

## **THE JERSEY FOUNDATION**

### **WHAT IS A FOUNDATION?**

The Foundation is a separate legal entity which will be incorporated therefore having a separate legal personality. It is established under the Foundations (Jersey) Law 2009 (the “Law”). Jersey is currently the only white listed common law jurisdiction with a foundation law. The Foundation must be established with one or more objects. The objects must be lawful, and they can be charitable, non-charitable or a mixture of both. Permissible objects might include, for example, benefiting a particular person or class of persons or carrying out a specific purpose or holding a particular asset.

### **THE COUNCIL**

A Foundation’s powers will be exercised by its Council, which is akin to a company’s board of directors. The Law will require that at least one Council Member is registered under the Financial Services (Jersey) Law 1998 (the “FSL”) to carry on foundation services business of this type (the “Qualified Member”). Seymour is regulated to fulfil this role.

### **THE GUARDIAN**

A unique requirement under the Law is that every Foundation has a Guardian. The Guardian will ensure that the Council carries out its functions in order to achieve the objects. It is possible for a Founder or the Qualified Member to be both a Council Member and the Guardian. The Guardian can retain certain powers to ensure that his consent is required in respect of significant decisions.

### **BENEFICIARIES**

Beneficiaries of a Foundation are not owed duties either by the Council or the Foundation itself. It is also possible to prevent beneficiaries from having any information in relation to a Foundation. The protection for beneficiaries provided by the Law comes through the requirement for a Qualified Member and the role of the Guardian. This concept in contrast with the fiduciary duty of trustees to consider and benefit their beneficiaries may make the Foundation more suitable for some families dynastic planning.

### **POTENTIAL USES**

1. The shares of the Private Trust Company will typically be owned by a non charitable purpose trust or by a company limited by guarantee. There is now a more favourable option for a Foundation to be the owner of the PTC shares or even be the trustee itself. Clients from civil law countries familiar with Foundations may prefer this.
2. The holding of assets which are “wasting” or subject to volatility in value In traditional trust structures, careful drafting of the trust instrument is often necessary where the purpose of the trust is to hold a single asset such as a business, artwork, an aeroplane or a boat. It is possible under the Law to establish a Foundation specifically to hold such an asset and the Council (with its Qualified Member) will not be subject to the same duties as trustees.

#### **Disclaimer**

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# SEYMOUR TRUST

3. A Foundation for Charitable and Non-Charitable Purposes. In certain jurisdictions, it is common for high net worth clients to use Foundations for their charitable and benevolent giving. Foundations under Jersey law can be created for both charitable and non-charitable purposes and the flexibility the Law allows in respect of the drafting of the Charter and Regulations, makes Jersey Foundations attractive for this purpose.
4. Reservation of Powers. It will be possible for powers to be reserved to a Founder of a Foundation. Alternatively, powers can be reserved to the Guardian or indeed any other person depending on the Founder's preference. The advantage being that a Foundation (as opposed to a trust where the power to direct investments is to be reserved) is that the Council has no overriding duty to monitor the performance of the investment.
5. The Guardians executive role. As stated, each Foundation must have a Council containing a Qualified Member and a Guardian. The Guardian's role is to ensure that the Council is carrying out the objects of the Foundation. Ensuring that the Guardian retains significant powers results in the Guardian having what translates into an executive role. An attraction for potential clients is that the Founder (or his appointee) could be the Guardian.
6. Holding "orphan" assets. There may be a wide variety of reasons why a company may need to be established but it needs to be owned separately from the rest of a structure. A Foundation is an "ownerless" incorporated vehicle which is ideally suited to this type of planning.

## REDOMICILE OF FOREIGN FOUNDATIONS TO JERSEY

The Foundations (Continuance) (Jersey) Regulations 2009 (the 'Continuance Regulations') allows Jersey Companies to continue as Jersey Foundations and Companies incorporated in certain jurisdictions outside Jersey to migrate to Jersey and continue as Jersey Foundations. Such jurisdictions include Bahamas, Malta, Liechtenstein, Panama, and St. Kitts and Nevis and in particular allow a variety of Foundations, Stiftungs and Anstalts incorporated in those jurisdictions to migrate to Jersey.

For more information on redomiciling to Jersey see our separate technical brief.

### SEYMOUR TRUST COMPANY LIMITED

Our director-led service ensures clients have access to highly qualified staff with a complete understanding of the relationship and their particular requirements.

Being a substantial and independent service provider regulated in a premier and internationally recognised jurisdiction, we have the flexibility to adapt to meet our clients ongoing requirements

We value the development of long-standing relationships with our clients based on confidence and trust.

#### Further information

For further information on this brief and other services we can offer please contact;

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