

GUERNSEY STATUTORY INSTRUMENT

2020 No. 83

**The Foundations (Annual Renewal) (Amendment)
Regulations, 2020**

Made , 2020
Coming into operation , 2020
Laid before the States , 2020

THE COMMITTEE FOR ECONOMIC DEVELOPMENT, in exercise of the powers conferred on it by section 51 of, and paragraph 7(7) of Schedule 1 to, the Foundations (Guernsey) Law, 2012^a and all other powers enabling it in that behalf, hereby orders:-

Amendment of Annual Renewal Regulations.

1. (1) The Foundations (Annual Renewal) Regulations, 2014^b are amended as follows.

(2) In paragraph (1) of regulation 2 -

(a) delete "and" at the end of subparagraph (d) and replace it with a comma,

^a Order in Council No. 1 of 2013.

^b G.S.I. No.10 of 2014; amended by G.S.I. No. 41 of 2017.

- (b) after subparagraph (e), insert –
- "(f) the category or categories of foundation to which it belongs, by reference to a system of classifying foundations prepared by the Registrar,
 - (g) with regard to each foundation official who is an individual, whether or not that official is licensed to act as such in relation to the foundation,
 - (h) where a foundation official who is an individual is not licensed to act as such in relation to the foundation -
 - (i) whether that official is unrewarded or is exempt, and
 - (ii) in the case of an official who is exempt, the applicable provisions,
 - (i) where the foundation is subject to the resident agent obligations at Schedule 1A to the Foundations (Guernsey) Law, 2012 and where the resident agent does not hold a fiduciary licence -
 - (i) the address for service of the resident agent, and
 - (ii) where no other person linked to the foundation holds a fiduciary licence -

- (A) the length of time for which the resident agent has been an official of foundation or otherwise associated with it,
 - (B) whether the resident agent is a beneficial owner of the foundation, and
 - (C) whether the resident agent has served a notice under section 9 of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 on any person in respect of the beneficial owners of the foundation within such period as the Registrar may direct,
- (j) other than for foundations within paragraph (2A), whether the foundation has an ongoing business relationship with a person licensed or authorised by, or registered with, the Commission, and, if so, the nature of that relationship,
- (k) for foundations to which this paragraph applies -
- (i) whether the accounts of the foundation have been audited or otherwise examined by an accountant, and
 - (ii) whether the foundation is directed and managed in Guernsey,

- (l) for foundations to which this paragraph applies, the jurisdiction of incorporation of any direct subsidiaries of the foundation and such other matters in relation to those subsidiaries as the Registrar may specify,
- (m) for foundations to which this paragraph applies, the location of any real property held by the foundation, and such other matters in relation to that property as the Registrar may specify,
- (n) for foundations to which this paragraph applies-
 - (i) the nature of the activities of the foundation,
 - (ii) the locations in which those activities are carried out, and
 - (iii) such other matters in relation to those activities as the Registrar may specify, and
- (o) other than for foundations within paragraph (2A), whether the foundation is a settlor, trustee, protector or beneficiary of an existing express trust (or occupies an equivalent role in relation to another form of legal arrangement), and, if so, such other matters in relation to that trust or other legal arrangement as the Registrar may specify."

(3) After paragraph (2) of regulation (2), insert –

"(2A) Subparagraphs (j) to (o) of paragraph (2) do not apply to a foundation that is -

- (a) a financial services business licensed by the Commission, or
- (b) a foundation that is created by a financial services business on its own behalf for the purposes of carrying out the services provided by that financial services business.

(2B) Without prejudice to the generality of paragraph (2A) -

- (a) paragraph (1)(k) applies to foundations that do not have an ongoing business relationship with a person licensed or authorised by, or registered with, the Commission,
- (b) paragraph (1)(l) applies to foundations that are classified as holding foundations under the system of classifying foundations referred to in paragraph (1)(f),
- (c) paragraph (1)(m) applies to foundations that are classified as investment foundations, as asset foundations, or as charities or other non-profit foundations under the system of classifying foundations referred to in paragraph (1)(f), and
- (d) paragraph (1)(n) applies to foundations that are classified as activity foundations or as charities or other non-profit foundations under the system of

classifying foundations referred to in paragraph (1)(f).

(2C) For the purposes of paragraphs (2) and (2A) -

- (a) "**directed and managed in Guernsey**" has the same meaning as in the Income Tax (Substance Requirements) (Implementation) Regulations, 2018,
- (b) "**the Fiduciaries Law**" means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,
- (c) "**fiduciary licence**" has the same meaning as in the Fiduciaries Law,
- (d) a foundation official is licensed to act as such in respect of the foundation if that official holds a fiduciary licence,
- (e) an unrewarded foundation official is one who not rewarded within the meaning of subparagraph (g),
- (f) a foundation official is rewarded if that foundation official is acting as an official of the foundation by way of business within the meaning of the Fiduciaries Law,

- (g) a foundation official is exempt if that official would be required to hold a fiduciary licence in acting as an official of the foundation but for the application of one or more of the exemptions at section 3 of the Fiduciaries Law,
- (h) the applicable provisions are the subsections of section 3 of the Fiduciaries Law which have the effect of exempting the official in question from the requirement to hold a fiduciary licence with regard to his or her acting as an official of the foundation, and
- (i) a person is linked to a foundation if -
 - (i) that person is an official of the foundation or is otherwise involved in its management or administration, or
 - (ii) an employee or official of that person is an official of the foundation or is otherwise involved in its management or administration."

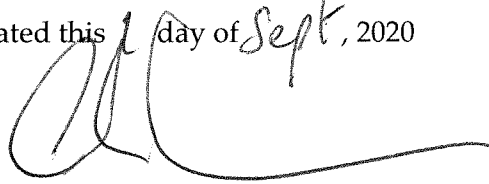
Citation.

2. These Regulations may be cited as the Foundations (Annual Renewal) (Amendment) Regulations, 2020.

Commencement

3. These Regulations shall come into force on the day on which they are made.

Dated this 1 day of Sept, 2020



CHARLES PARKINSON

President of the Committee for Economic Development

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations widen the category of information that must be provided by foundations when submitting an annual renewal. This additional information is required in order to assist the Registrar in discharging his or her functions on the basis of risk.

These Regulations will come into force on the day on which they are made.