trustees/council owe?	A trustee gives fiduciary duties to the beneficiaries	Council has duties to the foundation
What happens in a default?	Trustees liable for fraud, wilful misconduct or gross negligence. Right to sue vested in beneficiaries/new trustees against former trustees	Contractual right to sue vested in the foundation or the guardian/council members
Who has a right to information?	Settlor and any beneficiary, determined by courts/the trustee	Council members and guardian
What are the core documents?	Trust Deed and Letter of Wishes from the settlor	Incorporation Certificate, Charter (public document) and Rules (private document)
How is it taxed	Depends upon residence of settlor and/or beneficiaries	Depends on where it is structured like a company or a trust