

Jersey Foundations

This note outlines the key characteristics of a Jersey foundation and the procedure involved in the establishment of Jersey foundations.

Overview

The Foundations (Jersey) Law (the “Law”) came into force on 17 July 2009. A Jersey foundation is a hybrid vehicle, which borrows interesting characteristics from both a company and a trust. Like a company, it is an incorporated entity, having its own legal personality, which meaning it can hold assets, transact and sue in its own name.

The Law has been carefully drafted to ensure that the Jersey foundation is a highly modern and flexible vehicle, which can have many different uses.

Uses

Historically, the foundation has proved popular for philanthropy, family wealth planning, succession and tax planning purposes. The Jersey foundation is currently an attractive vehicle for such objectives. It is also sufficiently flexible to be used as a holding structure for valuable assets such as fine art and wasting assets such as vintage cars or options.

The Jersey foundation is starting to replace the Jersey trust in commercial transactions and investment fund structures. With increased interest from tax advisers in many jurisdictions, it will not be long before further uses are developed and the Jersey foundation becomes commonplace.

The Founder and Qualified Person

Unlike a trust, a foundation does not require any initial endowment to come into existence. Whilst the Founder is free to donate assets to the foundation, there is no requirement under the Law that he must do so the role of the Founder is to instruct the Qualified Person to incorporate the foundation.

A Qualified Person is a trust company registered in Jersey to carry on trust company business.

There is no requirement to disclose the identity of the Founder in the Charter (see ‘Documentation and Incorporation’ below). The Founder may be both a member of the Council and the Guardian and may reserve certain rights in relation to the foundation and its assets.

The Council

The Council is similar in many ways to the board of a company, with members of the Council being viewed as directors. It is responsible for administering the assets of the foundation and carrying out its objects; to benefit a beneficiary or to carry out a specific purpose, which does not need to be charitable. Whilst the personal liability of the Council members can be limited, there can be no exoneration for fraud, wilful misconduct or gross negligence.

Under Article 21 of the Law, a Qualified Person must be a member of the Council. Individuals and companies can also be members as there is no limit on the number of members.

The Guardian

A foundation must have a Guardian. The Guardian could be the Founder, the Qualified Person or a committee of individuals. The Guardian is responsible for ensuring that the Council carries out its functions and, in doing so, may require the Council to account for its administration of the foundation and furtherance of the foundation's objects.

A Guardian cannot be a member of the Council unless he is also a Founder or the Qualified Member of the Council.

The Regulation (see 'Documentation and Incorporation' below) may provide the Guardian with the power to approve or disapprove specified actions of the Council. Where an action is not permitted by the Regulations, the Guardian may sanction or authorise such action to be taken by the Council, provided that it is in the best interests of the foundation to do so.

The Beneficiaries

A beneficiary has no interest in the foundation's assets and is not owed a fiduciary duty by the Council. However, if the beneficiary becomes entitled under the Charter or the Regulations and the benefit is not provided within three years of the date of becoming aware of the entitlement, the beneficiary may apply to the Royal Court for an order for the foundation to provide the benefit.

The Jersey foundation has attracted much interest as, unlike a trust, a foundation is not obliged to provide any information to beneficiaries unless specifically required to by the Law, a court, the Charter or the Regulations.

Documentation and Incorporation

The Charter is the public document that is submitted by the Qualified Person to the Jersey Financial Services Commission when making an application for incorporation. It is a simple document listing basic information required by the Law, which does not need to include the name of the Founder or beneficiaries.

The Foundation must also keep certain records at its business address, which include:

- A copy of the current charter and regulations;
- A register of the names and addresses of the members of its Council;
- Records sufficient to show and explain its transactions
- Records to disclose, with reasonable accuracy, its financial position;
- A record of the appointment of the Guardian, showing his name, address and the effective date of his appointment; and
- A register of the names and addresses of all the persons who have endowed the foundation.

The Regulation is a private document, which is not filed with the incorporation application. It is comparable to the articles of association for a company but must deal with, amongst other matters, the establishment of the Council and the appointment of the Guardian.

The application fee is £200 but there is a same day 'fast-track' process, costing £400.

Taxation

In Jersey, the foundation is chargeable to tax at the rate of 0% (zero). For other jurisdictions, the tax treatment will depend upon how the drafted foundation is viewed by the relevant tax authority. A foundation's flexibility means it can be prepared to behave more like a company than a trust or vice versa, as shall be determined by the needs of the client.

About Hatstone

Hatstone is a leading boutique multi-jurisdictional law firm with offices in Jersey, London, Panama and South Africa.

Our philosophy revolves around a Partner-led client service.

We believe that the right people will attract the best work and we have put in place a first class team to assist you. The team has been carefully chosen to ensure that there is experience and strength-in-depth.

- **Partner-led:** Our Partners each have a wealth of experience in banking and finance, the establishment and maintenance of investment funds, corporate and commercial, acquisitions and mergers, private equity and venture capital, structured finance, financial services and regulatory law, trusts and foundations. We believe that our clients benefit from having their affairs overseen by senior staff with the necessary experience.
- **Client Focus:** We are dedicated to providing a client focused services. Knowing our clients and understanding what drives their businesses is fundamental to us. We enjoy a very strong rapport with our clients whom have access to our lawyers 24/7 through the latest technology. Our principal aim is to help clients achieve their objectives by offering them pragmatic advice and solutions.
- **Transparency:** We are happy to work on a fixed fee basis (in most circumstances) and are transparent about our fees.

For further Information, please contact:



Carl O'Shea
Group Partner
E: carl@hatstone.com
T: +44 (0) 1534 761 182



Hannes Botha
Group Partner
E: hannes@hatstone.com
T: +44 (0) 1534 761 196



Simon Vivian
Group Partner
E: simon@hatstone.com
T: +44 (0) 1534 761 186

HATSTONE

www.hatstone.com

Oak Walk, Le Mont Fallu,
St. Peter, Jersey, JE3 7EF
T: +44 (0) 1534 761 180

NOTE ON THIS RELEASE

The information contained in this client information release is intended as a general guide only. The contents are not intended as a substitute for formal legal advice and should be interpreted accordingly. Formal legal advice in all relevant areas should be sought before relying on any of the information contained in this release.