

# What is a Foundation?

Foundations are vehicles for holding assets. The Foundations (Jersey) Law 2009 (the “**Law**”) will now permit Foundations to be created under the law of Jersey.

A Foundation is traditionally viewed as being somewhere between a trust and a company. A Foundation must be established with one or more ‘objects’. With the sole caveat that the objects must be lawful, they can be charitable, non-charitable or a mixture of both.

Permissible objects might include, for example, benefiting a particular person or class of persons or carrying out a specific purpose or holding a particular asset. Common reasons for the establishment of a Foundation include:

- Carrying out charitable or philanthropic purposes.
- Retaining and preserving specific assets.
- Succession planning to enable family assets such as businesses to benefit the next generation without the need to physically divide that asset.
- Holding an asset such as a company to carry out a specific transaction.
- Holding assets to benefit family members.

A Foundation is an incorporated body. This means that the Foundation itself exists in the same way that a person or company exists. Therefore a Foundation can hold assets and take Court proceedings in its own name in the same way that a company may. This will have obvious benefits for any third parties wishing to contract with a Foundation since that third party will easily be able to ascertain the existence and status of the Foundation and be comfortable that it has full power to deal with its own assets.

In this respect a Foundation differs from a trust where it is the trustees of the trust who own assets and enter into contracts.

A Foundation’s powers will be exercised by its council, which is similar to a company’s board of directors. Under the Law anyone can be a member of the council. There must be at least one member but there is no statutory maximum. The founder of the Foundation (the person who provides the assets) may remain actively involved in the management of the Foundation by becoming a member of the council.

The founder could also ensure that trusted family advisers or friends are also council members and therefore have control. Council members do not have a fiduciary duty to people who may benefit from the Foundation but they do have duties towards the Foundation itself, similar to those of directors to companies.

However, the Law does require that at least one council member is registered under the Financial Services (Jersey) Law 1998 to carry on financial services business of this type. This person is referred to as the ‘Qualified Member’.

Unlike a company, there are no shareholders to hold the council to account. Instead this role will be carried out by the holder of another post known as the ‘guardian’. The main job of the guardian will be to ensure that the council carries out its functions in order to achieve the objects of the Foundations. The Law expressly permits the founder (whether or not he is also a member of the council) or the Qualified Member of the council also to be the guardian. The requirement for a guardian distinguishes Jersey from Foundations in many other jurisdictions and is a mechanism to ensure the proper administration of Foundations and protection for those who are to benefit from the Foundation.

A Foundation must have both a charter and regulations. The charter is a public document but the regulations are private. The charter must state the name of the Foundation, the objects (although there is no need to identify any people who will benefit), the initial endowment and how the Foundation can be wound up. All other details may be included in the regulations. The regulations are a private document and a Foundation will not be obliged to provide information about itself to any person other than as specifically required by the Law or as set out in its own regulations. The regulations can restrict the information that is provided to people who may benefit from the Foundation and therefore founders may prevent their children becoming aware of the existence of the Foundation until they reach a certain age or even until the founder’s death if the founder considers this to be appropriate.

The Law is drafted to ensure maximum flexibility and therefore may be a useful mechanism for holding assets if a trust is not considered appropriate or the founder wishes to maintain a level of control. Foundations may also be more familiar than trusts to prospective founders from civil law backgrounds. The tax implications of the use of a Foundation and the control of a founder will of course need to be considered for each individual case.

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# What is a Foundation?

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