

# Foundations - a review of recent offshore developments

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It has been possible to establish a Jersey Foundation since the introduction of the Foundations (Jersey) Law in 2009. Since that time there have been approximately 300 Jersey Foundations incorporated. Following the introduction of foundations into Jersey law, many other offshore and also increasingly onshore jurisdictions have followed or are about to follow suit. For example, both Guernsey and the Isle of Man now have foundations which compete with those in Jersey on the world stage. There are differences between the various offshore foundations such as the requirements for a Guardian and whether lay council members have to appear on a public register.

An interesting development, however, is that the introduction of foundation laws by the traditional offshore jurisdictions seems to have given impetus to the onshore jurisdictions either to introduce the ability to create foundations or to update their laws. For example, Luxembourg is intending to introduce a foundations law and this has been on the draft statute book for some time.

Liechtenstein, which is traditionally a very strong foundation jurisdiction, has also updated its law to make it much more modern.

When a colleague attended a conference on foundations in Switzerland recently, they concluded that there is an increasing interest for European lawyers in the use of both offshore and onshore foundations as wealth holding vehicles. Although it would be fair to say that there had been some scepticism about the benefits to Jersey of introducing a foundations law, even traditional civil law European lawyers could see that the Jersey foundation is a flexible product with some very useful features. Some practitioners who had been critical of the Jersey foundation initially, confirmed that they did now like the entity.

Whilst we in no way consider that foundations will replace trusts in traditional offshore trust jurisdictions such as Jersey and Guernsey, it does have its place for wealth planning and in particular in Jersey in relation to philanthropic structures, acting as a trustee and for holding

higher risk assets. At the Swiss conference, the brevity and clear drafting of the Foundations (Jersey) Law was commented upon favourably. A feature of the updated Liechtenstein foundation legislation that was being promoted, was its clear drafting compared to older legislation and we would wonder whether this is in some part due to the competition from the new offshore foundations laws.

There is increasing competition between the various financial centres, whether offshore and onshore and this is particularly notable in the case of foundation legislation. Whilst Jersey was not the first jurisdiction to have foundations, for example they had been long used in Panama and Liechtenstein, it was the first out of the major Crown Dependencies. However, whilst this gave the Island an advantage in one sense, it also enabled our rival jurisdictions to review the Jersey legislation and introduce different features. The working party in Jersey is looking at possible amendments and improvements to the Jersey legislation but increasing competition will mean that this is an ongoing process.

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