

## FOUNDATIONS: MIGRATING TO JERSEY

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### OCORIAN BRIEFING

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**The Foundations (Jersey) Law 2009 (the "Law") allows for the establishment of Jersey foundations, and adds significantly to the structuring opportunities available to clients selecting Jersey as a jurisdiction for private wealth management purposes.**

As a concept with its roots in civil law, and so familiar to clients based in locations such as the Middle East and continental Europe (to whom the trust concept is less familiar), the Jersey foundation is an incorporated vehicle, with its own legal personality and therefore able to transact, hold assets and to sue (and be sued) in its own name.

Although a familiar concept, the Jersey foundation is not identical to foundations seen in other jurisdictions (such as Liechtenstein and Panama) and a key feature is its flexibility, allowing focus to be placed on those aspects which will enable a foundation to look more like a trust, or conversely more like a company, as appropriate in the light of the client's particular structuring requirements.

In addition to establishing new foundations, it is also possible to migrate existing foreign-law structures to the Island. They can then continue as Jersey foundations and take advantage of the flexibilities offered by the Law, and also of the other established factors (such as political, economic and geographic stability; a robust and highly regarded regulatory regime; a well-respected judicial system with adherence to the rule of law; a depth and breadth of experience amongst its professional advisers; and proximity to London and its financial markets) which combine to make Jersey an attractive choice of jurisdiction.

The Foundations (Continuance) (Jersey) Regulations 2009 (the "Continuance Regulations") allow for Jersey companies and "recognized entities" to continue as Jersey foundations, and also for Jersey foundations to continue as "recognized entities" in other jurisdictions.

This briefing focuses on the migration of "recognized entities" to Jersey. For more information on foundations, please see our briefings on the [www.ocorian.com](http://www.ocorian.com).

#### **To whom is migration available?**

Migration to Jersey is an option available to "recognized entities", being designated classes of bodies or entities incorporated or established outside Jersey whether by registration, endowment or otherwise and whether or not having legal personality.

The list of "recognized entities" includes Panama Private Interest Foundations, Bahamas Foundations, Liechtenstein Stiftungs, Liechtenstein Anstalts, St Kitts Foundations, Nevis Multiform Foundations, Malta Private Foundations, Anguilla Foundations, Isle of Man Foundations and Guernsey Foundations.

In this briefing, such entities are referred to as "Migrating Entities".

### Before the application is made

The application for a Migrating Entity to migrate to Jersey is made to the Jersey Financial Services Commission, Jersey's government authority which regulates financial services. The application is made by a "qualified person", being an organisation with the appropriate regulatory registration under the Financial Services (Jersey) Law 1998.

Before the application is made, a notice of the intention to migrate (the "Notice") must be published, with copies being sent to: (i) all creditors known by the qualified person (after making reasonable enquiries) to have a claim against the Migrating Entity in excess of £5,000; and (ii) the registrar of companies in Jersey (the "Registrar").

The Notice must, inter alia, state whether the Migrating Entity would be solvent on its incorporation as a foundation in Jersey, and must allow those aggrieved to apply to the Royal Court in Jersey within 28 days after the first publication of the Notice to restrain the proposed incorporation. The court can only prohibit the incorporation from proceeding if it is satisfied that the interests of the person so applying would be unfairly prejudiced by the proposed migration.

Where the Notice does not state that, following migration, the foundation would be solvent, an Act of the Royal Court must be obtained before the migration application can proceed, confirming that the migration would not be prejudicial to the interests of the Migrating Entity's creditors. Copies of the application to court in this regard must be sent to the same recipients as the Notice itself.

### The application

As noted above, the application for migration is made by a qualified person. The application is accompanied by various supporting documents, including a copy of the charter which the Migrating Entity would have following its incorporation as a foundation.

A certificate is also required from the qualified person confirming (inter alia) that:

- a named qualified person would become the qualified member of the council of the Migrating Entity (the "Qualified Member"), following its incorporation as a foundation;

- regulations for the foundation have been approved by the Migrating Entity and by the Qualified Member;
- a specified address in Jersey is the business address in the Island of the Qualified Member;
- a guardian has been selected for the foundation;
- the laws of the jurisdiction in which the Migrating Entity is established or incorporated (the "Foreign Laws") do not prohibit the Migrating Entity from making the application;
- any authorization required by the Foreign Laws or by the constitution of the Migrating Entity has been obtained;
- following incorporation as a foundation, the Migrating Entity will, in due course, cease to be an entity incorporated or established under the Foreign Laws; and
- the interests of the creditors of the Migrating Entity will not be unfairly prejudiced.

Following receipt of an application, the accompanying documents are forwarded to the Registrar.

### Consideration of the application

An application can be declined in certain prescribed circumstances, such as where it is necessary to do so in order to protect the reputation and integrity of Jersey in financial and commercial matters, in the best economic interests of the Island, or to protect Jersey's international standing.

Where an application is declined, the Continuance Regulations allow for the qualified person to appeal to the Royal Court.

### Incorporation of the Migrating Entity as a foundation

The incorporation of the Migrating Entity as a foundation is effected by the Registrar who registers in the foundations register the name of the proposed foundation (and the name of the Migrating Entity, together with details of the jurisdiction in which it is established or incorporated), and the name and business address in the Island of the foundation's Qualified Member.

The Registrar then issues the foundation with a registration number and, as well as informing the Qualified Member of the incorporation, also informs the relevant official or body in the jurisdiction in which the Migrating Entity is established or incorporated that it has been incorporated as a foundation in Jersey.

### **Effect of migration**

Upon registration by the Registrar, the Migrating Entity is incorporated as a foundation. The Continuance Regulations provide that the Migrating Entity "continues but as a foundation" with the name indicated in the foundations register and that:

- the property and rights to which the Migrating Entity was entitled immediately before the incorporation of the foundation continue as the property and rights of the foundation;
- the foundation is subject to any criminal and civil liabilities, and to any contracts, debts and other obligations, to which the Migrating Entity was subject immediately before its incorporation as a foundation; and
- any actions and other legal proceedings which were pending by or against the Migrating Entity immediately before its incorporation as a foundation can be continued by or against the foundation.

## KEY CONTACTS

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