

MIGRATION OF FOUNDATIONS

The Foundations (Jersey) Law 2009, which allows for the establishment of foundations in Jersey, came into force on 17 July 2009. A Jersey foundation is an incorporated body of potentially infinite duration able to hold assets, sue and be sued and transact with third parties in its own name.

It employs the most useful aspects of Jersey trusts and Jersey companies, and can be tailored to operate in a more flexible manner than foundations in many of the civil law jurisdictions such as Panama and Liechtenstein.

Jersey offers many benefits to those considering establishing a foundation in the Island or moving an existing foundation from another jurisdiction. Apart from its flexible legal framework for the operation of foundations, Jersey is a stable political and economic environment easily accessible from London and Europe with a large and expert pool of finance professionals. Its reputation has been enhanced by its recent inclusion in the OECD's 'white list' of jurisdictions that have substantially implemented the internationally agreed tax standard set by the OECD.

Jersey companies and certain types of 'recognised entities' will be allowed to migrate to Jersey foundations under the Foundations (Continuance) (Jersey) Regulations 2009.

The list of the 'recognised entities', include those types of entity that are anticipated will migrate to Jersey, such as Bahamas Foundations, Liechtenstein Anstalts and Stiftungs, Malta Foundations, Nevis Multiform Foundations, Panama Private Interest Foundations and St. Kitts Foundations. The Regulations will also allow a Jersey foundation to migrate outside of Jersey.

Prior to applying to migrate an entity to continue as a Jersey foundation, it is necessary to publish a notice of intention to migrate. A copy of this notice must be sent to all creditors owed more than £5,000 by the migrating entity as well as to the Registrar of Companies in Jersey. It is to contain specific information on the entity type, current jurisdiction, a statement of solvency as well as a statement permitting any aggrieved person to apply to Jersey's Royal Court for an order to restrain the incorporation within 28 days of the first publication of the notice.

The application to migrate an entity to continue as a Jersey foundation is to be made to the Jersey Financial Services Commission (JFSC) by a 'qualified person', who is a regulated organisation registered under the Financial Services (Jersey) Law 1998. Various documents are to be submitted with the application, including a copy of the charter to be adopted by the new Jersey foundation and a certificate certifying, inter alia, that the interests of creditors will not be unfairly prejudiced; the name and business address of the 'qualified member' of the new foundation; confirmation of approval of the new regulations by the migrating entity and the qualified member; confirmation of choice of a guardian; that the law of the jurisdiction of the migrating entity allows its migration and permission to do so has been granted, if the law so requires, confirmation that once incorporated in Jersey the entity will cease to exist in the former jurisdiction.

An application may be refused if the JFSC deem that the objects of the proposed foundation are unlawful or may be harmful to Jersey's integrity as an international finance centre, however, the applicant can appeal to the Royal Court.

As soon as the JFCS has accepted the application, it instructs the Registrar of Companies to incorporate the migrating entity as a Jersey foundation. The Registrar records the name of the foundation shown on its charter, its former name in the jurisdiction it migrated from, the former jurisdiction and the business address of the qualified member in Jersey. The foundation is given a registration number, which is communicated to the

qualified member with confirmation of incorporation. The Registrar also confirms the incorporation to the authorities of the former jurisdiction.

It is important to note that the property and rights of the migrating entity continue with incorporation as a Jersey foundation, as do its civil and criminal liabilities, contracts, debts and any other obligations, and legal proceedings it faced before migration may be continued against the new foundation.

The flexibility and hybrid nature of the Jersey foundation is sure to appeal to many people unfamiliar with the trust concept, particularly those from civil law jurisdictions as well as those wishing to retain control over assets and maintain privacy.

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This information sheet provides a brief outline only and is not comprehensive as such and should you require further specific advice, please contact Kathy Gillen or Paul Camara:

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