

● FOUNDATIONS - WAS IT ALL WORTH IT?

The Foundations (Jersey) Law 2009 came into force on 17 July 2009 and created what was hailed as an important new wealth management vehicle to assist in Jersey's development of relations with new markets, particularly the Middle East, India and China. This was the culmination of over three years' work and is the product of excellent co-operation between the Economic Development Department and the finance industry to design and deliver what is needed for the future. However as only 22 have been formed in the first 6 months since the Foundations Law came into force, the question is whether the Jersey Foundation will prove to be a success or will the exercise transpire to have been a waste of time.

Foundations are formed by registering the Foundation Charter with the Registrar at the Jersey Financial Services Commission, a very similar procedure to the incorporation of a company. For this reason their take-up may be accurately assessed. Because there is no requirement for registration of trusts, it is not possible to obtain accurate statistics as to how many Jersey law trusts were formed in the past 6 months and thus no comparison can be made.

The level of activity in private wealth planning in 2009 was much reduced over that in previous years because of the great uncertainty arising from the global economic crisis, and thus the foundation was not born in the sort of climates that would have enabled instant success to be achieved. Whilst there were signs of greater activity in the last quarter of 2009, it is too early to be certain whether this will be sustained, although a number of senior economic commentators, including David Fenton of RBS who spoke in Jersey recently, have expressed the view that the global economy is now beginning a slow recovery which will take 3 to 5 years.

Wealth planning is, by its nature, a long term exercise, seeking to preserve wealth while meeting the future needs of several generations. It is therefore an exercise which is undertaken with care and with careful

analysis of all of the circumstances, and it can be months, even years, before final decisions are made, rather than days or weeks. As the Jersey foundation has only been available for six months, the probability is we are still experiencing lead-in time for many potential clients.

Furthermore, despite the recent positive economic indicators and signs of activity, confidence is only returning cautiously, and thus wealth planning structures are progressed carefully and slowly. Therefore it may well be the case that there are many foundations in the pipeline and which will be registered during 2010. Thus the statistics for 2010 are likely to provide a much more accurate picture of the success or otherwise of Jersey foundations.

The foundation is also new to the Jersey finance industry, and likewise new to those lawyers, accountants and other professional advisers dealing with high net worth individuals who recommend Jersey, particularly those in the UK. By contrast they are all very familiar and comfortable with the Jersey trust. It is therefore inevitable that it will take some time for those advisers and the finance industry to achieve anything like the same degree of comfort with the foundation.

However foundations have some important advantages over trusts. Firstly its separate legal personality, like a company, means that it can own assets in its own name, whereas a trust does not have its own legal personality and the assets have to be held in the name of the trustees. Therefore the foundation is much more comprehensible than a trust, particularly to people who have not grown up in a country whose law is derived from English law, as is the case for the majority of the world's population. Secondly no duties are owed to beneficiaries, so there is no requirement for the foundation council to disclose information about the foundation and its assets to them. Thirdly the beneficiaries cannot collectively force the termination of a foundation and the

distribution of the assets to them as they can with a trust, which is an important quality for those seeking to preserve family wealth while permitting enjoyment of it. Those who have acquainted themselves with these qualities and marketed foundations have found receptive audiences, not only in the new markets mentioned above, but also in Western and Central Europe, South Africa and the USA.

For all of these reasons it is more than likely that 2010 will see the Jersey foundation start to achieve the success that it truly deserves, and it could well be that within 5 years more foundations than trusts will be formed each year. Thus, far from being a failure, there are still excellent reasons to think that the Jersey foundation will prove to be a great success and a very wise investment of time and effort from all those who had a hand in bringing it into being.

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