

Key Facts Foundations

As part of the framework to the Foundations (Jersey) Law 2009, 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 pursuant to the Regulations.

The list of bodies corporate designated pursuant to the Regulations 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 (henceforth referred to 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 is required 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, and 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 the Migrant’s incorporation as a foundation may apply to the Royal Court in Jersey within 28 days of publication of the Notice to restrain the proposed 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)

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- 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 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, and 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

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