

## Key facts about the Foundations (Jersey) Law 2009

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- Must be incorporated by a “Qualified Person” on behalf of the founder, and an application for incorporation must be accompanied by the foundation charter.
- At incorporation, the Qualified Person must certify that a specific Qualified Person will become a member of the foundation council.
- The name of the foundation must end with the word “Foundation” or its equivalent in a foreign language.
- Entry in the Register is conclusive evidence that on the date set out the foundation was incorporated and the requirements of the Foundations Law were met.
- A foundation cannot engage in commercial trading other than trading which is incidental to the attainment of its objects.
- The Charter must be lodged with the Registrar on incorporation, and must specify (i) the name of the foundation; (ii) the objects for which the foundation was established (which can be charitable or non-charitable or both and can be for the benefit of people or purposes or both); (iii) the names and addresses of the first members of the foundation’s council; (iv) the details of any initial endowment; (v) what will happen to foundation assets should the foundation be wound up and dissolved; and (vi) if it is to be wound up and dissolved upon the happening of an event or the expiration of a fixed period of time, details of the event or time.
- A foundation does not have to have an initial endowment.
- The Regulations have to establish a Council and provide for the appointment, retirement, removal and remuneration (if any) of council members as well as how council decisions are to be made.
- The Regulations need to set out the functions of the council and if they may be delegated.

- The Regulations must have a procedure to ensure that a Qualified Person is appointed to the council and if that person tries to resign or is removed, as a matter of law that resignation or removal will not take effect until immediately before the appointment of a new Qualified Person.
- A foundation must have a Guardian and the Regulations must provide for that persons appointment and provision as to how the Guardian can retire, be appointed and be paid (if at all).
- The Founder or the Qualified Person can also be the Guardian, but no other council member can be the Guardian.
- The Guardian has to take reasonable steps to ensure that the council carries out its functions and may require the council to account to the Guardian for the way it has administered the foundations assets and acted in furtherance of the foundations objects.
- Unless the Regulations provide otherwise, the Guardian has power to sanction or authorise an action of the council which is not permitted by the Charter or the Regulations provided the Guardian is satisfied that the action is in the best interests of the Foundation and that the council are acting in good faith.
- The Council must contain a Qualified Person and must act honestly and in good faith with a view to the best interests of the Foundation and exercise the care, diligence and skill that reasonably prudent persons would exercise in comparable circumstances.
- A beneficiary has no interest in the Foundations assets and beneficiaries are not owed fiduciary duties by the Foundation or the Council Members.
- Except as specifically provided under the Foundations Law, or by the Charter or the Regulations, a Foundation is not required to provide any person (including a beneficiary) with any information about the Foundation.
- Questions arising in respect of a Foundation or the endowment of a Foundation must be determined in accordance with Jersey law. This includes questions relation to capacity of the Founder to incorporate or of any person to endow the Foundation.
- The incorporation or endowment of a Foundation is not void, voidable, liable to be set aside or invalid because of the incorporation or endowment defeating a claim imposed by the law of a foreign jurisdiction by reason of a personal relationship with a founder or person endowing a Foundation or by way of forced heirship.
- A judgement of a Court outside Jersey which concerns a question in respect of the Foundation or its endowment shall not be recognised enforced or give rise to a liability unless the Jersey Foundations Law has been complied with.

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