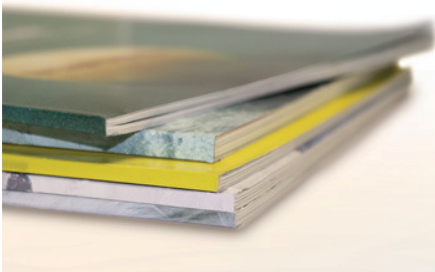


## Becoming a Jersey Foundation

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BY MARC GUILLAUME

### Becoming a Jersey Foundation

On 17 July 2009 both the **Foundations (Jersey) Law 2009** (the “Law”) and the **Foundations (Continuance) (Jersey) Regulations 2009** (the “Regulations”) came into force.

Their combined effect has been to:

- permit the establishment of foundations in Jersey;
- allow Jersey companies to become Jersey foundations;
- allow certain foreign vehicles to “continue” as Jersey foundations (effectively inviting existing entities to migrate to Jersey to take advantage of the newly created foundations regime);
- allow Jersey foundations to continue as certain types of foreign entity (mirroring the continuation into Jersey provisions).

The purpose of this article is to examine the process by which foreign vehicles may become Jersey foundations and to ask the obvious questions of interest to industry professionals and their clients in this regard, namely (i) which foreign entities may become Jersey foundations, (ii) how cumbersome is the process of making the change, and (iii) how much is it likely to cost?

#### Eligible Foreign Entities

Regulation 13 of the Regulations provides that a “recognised entity” may continue as a Jersey

foundation, and Regulation 1(1) defines a “recognised entity” for these purposes as “a body corporate incorporated or established outside Jersey that is within a class of bodies corporate designated by the Minister (for Economic Development)”. Currently, the classes of such bodies so designated are as follows:

- (i) Panama Private Interest Foundations;
- (ii) Bahamas Foundations;
- (iii) Liechtenstein Stiftungs;
- (iv) Liechtenstein Anstalts;
- (v) St Kitts Foundations;
- (vi) Nevis Multiform Foundations; and
- (viii) Malta Private Foundations.

Any entity falling within one of these classes is eligible to apply for continuance as a foundation subject to it satisfying the various status criteria and other requirements set out in the Regulations.

#### The Process

##### Notice of Intention to Apply for Continuance

The first step is the publication of a notice (the “Notice”) of the foreign entity concerned’s intention to apply for continuance in Jersey as a foundation. The Notice must be published by the Qualified Person (that is, a person with an appropriate licence under the **Financial Services (Jersey) Law 1998** – in all likelihood the service provider who will, in due course, serve as the qualified member on the board of the newly continued foundation), who will go on to make the formal application.

Copies of the Notice must be sent to all of the foreign entity's creditors who have a claim against the foreign entity exceeding £5,000 and to the registrar of companies in Jersey, and it should state (a) that the foreign entity is seeking to be incorporated as a foundation, (b) the jurisdiction in which the foreign entity is currently incorporated or established and (c) the type of "recognised entity" that it is. The Notice must also state whether or not, on incorporation, the new foundation would be solvent and explain that any person aggrieved by the proposed continuation may within 28 days after the first publication of the Notice apply to the Royal Court for an order restraining the proposed continuation.

In the event that the Notice cannot state that the entity will be solvent following its continuation as a foundation, specific approval from the Royal Court must first be obtained before the continuation can occur.

### The Application

The Qualified Person must then make the application for continuance to the Jersey Financial Services Commission (the "JFSC"). The application must be accompanied by, *inter alia*, the charter which the continuing entity will have once it is incorporated as a foundation and a certificate (the "Certificate", to be given by the Qualified Person) giving certain confirmations including that:

- (i) a specific Qualified Person will act as the qualified member (the "Qualified Member") on the council of the entity once it has been incorporated as a foundation;
- (ii) regulations for the foundation have been approved by both the entity and the Qualified Member;
- (iii) a particular address in Jersey is the business address of the Qualified Member;
- (iv) a guardian has been chosen for the foundation;
- (v) the making of the application is not prohibited by the laws of the entity's home jurisdiction;

- (vi) any authorisations required by the laws of the entity's home jurisdiction to the making of the application have been obtained;
- (vii) following incorporation as a foundation, the entity will cease to be a duly incorporated or established entity under the laws of its home jurisdiction; and
- (viii) the interests of the creditors of the entity will not be unfairly prejudiced by the application.

### Incorporation

Should the JFSC approve the application that fact (along with certain key details of the new foundation) will be entered into the foundations register and a registration number will then be issued in respect of the foundation. The fact of the incorporation will be communicated to both the Qualified Member and to the relevant authorities in the entity's home jurisdiction.

The entity will then continue as a Jersey foundation, albeit that it will retain all of the property, rights and obligations it had immediately prior to its incorporation as such.

### **The Cost**

The JFSC's standard fee to consider an application is £500. It should be noted, however, that the JFSC also has power to ask for security for its expenses beyond this sum where it considers it likely that the cost of processing the application will exceed this figure.

In addition, costs will also be incurred in (a) preparing and publishing the notice, (b) drafting the charter and regulations to be adopted by the new foundation and (c) work done by the Qualified Member in gathering the information it will require in order to be able to give the Certificate. These costs will, inevitably, vary greatly depending on the nature and complexity of the original entity.

Author: MARC GUILLAUME  
Advocate  
[mguillaume@applebyglobal.com](mailto:mguillaume@applebyglobal.com)

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