

KEY FACTS FOUNDATIONS

ON 25 JULY 2012, THE STATES OF GUERNSEY APPROVED THE FOUNDATIONS (GUERNSEY) LAW 2012. GUERNSEY HAS TAKEN THE OPPORTUNITY TO REVIEW THE DIFFERENT FEATURES OFFERED BY THE FOUNDATIONS LEGISLATION IN OTHER JURISDICTIONS TO CREATE ITS OWN DISTINCTIVE FOUNDATION HYBRID.

In addition to the specific features of its foundation legislation, Guernsey is a highly regarded financial centre, with a reputable Royal Court that provides sensible jurisprudence in the event that directions are required or there is a dispute.

FEATURES OF A GUERNSEY FOUNDATION

The Guernsey foundation has separate legal personality but is not described as a 'body corporate'. Therefore, it looks like a company and is registered as such but acts more like a trust.

- > Guernsey's foundations legislation allows for inward and outward migration of foundations.
- > Beneficiaries are not essential in a Guernsey foundation. The legislation allows a foundation to be formed with no beneficiaries at all. Instead, it can be formed for a designated purpose, such as acting as trustee of a family trust structure.
- > A Guernsey foundation can either have 'enfranchised beneficiaries' or 'disenfranchised beneficiaries'. The former have rights to information, while the latter do not. It is also possible to have a combination of both classes of beneficiaries and provision can be made for the promotion or demotion of beneficiaries between these two classes.
- > Unlike a trust, the beneficiaries of a foundation cannot come together to seek to collapse a foundation.
- > The founder may reserve certain powers for him or herself, but these powers are only valid for the duration of the founder's lifetime. If the founder is a legal entity, then the powers may only be reserved for 50 years after the establishment of the foundation. The role of the founder must be clearly set out in the foundation charter. The founder can be appointed to the foundation council.
- > The foundation council of a Guernsey foundation can comprise individuals or be corporate and its composition must be noted on the Guernsey Registry of Foundations. The council owes a duty to the foundation to act in good faith.
- > A foundation guardian is required if:
 - > the foundation has no beneficiaries, in which case the guardian acts as the enforcer of the purpose of the foundation (as described above); or
 - > the foundation has disenfranchised beneficiaries.
- > The guardian owes a fiduciary duty to the founder and the disenfranchised beneficiaries.
- > The founder is permitted to act as guardian.
- > A licensed fiduciary can act either as the guardian or as a member of the foundation council, but not both.

USES OF A GUERNSEY FOUNDATION

The range of possible uses for a Guernsey foundation is wide. However, many industry commentators expect that a Guernsey foundation may be particularly attractive in the following scenarios:

- > A family may wish to take advantage of the enfranchised and disenfranchised beneficiary classes to distinguish between the rights and roles of certain family members within the family business.

- > Many jurisdictions that do not recognise trusts do recognise foundations, meaning that a Guernsey foundation can be used as part of the ownership structure for property assets located in these jurisdictions. For example, a foundation could own a JAFZA company (the only company currently allowed to own immovable property in Dubai) that in turn holds Dubai property.
- > A Guernsey foundation set up to fulfil a specific purpose (i.e., with no beneficiaries) can provide a practical variation in a private trust company structure, offering a potential cost saving and structural simplification. In cases where a standard purpose trust is used to hold a private trust company, a separate enforcer vehicle is required within the structure. However, by using a Guernsey 'purpose foundation' the foundation guardian can fulfil the enforcer role.

REGISTRATION OF A GUERNSEY FOUNDATION

Guernsey has its own online foundations register with a maximum registration turnaround time of 24 hours. The following information is publicly available via the register:

- > The name and registered number of the foundation
- > The name and address of the councillors
- > The name and address of the guardian (if applicable)
- > The name and address of the Guernsey registered agent

To register a foundation, a licensed fiduciary must complete an application form and file the following with the Guernsey Foundations Registrar:

- > A copy of the foundation charter
- > A signed declaration by the founder or registered agent confirming the accuracy of the details in the charter
- > A declaration regarding the existence of disenfranchised beneficiaries or the future expectation disenfranchised beneficiaries
- > The names and addresses of the councillors and their signed declaration that they are willing to act
- > The name and address of the guardian (if applicable) and his/her signed declaration showing willingness to act
- > The name and address of the Guernsey registered agent
- > The address of the Guernsey registered office

REPORTING REQUIREMENTS

A Guernsey Foundation is required to file an Annual Renewal with the Companies Registrar this includes basic information regarding the foundation, details of the guardian and councillors, the purpose of the foundation and the type of activities undertaken.

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