

Jersey foundations a decade on

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Abstract

Jersey foundations mark their 10th anniversary in 2019. This article considers the changes that have occurred throughout the world and within the private wealth arena during that time and analyses the continuing appeal of Jersey foundations as a structuring option for families across the globe. Over the past 10 years, many families have chosen to use Jersey foundations, deciding that they are appropriate for them and their particular objectives. While each family has its own aims, three broad categories of use for the Jersey foundation have emerged, which this article explores in more detail.

Jersey foundations mark their 10th anniversary in 2019. Much has changed—throughout the world and within the private wealth arena—over the past decade. Recognizing those changes, and the importance of accommodating changes to come in the years ahead, the Jersey foundation represents an attractive option for families across the globe.

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Changing times

Just to touch briefly on some of the changes during the past 10 years:

- **Instability:** We have witnessed political unrest—in the Middle East and elsewhere—giving rise to growing interest in jurisdictions which offer stability, security, and adherence to the rule of law.
- **Transparency:** We have seen a significant drive towards greater transparency and international reporting with the advent of the Common Reporting Standard, the Foreign Account Tax Compliance Act, and the European Union's General Data Protection Regulation. This drive, together with the increased use of social media and concerns in relation to data theft and cyber-security, has led families to be more aware of the importance of reputation management.

As well as witnessing these changes, families have also begun to focus more closely than before on the significant amounts of private wealth which will need to transition across the generations over the coming years. There are suggestions that values passing to the next generation in North America will be some US\$30 trillion over the next 30–40 years and, in the countries of the Gulf Co-operation Council (GCC), those values will be in the order of US\$1 trillion over the next decade.

As family arrangements become more complex, and family members become more internationally mobile, so the need grows to identify suitable structures for private wealth planning. Not only is it important that a structure achieves a family's current objectives, it is also key that it can accommodate changes in the years to come, as family priorities and dynamics evolve.

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Choosing Jersey

The past decade has witnessed a growth in the number of jurisdictions introducing their own foundations legislation. Following the introduction of the Jersey foundation in 2009, foundations were introduced in the Isle of Man in 2012 and in Guernsey in 2013. More recently, 2017 and 2018 saw the enactment of foundations legislation in the Cayman Islands, Gibraltar, Abu Dhabi Global Market and the Dubai International Finance Centre.

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Looking first at the choice of jurisdiction, Jersey offers the following, all of which are very important against the backdrop of change referred to above:

- **Stability:** The island offers political, economic and geographic stability at levels not often seen in other jurisdictions.
- **Rule of law:** Jersey has a well-respected judicial system with adherence to the rule of law and ready access to the courts.
- **Robust and highly regarded regulatory regime:** The Island adheres to and is often an early adopter of global standards set by the UK, the European Union, the USA, and the Organisation for Economic Co-operation and Development (OECD).
- **Experience, expertise and quality of service:** Jersey's finance industry has developed over more than 50 years, and offers an extensive range of highly respected products and services, together with a finance industry workforce of more than 13,000 people.

In addition to the above factors, there are also practical issues which make Jersey an appropriate choice for many families:

- **Central time zone:** With a central time zone, Jersey is accessible for families across the globe.
- **Proximity to the UK:** There are several daily flight connections and a flying time to London of under an hour so that, for those with family connections or business interests in London or other parts of the UK, travel to Jersey for meetings with professional advisers and service providers makes logistical sense.

Choosing a Jersey foundation

Moving on to look at the form of foundation available in Jersey, perhaps the first point to emphasize is that the Jersey foundation is not an exact equivalent of a foundation found in any other jurisdiction. Jersey foundations should be considered on their own merits and it should not be assumed that, for example, they will give rise to the same rights and duties, nor that they will be interpreted in the same way, as foundations established elsewhere.

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Some of the key features of the Jersey foundation are as follows:

- **Flexibility:** The Foundations (Jersey) Law 2009 (the 'Foundations Law') recognizes the importance of flexibility and allows for structures to be tailored to suit individual requirements.

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- **Incorporated vehicle:** The Jersey foundation is brought into existence following the completion of a registration process.

- **Legal personality:** Being a legal entity in its own right, the Jersey foundation holds assets, and enters into contracts, in its own name.
- **Public record:** A search of the register of foundations in the Island can confirm the existence of a Jersey foundation with the entry of the foundation's name in the register being conclusive evidence that it has been incorporated and that the Foundations Law requirements in that regard have been satisfied.
- **No ultra vires:** The doctrine of ultra vires does not apply and a Jersey foundation can exercise all the functions of a body corporate, save only that it cannot directly acquire, hold or dispose of immovable property in Jersey, or engage in commercial trading that is not incidental to the attainment of its objects (although these limitations can be addressed by interposing an underlying company).
- **Indefinite existence:** Jersey foundations can be created for an indefinite period and are therefore well-suited to dynastic planning across future generations.
- **Amendments:** The Foundations Law allows for amendments to be made so that, for example, a foundation's objects can be changed as circumstances evolve, ensuring that they remain relevant and appropriate.
- **Orphan vehicle:** Without shareholders or other owners, the use of Jersey foundations can simplify planning arrangements.

In terms of the structure of the Jersey foundation, the following are core elements:

- **Principal roles:**
 - The founder is the person upon whose instructions a foundation is incorporated.
 - The council administers the foundation's assets and carries out its objects: it will have one or more members (including the 'qualified member' who holds an appropriate regulatory licence pursuant to the Financial Services (Jersey) Law 1998).
 - The guardian's role is to take such steps as are reasonable in all the circumstances to ensure

that the council carries out its powers and duties. There is no regulatory requirement for this role, nor is it necessary for the guardian to be resident in Jersey.

- **Objects:** The objects (or purposes) of a Jersey foundation can be tailored to reflect individual requirements, and can be to benefit people and/or to carry out purposes (whether charitable or non-charitable or a combination of both).
- **Constitutional documents:** A Jersey foundation will have a charter (which is registered and available for public inspection) and regulations (which are not registered and are therefore private). The Foundations Law specifies certain content for each of these documents and also allows for considerable flexibility so that, in particular, regulations can be tailored to address family governance and other specific requirements.

Trends over the decade

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While each family has its own objectives, three broad categories of use for the Jersey foundation can be identified:

- Succession and estate planning.
- Philanthropy.
- Orphan ownership.

Succession planning

For families focusing on succession and estate planning, the Jersey foundation is attractive because of its flexibility: a structure can be tailored to reflect individual objectives, and allow for amendments to be made in the future as family priorities and dynamics evolve. In addition to this over-arching flexibility, the following features of the Jersey foundation are often important:

- **Reservation of powers:** The founder can become a council member and/or the guardian, and can be given rights in relation to the foundation and its assets, so that concerns in relation to retention of control can be addressed.
- **Retention of assets:** A Jersey foundation can be drafted with the express object of holding certain assets and this can be key where, for example, a founder is planning to transfer a family business into a structure and would like it to be retained into the future, notwithstanding changes in family dynamics or the profitability of the business.
- **Fiduciary duties:** Individual founders have differing views in relation to the beneficiaries and, for some, it is important that the beneficiaries of a Jersey foundation have no interest in its assets and are not owed fiduciary duties by the foundation, the council or the guardian.
- **Information disclosure:** Another important feature of the Jersey foundation is that it allows for a tailored approach in relation to disclosure to beneficiaries. The constitutional documents can therefore be drafted to reflect individual requirements and may provide, for example, that younger beneficiaries should not be given information until they reach certain ages or stages in the development of their careers and independence.

Philanthropy

For families focusing on philanthropy, there are strong reasons for choosing a Jersey foundation. Again, its flexibility is key, with the following

particular factors playing an important role in the decision-making process:

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- **Choice of objects:** The foundation's objects can be drafted to reflect particular requirements which is important as philanthropy is frequently a very personal matter. Families can choose to pursue the cause that really matters to them, whether that cause is technically charitable or not.
- **Ongoing involvement:** For those looking for opportunities for ongoing involvement, the Jersey foundation offers a range of options. For example, the founder and/or other family members might sit on the council and participate in giving committees (deciding on the distribution of assets), or might act as the guardian (with a monitoring role to ensure that the council acts as intended).
- **Indefinite existence:** A Jersey foundation can exist for an indefinite period, and its objects can be amended over time, so that it is well-suited for those hoping to establish a structure which will last into the future, across the generations.
- **Public profile:** Some families are keen to publicize their giving initiatives, while others prefer to maintain a lower profile: the Jersey foundation can accommodate them all. For those favouring greater publicity, the foundation might carry their family name, and full details of the chosen causes and of the council members and guardian might be included in the charter so that they are publicly available. For those preferring a lower profile, a neutral name can be chosen, details of the objects can be specified in the regulations (which are private), and only the name of the council's qualified member needs to be made public.
- **Charity registration:** For families establishing a foundation with charitable objects, Jersey offers the additional choice of a charity registration which is important for many families. Again, preferences in relation to public profile can be

accommodated, with the innovative Jersey charity register offering registration on either the general or the restricted section. The latter is available for those using their own moneys (rather than public donations) and provides for only limited information (including the charity's registered number but not its name) to be publicly available.

Orphan ownership

For families focusing on the creation of bespoke structures, Jersey foundations (without shareholders or other owners) frequently provide an appropriate solution. This might, for example, arise in the context of a family office, with family wealth (and associated trusts, foundations and companies) being consolidated to help with reputation management and to provide increased simplicity and efficiency.

- PTCs: A private trust company (PTC) is often a key element with such structures, providing a dedicated trustee to act in relation to family trusts. The Jersey foundation can be used to own the shares in the PTC or, alternatively, to act as the PTC itself.
- Other roles: Similarly, families frequently establish dedicated protector or enforcer vehicles as part of their trust structuring, or vehicles to act as council

members or the guardian of a foundation. These can all be owned by a Jersey foundation, or a foundation can be incorporated to discharge such roles itself.

Conclusion

During the 10 years since its introduction, the Jersey foundation has become firmly established as a structuring option for families across the globe. Recognizing the changes which have occurred during the past decade, and the importance of accommodating changes to come in the years ahead, the Jersey foundation represents an attractive choice. There are strong reasons for choosing the Island as a jurisdiction and the Jersey foundation has flexibility at its core, together with a range of key features. This combination allows for the creation of robust structures of substance, tailored to reflect individual objectives, and capable of amendment in the future as family priorities and dynamics evolve.

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