



## Guernsey Introduces Foundations Legislation

The States of Guernsey have given approval to legislation which will introduce a new Foundations Law. The concept of Foundations has been around for many years in civil law jurisdictions such as Panama and Liechtenstein. In recent times however a number of common law jurisdictions such as Jersey and the Isle of Man have sought to also bring in a Foundations Law as they are seen as being attractive alternatives to Trusts, in particular where the structure is designed for clients of civil law jurisdictions where the Trust concept is not widely understood.

### What is a Foundation?

In outline, a Foundation is an entity which has its own legal personality, and which can be used to hold assets in a similar way to a Company.

Assets are donated to the Foundation by a founder and the Foundation is typically run for the benefit of beneficiaries or for a specific purpose (in a similar manner to a Trust). The Foundation will be governed by a charter, and will be run and managed by Counsellors (who act in a similar way to directors of a company). The Foundation will need to be registered with the Guernsey Registrar, but there will be limited publicly available information.

The Foundation can therefore be seen as a cross between a Trust and a Company.

### What are the differences between a Guernsey and a Jersey Foundation?

There are a number of subtle but key differences:-

- The Guernsey Law requires that the Foundation will not come into existence until endowed with assets (akin to a Trust which requires initial funds to be valid) whereas this is not required under Jersey Law.
- Unlike in Jersey, the Guernsey legislation imposes a Fiduciary duty on the Council members who administer the Foundation. This is likely to be far more attractive to founders concerned as to how the assets are to be managed. The Councillor will have a duty to act in good faith and act "en père de famille" (literally as the good father of a family), again in a similar manner to the Trustee of a Trust.

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- Under the Jersey legislation, unless otherwise provided, a beneficiary has no rights whereas under Guernsey Law the founder has the ability to determine what rights the beneficiaries should have with regard to the provision of information such as the constitution, the accounts and various records.

### Summary

It is unlikely that there will be a flood of new Foundations and it is probable that the Trust will remain the wealth management tool of choice for many. The Foundation, however, represents an interesting alternative and in particular is likely to be considered in areas of expected high growth such as the Middle East, Latin America and Russia and the CIS where the concept of Trusts is not widely understood.

Where a Foundation is considered it will be important to recognise the difference between jurisdictions and to choose the most appropriate. The Guernsey legislation is extremely flexible and therefore it is likely to be very attractive.

If you would like further information please contact Paul Schreibke or your normal Intertrust Guernsey contact.

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