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An Introduction To Foundations In Jersey

A Foundation is a legal entity which is created by an individual or group of individuals (the “**Founder(s)**”). It can only be established by a Qualified Person who must be a regulated and properly licenced financial services business in Jersey. Upon establishment, the Foundation is entered into the Register of Foundations and issued with a registration number. The Foundation acts through its Foundation Council Members which must include a Qualified Person.

Foundations may be incorporated in a variety of jurisdictions and are subject to different formalities, laws and requirements. Jersey Foundations are not an exact equivalent of those established in other jurisdictions but have been modelled on the best features present in the laws of other jurisdictions.

The terms of reference for a Foundation are detailed in its Charter and Regulations. The object for which a Foundation is established is set out in the Charter which is a public document (the “**Charter**”).

Beneficiaries do not need to be named in the Charter. By contrast the governance terms appertaining to the Foundation are set out in the Regulations which is a private document (the “**Regulations**”).

The Regulations normally define both the Beneficiaries and the Guardian.

The Regulations also establish the constitution of the Council, who are charged with the administration of the Foundation’s assets and the attainment of its objects.



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Key Features

The Foundation Council

The Foundation Council is responsible for the administration of the Foundation and must do so in accordance with the Foundation rules as set out in the Charter. Foundation Council members only have duties towards the Foundation itself; they have no fiduciary duty to the Beneficiaries. A regulated and properly licenced financial services business in Jersey (the "Qualified Person") must be included in the Foundation Council.

The Founder

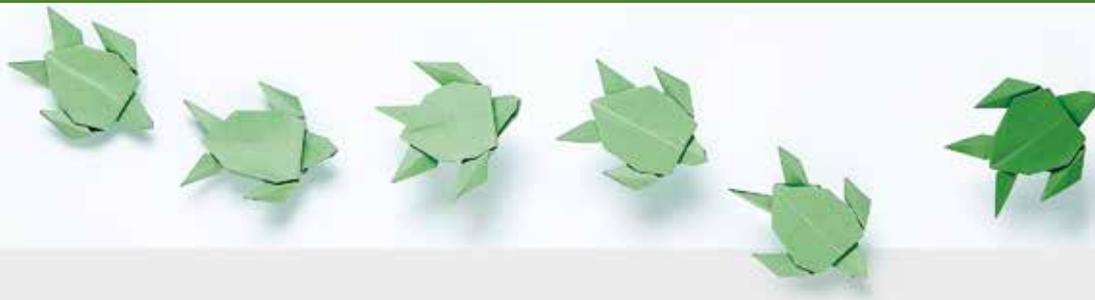
The individual or corporate entity who instructs the Qualified Person to apply for the incorporation of a Foundation is known as the Founder. A person who donates assets to the Foundation after it has been incorporated will neither be regarded as the Founder and nor receive Founder's rights unless the Regulations provide otherwise. The Founder may also be appointed to the Foundation Council, act as Guardian and/or a Beneficiary. The identity of the Founder is not publicly disclosed thereby allowing anonymity to be preserved.

The Beneficiaries

Beneficiaries can be set out in the Charter, which is a public document, or in the Regulations of the Foundation. They are not owed a fiduciary duty by the Foundation Council and have no right to information appertaining to the Foundation.

The Guardian

The Guardian, who may be the Qualified Person or the Founder, ensures that the Foundation Council properly carries out its functions in order to achieve the objects of the Foundation. The requirement for a Guardian therefore ensures the proper administration of the Foundation and the protection of its Beneficiaries. The Regulations may provide for the Guardian to retain various executive powers and to give its prior consent to the actions of the Foundation Council. Where the Founder is the Guardian, he is able to exert influence over the management of the Foundation. The Guardian also has a right to information on the Foundation.



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Benefits Of A Jersey Foundation

There are a number of advantages of establishing a Foundation in Jersey:

- It is a flexible vehicle which can be established for charitable or non-charitable purposes or a combination of both;
- It is a legally recognised vehicle for business and asset holding purposes;
- It has limited liability similar to a company;
- It can be a confidential vehicle if the Beneficiaries are only defined in the Regulations and the Founder's identity is not a matter of public record;
- It can be established with the sole object of holding a particular asset and, as the Foundation Council has no imposed fiduciary duty to the Beneficiaries, it may be an appropriate vehicle for certain family assets or businesses;
- Subject to its objects, it is able to exercise all of the functions of an incorporated company;
- Financial statements must be produced in accordance with the Foundations (Jersey) Law 2009 however there is no requirement for these to be filed with the Jersey Registry or for them to be available for public inspection;
- It is an appropriate vehicle for asset planning and can be migrated to other jurisdictions if required;
- It is possible to reserve rights and therefore a certain degree of control can be retained by the Founder or Guardian;
- A Jersey Foundation is for an unlimited duration.

If you would like to find out more about the Fairway Group and our Foundation services please contact us at enquiries@fairwaygroup.com

Fairway Group take great pride in protecting and growing our clients' assets through our trust services offering. Universally revered, turtles are nomadic, long-lived, independent creatures who return to the same nesting grounds where they were born, demonstrating a true sense of direction and importance of legacy. Each protective turtle shell is unique and representative of the service provided to each of our clients.

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