

Key Facts Foundations

On 17 July 2009 the Foundations (Jersey) Law 2009 (“the Law”) came into force. The Foundations (Continuance) (Jersey) Regulations 2009 (“the Regulations”) allows Jersey companies to continue in Jersey as foundations, and certain other “recognised entities” to migrate to Jersey and continue as foundations.

A Jersey foundation combines many aspects of both a trust and a body corporate, and will have many uses for offshore planning, as well as being of particular interest and appealing to planners from civil law jurisdictions already familiar with foundations, and who may be looking for international variations on that theme.

Target Profile for Migration

Migration is suitable for any “recognised entity”, as defined in the Regulations. This definition means a body corporate incorporated or established outside Jersey which falls within a class of bodies corporate designated by the Minister.

The list of bodies corporate designated by the Minister as “recognised entities” currently include foundations in:

- Panama
- Liechtenstein
- Bahamas
- Liechtenstein Anstalts and Stiftungs
- St Kitts Foundations, Nevis Multiform Foundations
- Malta Private Foundations

The application for a “recognised entity” (referred to in the following as “the Migrant”) to migrate to Jersey must be made to the Jersey Financial Services Commission (“JFSC”) by a “qualified person” (a person registered with the Jersey Financial Services Commission to carry on trust company business – Trident Trust Company Ltd in Jersey is so registered).

Pre-Application Matters

Prior to an application being made to the JFSC, the following requires to be carried out:

- A notice of intention to migrate (“the Notice”) must be published with copies sent to all creditors of the Migrant having a claim in excess of £5,000.00, as well as to the Registrar of Companies (“the Registrar”).
- The Notice must contain the following:
 - A statement that the Migrant is to continue as a foundation
 - Specify the current jurisdiction in which the Migrant is established, the type of entity which the Migrant comprises
 - A statement as to the solvency upon incorporation in Jersey as a foundation
 - A statement that any person aggrieved by its incorporation as a foundation may apply to the Royal Court in Jersey within 28 days of publication of the Notice to restrain the proposed

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incorporation as a foundation. (The Royal Court would only grant the restraining order if the interests of the applicant were unfairly prejudiced by the incorporation).

- Where the Notice does not confirm solvency after incorporation as a foundation, an application to the JFSC cannot be made until the Royal Court orders that there would be prejudice to the interests of creditors by reason of the application.

The Application

The qualified person will lodge the application together with a copy of the charter of the Migrant following its incorporation as a foundation and various supporting documents. The qualified person must also lodge a certificate confirming a number of matters including:

- The name of the qualified person named as the qualified member of the Migrant
- The regulations of the proposed Migrant
- The address in Jersey of the qualified member
- That a guardian has been selected for the Migrant
- That the laws under which the Migrant was established ("the Foreign Law") allows the application to migrate
- That all or any authorisations required under the foreign law or the constitution of the Migrant have been obtained
- That the Migrant will cease to be subject to the foreign law following migration
- That the interests of creditors will not be unfairly prejudiced by incorporation as a foundation in Jersey

Incorporation

The JFSC may decline the application if it perceives that there is any risk to the integrity and reputation of Jersey in financial and commercial matters or if the objects of the Migrant appear to be unlawful. An applicant who has been declined may appeal to the Royal Court.

If the application is successful, the JFSC confirms to the Registrar that it may incorporate the Migrant as a Jersey foundation. The Registrar will then register the name, the business address of the qualified member, the jurisdiction under which the Migrant was previously established or incorporated, and will issue a registration number. The Registrar will also inform the relevant authorities of the foreign jurisdiction that the Migrant has been duly incorporated as a foundation in Jersey.

The Future

Once the Migrant has been incorporated as a foundation in Jersey, its existence is subject to:

- Continuance thereafter of the property and rights to which it was entitled immediately before incorporation as a foundation in Jersey.
- The foundation remains subject to any criminal or civil liabilities and to any contracts, debts and other obligations to which the Migrant was subject prior to its incorporation as a foundation in Jersey.
- All and any legal actions or proceedings which were pending by or against the Migrant prior to its incorporation as a foundation in Jersey may be continued by or against it following incorporation as a foundation in Jersey.

Offices

The Americas/Caribbean

Bahamas

Trident Corporate Services
(Bahamas) Ltd
T: +1 242 322 6154
bahamas@tridenttrust.com

Barbados

Trident Corporate Services
(Barbados) Ltd
T: +1 246 621 0760
barbados@tridenttrust.com

British Virgin Islands

Trident Trust Company (BVI) Ltd
T: +1 284 494 2434
bvi@tridenttrust.com

Canada

TT Services (Canada) Ltd
T: +1 604 687 0811
vancouver@tridenttrust.com

Cayman Islands

Trident Trust Company
(Cayman) Ltd
T: +1 345 949 0880
cayman@tridenttrust.com

Nevis

Morning Star Holdings Ltd
T: +1 869 469 1817
nevis@tridenttrust.com

Meridian Trust Company Ltd

T: +1 869 469 1333
nevis@tridenttrust.com

Panama

Trident Trust (Panama) S.A.
T: +507 302 7494
panama@tridenttrust.com

United States

Atlanta
Trident Corporate Services, Inc
T: +1 404 233 5275
usa@tridenttrust.com

Trident Fund Services, Inc

T: +1 404 364 2019
americasfunds@tridenttrust.com

Miami

Integritas, Inc
T: +1 305 405 9006
contact@integritastrust.com

New York

Trident Corporate Services, Inc
T: +1 212 840 8280
nyc@tridenttrust.com

Sioux Falls

Trident Trust Company
(South Dakota) Inc
T: +1 605 679 4355
sd@tridenttrust.com

US Virgin Islands

Trident Trust Company (VI) Ltd
T: +1 340 774 7322
usvi@tridenttrust.com

Asia

Hong Kong

Trident Corporate Services (Asia) Ltd,
Trident Fund Services (HK) Ltd
& Trident Trust Company (HK) Ltd
T: +852 2805 2000
hongkong@tridenttrust.com

New Zealand

Trident Trust Company (NZ) Ltd
T: +64 9 300 6067
nz@tridenttrust.com

Singapore

Trident Corporate Services
(Singapore) Pte Ltd, Trident Fund
Services (Singapore) Pte Ltd &
Trident Trust Company (Singapore)
Pte Ltd
T: +65 6653 1800
singapore@tridenttrust.com

EMEA

Cyprus

Trident Trust Company (Cyprus) Ltd
T: +357 258 20 650
cyprus@tridenttrust.com

Dubai

Trident Trust Company (UAE) Ltd
DMCC Branch
T: +971 4 423 9988
dubai@tridenttrust.com

Trident Fund Services (DIFC) Ltd

T: +971 4 277 1191
dubai@tridenttrust.com

Guernsey

Trident Trust Company
(Guernsey) Ltd
T: +44 1481 727571
guernsey@tridenttrust.com

Isle of Man

Trident Trust Company (IOM) Ltd
T: +44 1624 646700
iom@tridenttrust.com

Jersey

Trident Trust Company Ltd
T: +44 1534 733401
jersey@tridenttrust.com

Luxembourg

Trident Trust Company
(Luxembourg) S.A.
T: +352 26 30 28 48
luxembourg@tridenttrust.com

Malta

Trident Corporate Services
(Malta) Limited &
Trident Trust Company (Malta) Ltd
T: +356 21 434 525
malta@tridenttrust.com

Mauritius

Trident Trust Company
(Mauritius) Ltd
T: +230 210 9770
mauritius@tridenttrust.com

Seychelles

Trident Trust Company
(Seychelles) Ltd
T: +248 4 422 000
seychelles@tridenttrust.com

Switzerland

Trident Corporate Services AG
T: +41 44 396 1080
switzerland@tridenttrust.com

United Kingdom

Trident Trust Company (UK) Ltd
T: +44 20 7935 1503
uk@tridenttrust.com

Trident Company

Services (UK) Ltd
T: +44 20 7487 0460
corpservices@tridenttrust.com