

What is a Foundation?

There is no single legal definition of a foundation however it may be described as a legal entity which is created when a person provides assets for a specific purpose. The foundation holds the assets for purposes set out in its constitutive documents and is administered according to contractual rather than fiduciary principles - principles that are more widely understood than those that underpin trusts. The foundation is a distinct legal entity but unlike a company, it has no shareholders.

Foundations are structures that can be used in similar circumstances to traditional family trusts but are familiar to clients and intermediaries with a civil law background. As Foundations, unlike trusts, have legal personality, they will, in accordance with Guernsey's legal tradition, be entered onto a public register which will be administered by the Guernsey Registry.

Foundations generally have the following common features:

1. have legal personality and, in many jurisdictions, are inscribed on a public register;
2. are formed by a founder who provides the initial assets of the foundation known as the endowment;
3. hold assets for the purposes set out in their constitutive documents and are administered according to contractual rather than fiduciary principles;
4. are run by a council (or board) which is responsible for fulfilling the purpose of the foundation;
5. have no shareholders and may or may not have beneficiaries depending upon the purpose of the foundation;
6. beneficiaries have contractual rights to enforce the operation of the foundation in accordance with its constitutive document - rather than proprietary rights in its assets, or equitable rights such as are available to the beneficiaries of trusts
7. may have an advisor or protector if its rules so provide.