

PROJET DE LOI

ENTITLED

The Foundations (Guernsey) Law, 2012 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* No. I of 2013; as amended by the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (No. VI of 2017); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. XXVII of 2018). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Arbitration (Guernsey) Law, 2016 (No. X of 2016); the Companies (Registrar) (Credit Arrangements) Regulations, 2015 (G.S.I. No. 112 of 2015).

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ARRANGEMENT OF SECTIONS

PART I CREATION AND CONSTITUTION

1. Creation of foundation.
2. Capital endowment.
3. Constitution.
4. Charter.
5. Rules.
6. Default recipient.
7. Purpose.
8. Amendment of purpose.
9. Council.
10. Guardian.
11. Reservation to founder of powers to amend, revoke, vary or terminate.
12. Resident agents.
13. Establishment, registration.

PART II FOUNDATION OFFICIALS

Appointment, resignation and removal

14. Appointment of additional foundation officials where less than required number.
15. Appointment of new or additional councillors in absence of express provision, etc.
16. Appointment of new guardian in absence of express provision, etc.
17. Resignation or removal of councillors.
18. Resignation or removal of guardian.

Duties

19. General duties.
20. Duty not to profit from office.

Consolidated text

21. Duty to give information.
22. Duty to maintain records.
23. Duty of councillors to act together.
24. Impartiality of councillors.

General powers of councillors

25. Delegation by Council.
26. Corporate councillors.
27. Non-disclosure of deliberations.

Liability for breach of duty

28. Liability for breach of duty.
29. Power to relieve foundation officials from personal liability.

PART III
PARTICIPANTS

General

30. Participants.

Beneficiaries

31. Beneficiaries.
32. Enfranchised beneficiaries.
33. Disenfranchised beneficiaries.
34. Disclaimer of beneficial interest.
35. Class interests.

PART IV
PROVISIONS OF GENERAL APPLICATION

Jurisdiction and powers of Royal Court

36. Jurisdiction of Royal Court.
37. Application of Guernsey law to questions of validity.
38. Approval of particular transactions.
39. Judgment against foundation official to be binding on participants or disenfranchised beneficiaries.
40. Settlement of action against foundation official by alternative dispute resolution to be binding on participants or disenfranchised beneficiaries.
41. Applications for directions.
42. General powers of Royal Court.
43. Powers of Royal Court in event of default.

Consolidated text

44. Payment of costs.
45. Constitution of Royal Court.

Offences

46. Offences by legal persons, etc.
47. False or misleading information.
48. Penalties.
49. Migration, revocation, winding up and termination.

Supplementary provisions

50. Consequential amendments.
51. General provisions as to subordinate legislation.
52. Interpretation.
53. Savings.
54. Citation.
55. Commencement.

SCHEDULE 1
ESTABLISHMENT, REGISTRATION AND ANCILLARY MATTERS
(INCLUDING DISQUALIFICATION)

Establishment and registration

1. Name of foundation.
2. Registered office of foundation.
3. Registrar of Foundations.
4. Register of Foundations.
5. Use of Part B of the Register.
6. Establishment of foundation.
7. Registration of foundation.
8. Issue of certificate of registration.
9. Pre-establishment contracts and obligations.
10. Change in and rectification of registered particulars.

Ancillary matters (including disqualification)

11. Power of councillors to bind the foundation.
12. Constitutional limitations: transactions involving councillors.
13. Formal execution of documents.
14. Common seal.
15. Disqualification orders.
16. Revocation of disqualification order.
17. Fit and proper person.
18. Registrar to keep register of disqualification orders.

Consolidated text

19. Service of documents.
20. Documents to be submitted, etc, in electronic form.
21. Recovery of fees and financial penalties.
22. Resident agent requests.
23. Power to make regulations.

SCHEDULE 1A
RESIDENT AGENTS

1. Resident agents.
2. Record of resident agent.
3. Duties of resident agent on registration.
4. Restriction of interests for failure to disclose beneficial ownership.
5. Disclosure of beneficial ownership information by resident agent.
6. Tipping off.
7. Privileged information.

SCHEDULE 2
MIGRATION, REVOCATION WINDING UP AND TERMINATION

PART I
MIGRATION

Registration of overseas foundation as a Guernsey foundation

1. Overseas foundation may be registered as Guernsey foundation.
2. Registration must be authorised by foreign law.
3. Foundation cannot be bankrupt, etc.
4. Application for registration as a Guernsey foundation.
5. Migration details.
6. Effect of registration.
7. Cancellation of registration.

Transfer of registration of Guernsey foundations to overseas

8. Foundations may transfer registration.
9. Foundations cannot transfer registration without power to do so.
10. Foundations cannot transfer registration if in bankruptcy, etc.
11. Foundations cannot transfer registration without giving notice to creditors and participants.
12. Application for transfer of registration.
13. Effect of transfer.
14. Cancellation of transfer.
15. Power of Royal Court to make orders as to transfer of registration.

General

16. Declaration of compliance.
17. Documents in a language other than English.
18. Registration or transfer not to prejudice continuity of foundation's existence.
19. Terminology used in other jurisdictions.

PART II
REVOCATION AND VARIATION

20. Revocation or variation of powers.
21. Variation of terms of Constitution on application to Royal Court.

PART III
WINDING UP AND TERMINATION

22. Winding up and termination.
23. Winding up events.
24. Winding up of foundation by Royal Court.
25. General provisions as to winding up of foundations.
26. Personal liability for certain defaults in event of bankruptcy.
27. Distribution of assets upon winding up.
28. Removal from Register.
29. Reinstatement of foundations following order for winding up of foundation.
30. Power to make regulations.

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The Foundations (Guernsey) Law, 2012

THE STATES, in pursuance of their Resolutions of the 15th December, 2006^a and 8th March, 2012^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART I

CREATION AND CONSTITUTION

Creation

Creation of foundation.

1. Any one or more persons ("the founder(s)") may by –
 - (a) endowing the foundation with its initial capital (see section 2),
 - (b) subscribing his name, as the founder, to the Constitution of the foundation (see section 3(2)), and
 - (c) otherwise complying with the requirements of this Law in respect of establishment and registration (see Schedule 1),

a Article VIII of Billet d'État No. XXI of 2006.

b Article XV of Billet d'État No. V of 2012.

create a Guernsey foundation which, upon establishment, has legal personality separate and independent from its founder (see Schedule 1, paragraph 6(4)).

Capital endowment.

2. (1) The "**initial capital**" of a foundation is the capital endowed upon the foundation in order that the requirements for the Charter may be met (see section 4(1)) and the foundation may be established (see section 1(a)).

(2) The initial capital may comprise any property.

(3) Following the endowment of the initial capital, further property may be endowed upon the foundation by any person if the Constitution (see section 3) so permits.

(4) A founder does not have any interest in a foundation by virtue only of endowing it with its initial capital or further property or otherwise by virtue of being the founder thereof.

(5) No person has any interest in a foundation, or is a founder of a foundation, by virtue only of endowing it with further property in accordance with subsection (3).

Constitution.

3. (1) The Constitution of a foundation comprises –

(a) the Charter (see section 4), and

(b) subject to section 5(4), the Rules (see section 5).

(2) The founder must subscribe to the Constitution, by signing it in

his own name, either personally or by his resident agent on his behalf [(see Schedule 1A)].

NOTE

In section 3, the words, figure and letter in square brackets in subsection (2) were substituted by the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, section 21(2), with effect from 15th August, 2017.

Charter.

4. (1) The Charter must –
- (a) state the name of the foundation (see Schedule 1, paragraph 1),
 - (b) state the purpose of the foundation (see section 7),
 - (c) contain a description of the initial capital of the foundation (see section 2),
 - (d) state the duration of the foundation (if it is to subsist for a limited period only),
 - (e) contain a declaration from the founder, or his resident agent, that the founder wishes the councillors to comply with the terms of the Charter.
- (2) The Charter may contain any matter –
- (a) that is otherwise required or permitted to be in the Rules in accordance with section 5, or

- (b) that the founder thinks fit.
- (3) The Charter may be amended only if –
 - (a) the Charter so provides, or
 - (b) the Royal Court so orders, or the Registrar so permits, in accordance with Schedule 1, paragraphs 10(4) and (5).

Rules.

- 5. (1) The Rules must –
 - (a) prescribe the functions of the Council (and see section 9),
 - (b) detail the procedures for the appointment, resignation and removal of councillors and any guardian (see sections 14 to 18), and
 - (c) if the councillors or guardian are to be remunerated (see section 20), make such provision as the founder thinks fit in respect thereof.
- (2) The Rules may –
 - (a) prescribe the manner in which the property of the foundation may be distributed, accumulated or applied,
 - (b) detail whether, and if so how, further property may be endowed upon the foundation,

Consolidated text

- (c) provide for the addition or removal of a person or class of persons as beneficiary or for the exclusion from benefit of a person or class of persons, either revocably or irrevocably,
- (d) detail any person's powers in relation to the foundation (including, but not limited to, the power to appoint or remove a foundation official, to take investment decisions or to approve the use of the foundation's assets),
- (e) impose obligations upon beneficiaries as a condition of benefit,
- (f) make the interest of a beneficiary –
 - (i) liable to termination,
 - (ii) subject to a restriction on alienation or dealing, or
 - (iii) subject to diminution or termination in the event of the beneficiary becoming bankrupt,
- (g) detail the name and address of the default recipient (see section 6) failing which the default recipient shall, unless Her Majesty's Receiver-General directs otherwise, be the Crown, and
- (h) contain any other matter that the founder thinks fit.

- (3) The Rules may be amended only if –
 - (a) the Constitution so provides, or
 - (b) an application is made to the Royal Court by or on behalf of the founder or a foundation official whereupon the Court may, in its absolute discretion and on such terms and conditions as it thinks fit, by order authorise the rectification of any error, defect or omission therein.

(4) To the extent to which matters required or authorised to be in the Rules under subsection (1) are contained within the Charter, such matters need not also be in the Rules, and if all of the matters in subsection (1) and (2) are contained in the Charter, the foundation need not have any Rules.

Default recipient.

6. (1) The Constitution may identify a default recipient to whom all the foundation assets shall pass in the event of the termination of the foundation (see Part III of Schedule 2).

(2) Subject to the terms of the Constitution, the default recipient is not entitled to information about the foundation, has no interest in it, and is not a participant of the foundation.

- (3) If –
 - (a) no default recipient is named in the Constitution, or
 - (b) any such default recipient no longer exists,

any property or assets of the foundation existing at the termination of the foundation shall, unless Her Majesty's Receiver-General directs otherwise, become bona vacantia belonging to the Crown.

Purpose.

7. A foundation must have a purpose and may be established for any purpose, save that it cannot carry out any commercial activities except those necessary for, and ancillary or incidental to, its purpose.

Amendment of purpose.

8. (1) The purpose of a foundation may be only amended –

- (a) where there is an express power so to amend in the Charter,
- (b) by order of the Royal Court in accordance with –
 - (i) subsection (2), or
 - (ii) Schedule 2, paragraph 21.

(2) If there is no express power to amend the purpose in the Charter then, subject to subsection (3), the purpose may be amended by order of the Royal Court where –

- (a) the purpose has been, as far as may be, fulfilled,
- (b) the purpose cannot be carried out, or not according to its spirit,

Consolidated text

- (c) the purpose provides a use for part only of the property of the foundation,
- (d) the purpose was laid down by reference to a class of persons or to a matter which has for any reason since ceased to be –
 - (i) suitable, or
 - (ii) practicable in administering the foundation,
- (e) in the case of a charitable purpose, the purpose has ceased to be charitable (by being useless or harmful to the community or otherwise), or
- (f) the purpose has ceased in any other way to provide a suitable and effective method of using the property of the foundation,

and in these cases the property, or the remainder of the property, as the case may be, shall be held for such other charitable or non-charitable purpose as the Royal Court, on the application of –

- (i) Her Majesty's Procureur,
- (ii) the Council, or
- (iii) the participants,

may declare to be consistent with the original intention of the founder or the spirit in which the foundation was established.

(3) An application to the Royal Court to amend the purpose under subsection (2) may only be made upon notice to the participants (see section 30).

Council.

9. (1) A foundation must have a Council.

(2) Subject to the terms of the Constitution, the Council shall comprise at least two councillors.

(3) For the avoidance of doubt the founder or a body corporate may be appointed as a councillor.

(4) A councillor –

(a) must be so named in the Register (in accordance with Schedule 1, paragraph 4),

(b) must ensure that the Council keeps accurate accounting records, and

(c) is a foundation official and must comply with the provisions of Part II (Foundation Officials).

(5) A person must not be appointed as a councillor, or be so referred to in the Register, unless he has consented in writing to being a councillor of the foundation.

(6) The appointment of a person as a councillor has no effect if the person is a guardian of the foundation.

Guardian.

- 10.** (1) If, in respect of a foundation, –
- (a) there is a purpose in respect of which there are no beneficiaries, or
 - (b) there are disenfranchised beneficiaries (see section 33),

the foundation must have a guardian in relation to that purpose or those beneficiaries (see sections 16 and 18 for the appointment and removal of a guardian and section 14 for the role of foundation officials in the absence of a guardian).

(2) Without prejudice to subsection (1) the foundation may have a guardian if the Charter so provides.

(3) For the avoidance of doubt, the founder or a body corporate may be appointed as guardian.

- (4) A guardian –
- (a) must be so named in the Register (in accordance with Schedule 1, paragraph 4),
 - (b) must keep and retain accurate accounts and records of his guardianship for so long as his guardianship subsists and for 6 years thereafter, and
 - (c) is a foundation official and must comply with the provisions of Part II (Foundation Officials).

(5) A person must not be appointed as a guardian, or be so referred

to in the Register, unless he has consented in writing to being the guardian of the foundation.

(6) The appointment of a person as guardian has no effect if the person is a councillor of the foundation.

Reservation to founder of powers to amend, revoke, vary or terminate.

11. (1) Subject to the terms of the Constitution and to subsection (2), the founder may not reserve to himself any powers to amend, revoke or vary the Constitution or purpose or to terminate the foundation.

(2) The founder may reserve the following powers –

- (a) a power to amend, revoke or vary the terms of the Constitution, in whole or in part,
- (b) subject to section 8, a power to amend, revoke or vary the purpose of the foundation, in whole or in part,
- (c) a power to terminate the foundation,

provided that the power to amend, revoke, vary or terminate, as the case may be, is detailed in full in the Charter, and provided that these powers are only reserved –

- (i) for a period not exceeding the duration of the founder's life, if he is a natural person, or
- (ii) for a period not exceeding 50 years from the date of establishment of the foundation, if the founder is a legal person,

and thereafter any such powers so reserved shall lapse, notwithstanding the terms of the Constitution.

- (3) If, at any time in respect of a foundation, –
- (a) any power has been reserved or granted under subsection (1) to more than one founder, and
 - (b) more than one founder is capable of exercising it at that time,

then such power must be exercised by those founders unanimously unless the Charter provides otherwise.

[Resident agents.]

12. Schedule 1A (which makes provision in relation to resident agents) has effect.]

NOTE

Section 12 was substituted by the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, section 21(3), with effect from 15th August, 2017.¹

Establishment, registration and ancillary matters (including disqualification).

13. The provisions of Schedule 1 shall have effect.

PART II

FOUNDATION OFFICIALS

Appointment, resignation and removal

Appointment of additional foundation officials where less than required number.

14. (1) Subject to the terms of the Constitution, where –
- (a) the number of councillors falls below the number required by or by virtue of section 9(2), or
 - (b) there is no guardian of the foundation, and a guardian is required by virtue of section 10 or the terms of the Constitution,

the necessary additional foundation officials shall be appointed as soon as practicable in accordance with the Constitution or, where the Constitution is silent, in accordance with the provisions of this Law (see sections 15 and 16).

(2) Until the necessary appointments are made in accordance with subsection (1), and subject to the Constitution, the existing foundation officials shall act only to preserve the property of the foundation.

Appointment of new or additional councillors in absence of express provision, etc.

15. (1) Where –
- (a) notwithstanding section 5(1)(b), the Constitution of a foundation contains no provision for the appointment of a new or additional councillor,
 - (b) any such provision has lapsed or failed, or
 - (c) the person with power to make any such appointment is not capable of exercising the power,

a new or additional councillor may be appointed by –

- (i) the Council,
- (ii) the last remaining councillor or his personal representative or liquidator,
- (iii) the Registrar, or
- (iv) the Royal Court, on the application of any person mentioned in section 42(2).

(2) A councillor appointed under this section has the same functions, and may act in all respects, as if he had been originally appointed a councillor.

(3) A councillor with power to appoint a new or additional councillor who fails to exercise the power may be removed from office by the Royal Court, on the application of any person mentioned in section 42(2).

Appointment of new guardian in absence of express provision, etc.

16. (1) Where the foundation requires a guardian in order to comply with section 10 or the terms of the Charter and –

- (a) notwithstanding section 5(1)(b), the Constitution of a foundation contains no provision for the appointment of a new guardian,
- (b) any such provision has lapsed or failed, or

- (c) the person with power to make any such appointment is not capable of exercising the power,

a new guardian may be appointed by –

- (i) the founder, his agent or personal representative,
- (ii) the Registrar, or
- (iii) the Royal Court, on the application of any person mentioned in section 42(2).

(2) A guardian appointed under this section has the same functions, and may act in all respects, as if he had been originally appointed a guardian.

Resignation or removal of councillors.

17. (1) Subject to the terms of the Constitution, a councillor may resign his office by delivering a written notice of resignation to the Council.

(2) A councillor is removed from office on the coming into effect of, or the exercise of a power under, a provision in the Constitution under or by which he is removed from or otherwise ceases to hold office.

(3) Subject to subsection (4) and to the terms of the Constitution, a resignation takes effect –

- (a) on delivery of the notice, or
- (b) on such later date or on the happening of such later

event as may be specified therein.

- (4) A resignation –
 - (a) given to facilitate a breach of duty, or
 - (b) which would result in there being fewer councillors than the number required by or by virtue of section 9(2),

has no effect.

- (5) Where the Council has reason to believe that a councillor of a foundation –
 - (a) is unwilling or is refusing to act,
 - (b) is bankrupt or otherwise unfit to act, or
 - (c) is incapable of acting,

the Council shall apply to the Royal Court for the removal of the councillor and the appointment of a replacement; and his removal from office takes effect on the date specified by the order of the Court.

Resignation or removal of guardian.

18. (1) Subject to the terms of the Constitution, a guardian may resign his office by delivering a written notice of resignation to the Council.

(2) A guardian is removed from office on the coming into effect of, or the exercise of a power under, a provision in the Constitution under or by which

Consolidated text

he is removed from or otherwise ceases to hold office.

(3) Subject to subsection (4) and to the terms of the Constitution, a resignation takes effect –

- (a) on delivery of the notice, or
- (b) on such later date or on the happening of such later event as may be specified therein.

(4) A resignation given to facilitate a breach of the guardian's duties has no effect.

(5) Where the Council has reason to believe that the guardian –

- (a) is unwilling or is refusing to act,
- (b) is bankrupt or otherwise unfit to act, or
- (c) is incapable of acting,

the Council shall apply to the Royal Court for the removal of the guardian and the appointment of a replacement; and his removal from office takes effect on the date specified by the order of the Court.

Duties

General duties.

19. (1) The councillors have a duty to the foundation to act in good faith in the exercise of their functions.

(2) The guardian has a duty to the founder and the beneficiaries to act in good faith and en bon père de famille –

- (a) to enforce the Constitution and the purpose, and
- (b) in the exercise of his functions.

(3) For the avoidance of doubt, in the exercise of his duty under subsection (2), a guardian may bring an action against the Council unless the Constitution provides otherwise.

(4) A councillor must execute and administer the foundation and must exercise his functions under it –

- (a) in accordance with the provisions of this Law, and
- (b) subject to those provisions –
 - (i) in accordance with the terms of the Constitution, and
 - (ii) only in the advancement of the purpose.

Duty not to profit from office.

- 20.** (1) Subject to subsection (2), foundation officials shall not –
- (a) derive, directly or indirectly, any profit from their appointment,
 - (b) cause or permit any other person to so derive any such profit, or

- (c) on their own account enter into any transaction with the foundation, or relating to the property of the foundation, which may result in any such profit,

except –

- (i) as expressly authorised by the terms of the Constitution,
- (ii) as permitted by the provisions of this Law, or
- (iii) with the approval of the Royal Court.

(2) Subject to section 28, a guardian is entitled to be paid, and shall be reimbursed, by the Council from the property of the foundation for all expenses and liabilities properly incurred in connection with the guardianship of the foundation.

Duty to give information.

21. (1) The Council shall, at all reasonable times, at the written request of –

- (a) the guardian,
- (b) any enfranchised beneficiary (see section 32) or
- (c) subject to the terms of the Constitution, the founder,

provide full and accurate information as to the state and amount of the foundation property within 3 months' from the date of such request.

(2) Where by virtue of subsection (1)(c) the terms of the Constitution prohibit or restrict the provision of any information described in subsection (1), the founder may notwithstanding the prohibition or restriction apply to the Royal Court for an order authorising or requiring the provision of the information.

(3) When applying to the Royal Court for an order under subsection (2) the founder must show that the provision of the information is necessary or expedient –

- (a) for the proper disposal of any matter before the Court,
- (b) for the protection of the interests of any beneficiary or the purpose, or
- (c) for the proper administration or enforcement of the foundation.

Duty to maintain records.

22. (1) The Council shall ensure that a foundation shall keep the records of the foundation or a copy thereof at its registered office (and see Schedule 1, paragraph 2).

- (2) The accounting records, must be –
- (a) sufficient to show and explain the foundation's transactions,
 - (b) such as to disclose with reasonable accuracy, at any time, the foundations' financial position at that time, and

- (c) such as to enable the foundation officials to ensure that the foundation's accounts are prepared properly and in accordance with any relevant enactment for the time being in force,

and they shall in particular contain day to day entries of all sums of money received and expended by the foundation, the matters in respect of which the receipt and expenditure takes place and a record of the assets and liabilities of the foundation.

(3) The guardian and resident agent shall be entitled to inspect the documents referred to in subsection (1) upon 2 working days' notice in writing to the Council.

Duty of councillors to act together.

23. (1) Subject to the terms of the Constitution –

- (a) all the councillors of a foundation shall, acting as the Council, join in the execution of the foundation, and
- (b) no function conferred on the Council shall be exercised unless all the councillors agree on its exercise.

(2) Where the terms of the Constitution empower the Council to act by majority, a councillor who dissents from a decision of the majority may require his dissent to be recorded in writing.

Impartiality of councillors.

24. (1) Subject to the terms of the Constitution and to subsection (2), where a foundation has more than one beneficiary or purpose, the Council shall be impartial and shall not execute the foundation for the advantage of one at the expense

of another.

(2) Subsection (1) does not prejudice the exercise of a discretion conferred on the Council by the terms of the Constitution.

General powers of the Council

Delegation by Council.

25. (1) Subject to the terms of the Constitution, the Council shall not delegate its functions unless permitted to do so by the provisions of this Law.

(2) Except where the terms of the Constitution specifically provide to the contrary, the Council may –

- (a) delegate the management of foundation property to, and appoint, managers whom the Council reasonably considers to be competent and qualified to manage the foundation property or the investment thereof,
- (b) appoint professional persons to act in relation to the affairs of the foundation or to hold any foundation property, and
- (c) authorise any such manager or person to retain any commission or other payment usually payable for services of the description rendered.

(3) A councillor who, without any breach of duty, makes or permits the continuation of a delegation or appointment under subsection (2), is not liable for any loss to the foundation arising from the delegation or appointment.

Corporate councillors.

26. (1) A corporate councillor may –

- (a) act in connection with a foundation by resolution of the corporate councillor or of its board of directors or other governing body, or
- (b) by such resolution appoint an officer or employee, or a committee of officers or employees, or both, to act on its behalf in connection with the foundation.

(2) The rights in action of the corporate councillor against its officers and employees are not assets of the foundation.

Non-disclosure of deliberations.

27. (1) Notwithstanding sections 21 (duty to give information) and 32 (enfranchised beneficiaries), a councillor is not, subject to the terms of the Constitution and to any order of the Royal Court made pursuant to an application under this section by a participant, obliged to disclose documents which reveal –

- (a) his deliberations as to how he should exercise his functions as councillor,
- (b) the reasons for any decision made in the exercise of those functions,
- (c) any material upon which such a decision was or might have been based.

(2) A participant applying to the Royal Court for an order under this section for the disclosure of any document must show that the disclosure is

necessary or expedient –

- (a) for the proper disposal of any matter before the Court,
- (b) for the protection of the interests of any beneficiary or purpose, or
- (c) for the proper administration or enforcement of the foundation.

Liability

Liability for breach of duty.

28. (1) Subject to the provisions of this Law and to the terms of the Constitution, a foundation official who commits or connives in a breach of his duty is liable for any loss or depreciation in value of the foundation property resulting from the breach.

(2) A foundation official is not liable for a breach of duty committed by another foundation official unless –

- (a) he becomes or ought to have become aware of the breach or of the intention to commit the breach, and
- (b) he actively conceals the breach or intention, or fails within a reasonable time to take proper steps to protect or restore the foundation property or to prevent the breach.

(3) The terms of a Constitution may not –

- (a) relieve a foundation official of liability for a breach of duty arising from his own fraud, wilful misconduct or gross negligence, or
- (b) grant him any indemnity against the foundation property in respect of any such liability.

(4) For the avoidance of doubt, and without prejudice to any other provision of this Law a term of a Constitution is invalid to the extent that it purports to –

- (a) relieve a foundation official of liability for a breach of duty arising from his own fraud, wilful misconduct or gross negligence, or
- (b) grant him any indemnity against the foundation property in respect of any such liability.

Power to relieve foundation officials from personal liability.

29. The Royal Court may relieve a foundation official wholly or partly of liability for a breach of duty, where it appears to the Court that the official –

- (a) has acted honestly and reasonably, and
- (b) ought fairly to be excused –
 - (i) for the breach of duty,
 - (ii) for omitting to obtain the directions of the Court in the matter in which the breach arose.

PART III
PARTICIPANTS

General

Participants.

30. The participants of a foundation are –

- (a) the founder,
- (b) the enfranchised beneficiaries (see section 32),
- (c) in relation to any purpose or disenfranchised beneficiary (see section 33), the guardian, and
- (d) any other person so identified by the Constitution.

Beneficiaries

Beneficiaries.

31. (1) A "**beneficiary**" is a person who may benefit from a foundation and who is –

- (a) so identified in the Constitution by name, or
- (b) whose identity is ascertainable from the terms of the Constitution by reference to –
 - (i) a class (see section 35), or
 - (ii) a relationship to another person, whether or not

living at the time of the creation of the foundation or at the time by reference to which, under the terms of the Constitution, members of a class are to be determined.

(2) The Constitution may provide for the addition or removal of a person as beneficiary or for the exclusion from benefit of a beneficiary either revocably or irrevocably.

(3) The Constitution may impose an obligation on a beneficiary as a condition of benefit.

(4) A founder or foundation official of a foundation may also be a beneficiary thereof.

(5) The Constitution may state –

(a) whether a beneficiary is entitled to the information about the foundation set out in section 32(1) ("**an enfranchised beneficiary**"), or

(b) whether a beneficiary is not entitled to that information ("**a disenfranchised beneficiary**": see section 33), and

(c) whether, and if so, in what manner a disenfranchised beneficiary may become an enfranchised beneficiary or vice versa.

(6) Where in respect of any beneficiary the Constitution is silent or unclear as to –

- (a) the matters in subsection (5)(a) and (b), then the beneficiary is an enfranchised beneficiary, and
- (b) the matters in subsection (5)(c), the status of that beneficiary may not be altered save by order of the Royal Court.

Enfranchised beneficiaries.

32. (1) An enfranchised beneficiary is entitled to –

- (a) copies of the Constitution,
- (b) disclosure of records and accounts of the foundation, on written request to the Council,
- (c) make an application to the Royal Court to request an order to prohibit –
 - (i) a change to the purpose under section 8 (amendment of purpose), or
 - (ii) the winding up of the foundation (see Schedule 2, paragraph 23).

(2) Subject to the terms of the Constitution, subsection (1) does not entitle a beneficiary to the information detailed in section 27 (non disclosure of deliberations).

Disenfranchised beneficiaries.

33. Subject to the terms of the Constitution, a disenfranchised beneficiary is not entitled to any information about the foundation.

Disclaimer of beneficial interest.

34. (1) Subject to the terms of the Constitution, a beneficiary may disclaim his interest in a foundation or any part of it, whether or not he has received any benefit from it.

(2) A disclaimer shall be in writing and, subject to the terms of the Constitution –

(a) may be temporary, and

(b) may, if the disclaimer so provides, be revoked in the manner and circumstances specified thereby.

(3) A disclaimer is not effective until it is delivered to the Council.

Class interests.

35. Subject to the terms of the Constitution, where a foundation is made in favour of a class of persons then, –

(a) the class closes when it is no longer possible for any other person to become a member of the class, and

(b) where the interest of the class relates to income, and no member of the class exists, the income shall be accumulated and retained until a member of the class exists or the class closes.

PART IV

PROVISIONS OF GENERAL APPLICATION

Jurisdiction and powers of Royal Court

Jurisdiction of Royal Court.

36. Without prejudice to the Royal Court's inherent jurisdiction, and for the avoidance of doubt, the Royal Court sitting as an Ordinary Court ("**the Royal Court**") has jurisdiction in respect of a Guernsey foundation and all matters relating thereto.

Application of Guernsey law to questions of validity.

37. (1) Subject to the terms of the Constitution, all questions arising in relation to a Guernsey foundation or any disposition of property to or upon such a foundation, including (without limitation) questions as to –

- (a) the capacity of the founder,
- (b) the validity, interpretation or effect of the Constitution or any variation or revocation thereof,
- (c) the validity of any endowment to the foundation,
- (d) the administration of the foundation, whether it is conducted in Guernsey or elsewhere, including (without limitation) questions as to the functions, appointment and removal of foundation officials,
- (e) the existence and extent of any functions in respect of the foundation, including (without limitation) powers of variation, revocation and appointment, and the validity of the exercise of any such function,
- (f) the distribution of the foundation property,

are to be determined according to the law of Guernsey without reference to the law of any other jurisdiction.

For these purposes "**the law of Guernsey**" does not include the Guernsey rules of private international law, except those set out in this section.

- (2) Subsection (1) –
- (a) does not validate any endowment of property to the foundation by the founder, which is neither owned by the founder nor the subject of a power of disposition vested in the founder,
 - (b) does not affect the recognition of the law of any other jurisdiction in determining whether the foundation is the owner of any property,
 - (c) is subject to any express provision to the contrary in the terms of the Constitution,
 - (d) does not, in determining the capacity of a legal person, affect the recognition of the law of its place of establishment,
 - (e) does not affect the recognition of the law of any other jurisdiction prescribing the formalities for the disposition of property, and
 - (f) subject to subsection (3), does not validate –

- (i) any disposition of real property situate in a jurisdiction other than Guernsey which is invalid under the law of that jurisdiction, or
- (ii) any testamentary disposition which is invalid under the law of the testator's domicile at the time of his death.

(3) No Guernsey foundation, and no endowment of property upon such a foundation, is void, voidable, liable to be set aside, invalid or subject to any implied condition, nor is the capacity of any foundation official or participant to be questioned, nor is any foundation official, participant or third party to be subjected to any obligation or liability or deprived of any right, claim or interest, by reason that –

- (a) the laws of any other jurisdiction prohibit or do not recognise a Guernsey foundation, or
- (b) the foundation or endowment thereupon –
 - (i) avoids or defeats or potentially avoids or defeats rights, claims, interests, obligations or liabilities conferred or imposed by the law of any other jurisdiction on any person –
 - (A) by reason of a personal relationship to a founder or any beneficiary, or
 - (B) by way of foreign heirship rights, or
 - (ii) contravenes or potentially contravenes any rule of law, judgment, order or action of any other

jurisdiction intended to recognise, protect, enforce or give effect to any such rights, claims, interests, obligations or liabilities.

(4) Notwithstanding any legislation or other rule of law for the time being in force in relation to the recognition or enforcement of judgments, no judgment or order of a court of a jurisdiction outside Guernsey shall be recognised or enforced or give rise to any right, obligation or liability or raise any estoppel if and to the extent that –

- (a) it is inconsistent with this Law, or
- (b) the Royal Court, for the purposes of safeguarding the purpose of the foundation or the interests of the beneficiaries, or in the interests of the proper administration of the foundation, so orders.

(5) This section applies –

- (a) whenever the foundation or endowment thereto was created or made,
- (b) notwithstanding any other provision of this Law.

(6) In relation to a Guernsey foundation comprising personal property or any endowment of such property upon such a foundation, the law of Guernsey relating to *légitime* and the rights of a surviving spouse apply only where the founder is domiciled there at the time of his death.

Approval of particular transactions.

38. Where in the management or administration of a foundation a

transaction is, in the opinion of the Royal Court, expedient, but cannot be effected because the necessary power is not vested in the Council by the terms of the Constitution or by law, the Royal Court, on the application of any person mentioned in section 42(2) –

- (a) may confer on the Council, generally or in any particular circumstances, the necessary power, on such terms and conditions as the Court thinks fit, and
- (b) may direct the manner in which, and the property from which, any monies authorised to be expended, and the costs of any transaction, are to be paid or borne.

Judgment against foundation official to be binding on participants or disenfranchised beneficiaries.

39. (1) Any order, judgment or finding of law or fact of the Royal Court in an action against a foundation official founded on breach of duty is binding on the foundation and all participants and disenfranchised beneficiaries of the foundation, whether or not yet ascertained or in existence, and whether or not minors or persons under legal disability.

(2) Subsection (1) applies in respect of a participant or disenfranchised beneficiary only if –

- (a) he was represented in the proceedings (whether personally, or by the guardian of the foundation, or as the member of a class, or otherwise), or
- (b) if not so represented, he had notice of the proceedings and a reasonable opportunity of being heard.

"**Notice**" in paragraph (b) means 14 days' notice or such other period as the Court may direct.

(3) This section is without prejudice to the powers of the Royal Court in respect of representative proceedings and class actions.

Settlement of action against foundation official by alternative dispute resolution to be binding on participants or disenfranchised beneficiaries.

40. (1) Where –

- (a) the terms of the Constitution direct or authorise, or the Royal Court so orders, that any claim against a foundation official founded on breach of duty may be referred to alternative dispute resolution ("**ADR**"),
- (b) such a claim arises and, in accordance with the terms of the Constitution or the Court's order, is referred to ADR, and
- (c) the ADR results in a settlement of the claim which is recorded in a document signed by or on behalf of all parties,

the settlement is binding on all participants and disenfranchised beneficiaries of the foundation, whether or not yet ascertained or in existence, and whether or not minors or persons under legal disability.

(2) Subsection (1) applies in respect of a participant or disenfranchised beneficiary only if –

- (a) he was represented in the ADR proceedings (whether

personally, or by the guardian of the foundation, or as the member of a class, or otherwise), or

- (b) if not so represented, he had notice of the ADR proceedings and a reasonable opportunity of being heard,

and only if, in the case of a participant or disenfranchised beneficiary who is not yet ascertained or in existence, or who is a minor or person under legal disability, the person conducting the ADR proceedings certifies that he was independently represented by a person appointed for the purpose by a court of law.

"Notice" in paragraph (b) means 14 days' notice or such other period as the person conducting the ADR proceedings may direct.

(3) A person who represents a participant or disenfranchised beneficiary in the ADR proceedings for the purposes of subsection (2)(a) is under a duty of care to that person.

(4) For the avoidance of doubt, the ADR proceedings need not be conducted in Guernsey or in accordance with the procedural law of Guernsey.

(5) In this section –

"ADR" includes conciliation, mediation, early neutral evaluation, adjudication, expert determination and arbitration, and

"proceedings" includes oral and written proceedings.

NOTE

In accordance with the provisions of the Arbitration (Guernsey) Law, 2016, section 80(1), with effect from 12th December, 2016, the provisions of that Law apply to every arbitration under a Guernsey enactment (a "statutory arbitration"), subject to, first, the exceptions in section 80(2) and, second, the adaptations and exclusions specified in sections 81 to 83 of the 2016 Law.

Applications for directions.

41. A foundation official may apply to the Royal Court for directions as to how he should or might act in any of the affairs of the foundation, and the Court may make such order as it thinks fit.

General powers of Royal Court.

42. (1) On the application of any person mentioned in subsection (2), the Royal Court may –

- (a) make an order in respect of –
 - (i) the execution, administration or enforcement of a foundation,
 - (ii) a foundation official, including an order as to the exercise of his functions, the removal of a foundation official (if, for example, he refuses or is unfit to act, or he is incapable of acting or is bankrupt, or his property becomes liable to arrest, saisie, or similar process of law), the appointment, remuneration or conduct of a foundation official, the keeping and submission of accounts, the making of payments, whether into court or otherwise, and the repayment to the foundation of any loss caused by a foundation official's breach of duty,

- (iii) a participant, or any person connected with a foundation,
 - (iv) any foundation property, including an order as to the vesting, preservation, application, distribution, surrender or recovery thereof,
- (b) make a declaration as to the validity or enforceability of the terms of the Constitution,
 - (c) rescind or vary an order or declaration under this Law or make a new or further order or declaration.
- (2) An application under subsection (1) may be made by –
- (a) Her Majesty's Procureur,
 - (b) a foundation official,
 - (c) a participant,
 - (d) the Registrar,
 - (e) with leave of the Royal Court, any other person.
- (3) Where the Royal Court appoints or removes a foundation official under this section it may impose such requirements and conditions as it thinks fit.
- (4) Subject to the Royal Court's order, a foundation official

appointed by the Court has the same functions, and may act in all respects, as a foundation official appointed under the terms of the Constitution.

Powers of Royal Court in event of default.

43. If a person does not comply with an order of the Royal Court under this Law requiring him to do anything, the Royal Court may, on such terms and conditions as it thinks fit, order that the thing be done by another person, nominated for the purpose by the Court, at the expense of the person in default (or otherwise as the Court directs), and a thing so done has effect in all respects as if done by the person in default.

Payment of costs.

44. Without prejudice to its powers arising otherwise than under this Law, the Royal Court may order the costs and expenses of and incidental to an application to the Court under this Law to be paid by the foundation or by such persons, and in such manner and on such basis, as the Court thinks fit.

Constitution of Royal Court.

45. For the purposes of this Law the Royal Court is properly constituted by the Bailiff sitting unaccompanied by the Jurats.

Offences

Offences by legal persons, etc.

46. (1) Where an offence under this Law is committed by a legal person and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person, or

- (b) any person purporting to act in any such capacity,

he as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under this Law shall be paid from the funds of that body.

False or misleading information.

47. (1) A person who –

- (a) in connection with any application to, or otherwise in furnishing any information or document to, the Registrar in respect of a foundation under the provisions of this Law,
- (b) in purported compliance with a requirement imposed by or under the provisions of this Law, or
- (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document provided by him would or might be used by the Registrar for the purpose of exercising his functions conferred by or under this Law –
 - (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
 - (ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
 - (iii) produces or furnishes or causes or permits to be

produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(2) A foundation official who fails to provide the Registrar with any information in his possession knowing or having reasonable cause to believe –

- (a) that the information is relevant to the exercise by the Registrar of his functions under this Law; and
- (b) that the withholding of the information is likely to result in the Registrar being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the foundation or foundation official,

is guilty of an offence.

Penalties.

48. (1) A person guilty of an offence under section 47(1) [or Schedule 1A] is liable –

Consolidated text

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months, to a fine not exceeding level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine, or to both.

(2) A person guilty of an offence under any other section or paragraph is liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to a fine.

NOTE

In section 48, the words, figure and letter in square brackets in subsection (1) were substituted by the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, section 21(4), with effect from 15th August, 2017.

Supplementary

Migration, revocation, winding up and termination.

49. The provisions of Schedule 2 have effect.

Consequential amendments.

50. (1) In the Regulation of Fiduciaries Law, after section 4(3)(b)(iii) insert –

"(iv) acting as foundation official for foundations within the meaning of section 2(1)(d), but only

where the individual is resident in Guernsey.",

- (2) In the Companies Law –
 - (a) after section 428(3)(h) insert –

"(ha) his record of compliance with any provision contained in or made under the Foundations (Guernsey) Law, 2012 in acting as a foundation official or resident agent within the meaning of that Law,"
 - (b) in section 536(2) after "Office of the Registrar" insert "and in relation to the exercise of his functions".

General provisions as to subordinate legislation.

- 51. (1) The States may by Ordinance –
 - (a) amend Part II and Part IV of this Law,
 - (b) make such other provision as they think fit for the purposes of carrying this Law into effect, and
 - (c) make such amendments to any other enactment as they think fit where it is necessary to do so for the purpose of giving proper effect to that enactment and as are consequential upon the enactment of this Law.
- (2) An Ordinance or regulation under this Law –
 - (a) may be amended or repealed by a subsequent

Ordinance or regulation, as the case may be, hereunder,
and

- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient including, in the case of an Ordinance, provision making consequential amendments to this Law and any other enactment.

(3) Any power conferred by this Law to make an Ordinance or regulation may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

(4) Regulations under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

NOTE

The following Regulations have been made under section 51:

Foundations (Annual Renewal) (Amendment) Regulations, 2017;
Foundations (Investment Schemes) (Exemption) Regulations, 2017;
Foundations (Annual Renewal) (Amendment) Regulations, 2020.

Interpretation.

52. (1) In this Law, unless the context otherwise requires –

"accounting records" includes all underlying documentation, such as invoices, receipts and contracts, and details of property endowed upon the foundation (including the name and address of the person who endowed the property),

"address" in relation to any person means (unless the Registrar determines otherwise in any particular case) his physical address, telephone numbers and email address,

"bankrupt" means, –

- (a) that a declaration of insolvency has been made in respect of him by the Royal Court under the Loi ayant

rapport aux Débiteurs et à la Renonciation, 1929^c,

- (b) that a Commissioner or Committee of Creditors has been appointed by the Royal Court under that Law to supervise or secure his estate,
- (c) that his affairs have been declared to be in a state of "désastre" at a meeting of his arresting creditors held before a Commissioner of the Royal Court,
- (d) that an interim vesting order has been made against him in respect of any of his real property in the Bailiwick,
- (e) in the case of a company, and otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding up, that –
 - (i) a liquidator (provisional or otherwise) has been appointed to act, or
 - (ii) the company has passed a special resolution requiring that it be voluntarily wound up,
- (f) in the case of a company, that an administration order is in force in respect of the company or, if the company is a protected cell company, in respect of any of its cells,
- (g) in the case of a protected cell company, that a receivership order is in force in respect of any of its

^c Ordres en Conseil Vol. VIII, p. 310.

cells,

- (h) in the case of a foundation, that a winding up order has been made by the Royal Court in respect of the foundation pursuant to paragraph 24(1)(f) of Schedule 2,
- (i) that a composition, compromise or arrangement with creditors has been entered into in respect of him whereby his creditors will receive less than 100 pence in the pound,
- (j) that possession or control has been taken of any of his property or affairs by or on behalf of creditors or, in the case of a company, the holders of debentures issued by it,
- (k) that an event, measure or procedure has occurred outside Guernsey in relation to him which corresponds as nearly as may be to any event described in the above paragraphs,

and "**bankruptcy**" shall be construed accordingly,

["**beneficial owner**" has the meaning it has for the purposes of the Beneficial Ownership Law,]

["**Beneficial Ownership Law**" means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,]

"**beneficiary**" has the meaning given in section 31,

"breach of duty" means a breach of any duty imposed on a foundation official by this Law, including the duties imposed under section 19, or by the terms of the Constitution, and cognate expressions shall be construed accordingly,

"Charter" has the meaning given in section 4,

"Companies Law" means the Companies (Guernsey) Law, 2008^d, as amended,

"Constitution" means the Charter and Rules of a foundation,

"corporate councillor" means a councillor which is a body corporate (wherever incorporated),

"Council" has the meaning given in section 9,

[**"customs officer"** means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,]

"default recipient" has the meaning given in section 6,

"[Committee]" means the States of Guernsey [Committee for Economic Development],

"department" means any department, council or committee (however

^d No. VIII of 2008 amended by Ordinance Nos. XXV of 2008; LIV of 2008; VII of 2009; XIV of 2009; G.S.I.s No. 34 of 2009; No. 34 of 2010 and No. XI of 2010.

called) of the States of Guernsey,

"disenfranchised beneficiary" has the meaning given in section 31(5),

"disposition" includes any means by which property or any interest therein is created, transferred, dealt with, extinguished or charged, and related expressions shall be construed accordingly,

"endowment" means the dedicating of property to a foundation,

"enfranchised beneficiary" has the meaning given in section 31(5),

"establishment" shall be construed in accordance with paragraph 6 of Schedule 1,

"foreign heirship right" means any right, claim or interest arising under the law of a jurisdiction other than Guernsey in, against or to the property of any person arising, accruing or existing in consequence of, or in anticipation of, that person's death, other than a right, claim or interest created by will or expressed in any other voluntary disposition by that person or resulting from an express limitation in the disposition of the property to that person,

"formalities", in relation to a disposition of property, means the documentary and other actions required generally by the law of the jurisdiction in question for any such disposition of any such property, and includes any special formalities required by reason of the party effecting the disposition being a minor, a person under legal disability or a corporation,

"foundation official" includes the councillors and guardian,

"founder" has the meaning given in section 1,

"functions" includes rights, powers, discretions, privileges, obligations, liabilities and duties,

"Guernsey licensed fiduciary" means a person who is a licensed fiduciary under the Regulation of Fiduciaries Law,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"initial capital" has the meaning given in section 2(1),

"interest", in relation to a beneficiary, means his interest under a foundation,

"minor" means a person who has not attained the age of 18 years,

"Part A of the Register" has the meaning given in Schedule 1, paragraph 4(2)(a),

"Part B of the Register" has the meaning given in Schedule 1, paragraph 4(2)(b),

"participants" has the meaning given in section 30,

"personal relationship" includes every form of relationship by blood, adoption, marriage or cohabitation regardless of whether the law of any jurisdiction recognises the validity, legitimacy or existence of the relationship, and includes a former personal relationship which has in law or in fact terminated.

A personal relationship also exists between two persons if a personal relationship exists between each of them and a third person,

"personal representative" means the executor or administrator of the estate of a deceased person or the guardian of a person,

[**"police officer"** means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,]

"profit" includes gain or advantage,

"property" –

- (a) means immeubles and meubles of any description, wherever situated, and any share, right or interest therein, and includes tangible or intangible property and any debt or thing in action,
- (b) in relation to rights and interests, includes rights and interests whether vested, contingent, defeasible or future,

"provisions of this Law" includes the provisions of any Ordinance or regulations hereunder,

"purpose" means any purpose whatsoever, whether or not involving the conferral of any benefit on any person, and includes, without limitation, the holding or ownership of property and the exercise of functions,

"records of the foundation" includes all documents filed with the Registrar, the Constitution, the accounting records, and all documents required to be kept by the foundation in accordance with any enactment,

"Register" has the meaning given in Schedule 1, paragraph 4((1),

"Registrar" has the meaning given in Schedule 1, paragraph 3(1),

[**"Registrar of Beneficial Ownership"** means the Registrar of Beneficial Ownership of Legal Persons, the office of which was established under section 1 of the Beneficial Ownership Law,]

"Regulation of Fiduciaries Law" means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^e, as amended,

"Royal Court" means the Royal Court sitting as an Ordinary Court, constituted in accordance with section 45,

"Rules" has the meaning given in section 5, and

"States" means the States of Guernsey.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

^e Order in Council No. I of 2001 amended by No. XIV of 2003; No. XVI of 2007; No. VIII of 2008; No. XXV of 2008; Ordinance No. XXXIII of 2003 (the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003) and Guernsey Statutory Instrument No. 3 of 2008 (the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Regulations, 2008).

NOTES

In section 52,

the definitions of the expressions "beneficial owner", "Beneficial Ownership Law", "customs officer", "police officer" and "Registrar of Beneficial Ownership" in subsection (1) were inserted by the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, section 21(5), with effect from 15th August, 2017;

the words, first, "the Committee" and, second, "Committee for Economic Development" in square brackets in the definition of the expression "the Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 2 and section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

Savings.

- 53.** (1) Nothing in this Law –
- (a) affects the functions under any provision of law of Her Majesty's Sheriff or of any guardian or attorney,
 - (b) subject to section 37, validates an otherwise invalid endowment,

- (c) derogates from any right of a minor to repudiate a transaction on attaining full age,
- (d) disapplies or derogates from any rule of law or custom relating to the formalities required for the disposition of immeubles in Guernsey.

(2) Nothing in this Law derogates from the powers of the Royal Court which exist independently of this Law –

- (a) to set aside, vary or reduce any transfer or other disposition of property, testamentary or otherwise,
- (b) to make an order relating to matrimonial proceedings,
- (c) to make an order relating to the avoidance of fraud on creditors.

(3) Nothing in this Law derogates from the provisions of –

- (a) Article 29 of the Law entitled "Loi sur les Successions, 1840"^f,
- (b) the Law entitled "Loi supplémentaire à la Loi des Successions, 1890"^g.

(4) Nothing in this Law affects a personal representative acting as such.

^f Ordres en Conseil Vol. I, p. 51, Vol. II p. 59.

^g Ordres en Conseil Vol. II, p. 323.

(5) No endowment upon a foundation is invalidated by application of the principle of "donner et retenir ne vaut".

Citation.

54. This Law may be cited as the Foundations (Guernsey) Law, 2012.

Commencement.

55. This Law shall come into operation on the date appointed by regulations of the Department.

NOTE

The Law was brought into force on 8th January, 2013 by the Foundations (Guernsey) Law 2012 (Commencement) Regulations, 2013, regulation 1.

SCHEDULE 1

Section 13

ESTABLISHMENT, REGISTRATION AND ANCILLARY MATTERS
(INCLUDING DISQUALIFICATION)

Establishment and registration

Name of foundation.

1. (1) The name of a foundation –
 - (a) shall be stated in its certificate of establishment (see paragraph 8),
 - (b) shall contain the word "Foundation" or the abbreviation "Fdn.",
 - (c) shall not be the same as a name already appearing in the Register,
 - (d) shall not be such as to constitute a criminal offence or, in the opinion of the Registrar, be offensive, misleading or inappropriate,
 - (e) shall not include any word such as "Imperial", "Royal", "Queen" or "Crown" which implies or might be taken to imply royal or government connection, support or patronage, unless Her Majesty's Procureur has given written permission for the use of that word, or
 - (f) shall not be such as to induce the public to confuse the foundation with some other person or body previously established in Guernsey or elsewhere.

(2) The Royal Court, if satisfied that any provision of subparagraph (1) has not been complied with, may order that, within such time and subject to such terms, conditions and penalty as the Court thinks fit, the name of the foundation shall be changed.

(3) If an order of the Royal Court under subparagraph (2) is not complied with in any respect the foundation shall be liable to be wound up by order of the Royal Court under Schedule 2, paragraph 24(1) (winding up by the Royal Court).

Registered office of foundation.

2. (1) Every foundation shall at all times have a registered office in Guernsey, at which all records of the foundation (or copies thereof) must be kept (and see section 22).

(2) The Registrar shall be notified of any change in the registered office in accordance with paragraph 10 (change in registered particulars).

(3) The name and address of the registered office shall be included in all correspondence sent by foundation officials on behalf of the foundation, together with the registration number (see paragraph 7(4)).

Registrar of Foundations.

3. (1) There is established the office of the Registrar of Foundations ("**the Registrar**"), which shall be held by the Registrar of Companies whose office was created under section 495 of the Companies Law.

(2) For the avoidance of doubt, the functions of the Registrar conferred by or under this Law are, for the purposes of sections 495(5) and 499(1)(f) of the Companies Law, functions assigned or transferred to him by or under an

enactment, and the provisions of that Law relating to the Registrar's functions (whether conferred by or under that Law or otherwise), together with the associated penalties and offences, and other ancillary, incidental and supplementary provisions, apply *mutatis mutandis* to the Registrar's functions conferred by or under this Law.

Register of Foundations.

4. (1) The Registrar shall establish and thereafter maintain a Register of Foundations ("**the Register**").

(2) The Register shall contain –

(a) a record of all foundations registered under paragraph 7 containing –

(i) the name and registered number of the foundation,

(ii) the name and address of the councillors appointed in accordance with or by virtue of section 9(2),

(iii) the name and address of the guardian, appointed in accordance with or by virtue of section 10, if applicable, and

(iv) the details of the registered office,

("Part A of the Register"),

(b) a statement of the purpose of the foundation, and all declarations and other documents filed with the

Registrar under or for the purposes of this Law ("**Part B of the Register**").

(3) Part A of the Register only shall be part of the public records of the Island of Guernsey.

Use of Part B of the Register.

5. (1) Subject to the provisions of subparagraph (2), no person who under or for the purposes of this Law receives information comprised or intended to be comprised within Part B of the Register, shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) Subparagraph (1) does not preclude –

(a) the disclosure of –

(i) information which at the time of disclosure is or has already been made available to the public from other sources, or

(ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,

(b) the disclosure of information for the purpose of enabling or assisting the Registrar to discharge his functions,

(c) where, in order to enable or assist him to discharge his

functions conferred by or under this Law, the Registrar considers it necessary to seek advice from a qualified person on any matter of law, accountancy or valuation or any other matter requiring the exercise of professional skill, the disclosure by the Registrar to that person of such information as appears to the Registrar to be necessary to ensure that that person is properly informed as to the matters on which his advice is sought,

- (d) the disclosure of information for the purpose of enabling or assisting an authority exercising, in a place outside the Bailiwick, functions equivalent to those of the Registrar under this Law to exercise its functions,
- (e) the disclosure of information for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings in the Bailiwick or elsewhere,
- (f) the disclosure of information for the purposes of enabling or assisting Her Majesty's Procureur to discharge his functions,
- (g) the disclosure of information for the purposes of enabling or assisting the Guernsey Financial Services Commission to discharge its functions,
- (h) the disclosure of information in connection with any proceedings arising out of this Law,

- (i) the disclosure of information to comply with an order of a court,
- (j) the disclosure of information which is authorised or required by or under this Law or any other enactment.

(3) A person who discloses or causes or permits the disclosure of any information in contravention of this paragraph is guilty of an offence.

Establishment of foundation.

6. (1) A foundation shall only be established if the requirements of this Law are satisfied.

(2) A foundation may not be established if its purpose or Constitution is contrary to the law of Guernsey.

(3) A foundation is established –

- (a) by the Registrar registering it on the Register and allocating it a registration number (see paragraph 7),
- (b) with effect from the date of registration as stated in the certificate of registration (see paragraph 8).

(4) Upon establishment under the name set out in the Register and for the purposes set out in the Register –

- (a) a foundation has legal personality, separate from its founder, foundation officials and beneficiaries with a continuous existence until its removal from the

Register,

- (b) the persons named in the application as foundation officials are deemed to have been appointed to their respective offices.
- (5) When established, a foundation –
- (a) may sue and be sued in its name and may exercise all the functions of a legal person, including the power to hold land, and
 - (b) may have a common seal (see paragraph 15).

Registration of foundation.

7. (1) Every foundation shall be registered and shall continue to be registered in accordance with this paragraph.

(2) Only a Guernsey licensed fiduciary may apply to register a foundation.

(3) A person wishing to effect the registration of a foundation shall file with the Registrar –

- (a) the Charter (see section 4),
- (b) a declaration signed by the founder or the resident agent that the details contained within the Charter are correct and an accurate reflection of the purposes of the foundation,

Consolidated text

- (c) a declaration as to whether there are, or there are intended to be, any disenfranchised beneficiaries,
- (d) the names and addresses of the proposed councillors, together with their written consent so to act,
- (e) the name and address of the proposed guardian (if appropriate) together with his written consent so to act,
- [(f) a statement by the resident agent (if any), comprising his name and address and confirmation that he has complied with his obligations under paragraph 3 of Schedule 1A,]
- (g) the address of the registered office in Guernsey,
- (g) any applicable fee, and
- (h) such other documents or information as the Registrar may require.

(4) Upon receipt of the fee, documents and information specified in subparagraph (3), and provided that the Registrar is satisfied that the requirements of the provisions of this Law are satisfied, the Registrar shall –

- (a) register the foundation in the Register by inscribing its name therein, and
- (b) allocate a registration number to the foundation,

and thereupon the foundation shall be established for the purposes of this Law.

- (5) The Registrar –
- (a) when registering a foundation in the Register under this paragraph, and
 - (b) when issuing a certificate of registration in relation to the foundation under paragraph 8 or paragraph 10,

may rely upon the documents filed with him in all respects and shall not be bound to enquire further as to whether, in relation to the foundation, the formalities prescribed by this Law have been complied with.

(6) The [Committee] may by regulations prescribe the fees to be charged by the Registrar on receipt of any application to him or on the exercise of any function by him under the provisions of this Law, which fees may be set at such level that the [Committee] considers appropriate.

(7) The [Committee] may, in its discretion, determine that all registrations be subject to an annual renewal procedure; and if it does so, it must specify by regulations –

- (a) what information and fee (if any) are to be provided and in what form,
- (b) what procedure shall be followed (including an appeals procedure if it thinks fit), and
- (c) without prejudice to any other provision of this Law, what, if any, financial penalties shall be payable by such persons as may be prescribed by the regulations

for failure to comply with the renewal procedure.

Issue of certificate of registration.

8. (1) On registration of a foundation, the Registrar shall issue a certificate of registration to the foundation at its registered office.

(2) The certificate must –

(a) state –

(i) the name and registered number of the foundation,

(ii) the registered office of the foundation,

(iii) the date of its establishment,

(iv) the duration of the foundation (if applicable),
and

(b) be signed by the Registrar.

(3) The certificate is, unless it has ceased to be valid, conclusive evidence of compliance with the requirements of this Law as to registration and of all matters stated in it.

(4) A certificate of registration shall cease to be valid in the circumstances described in paragraph 10 of this Schedule (change in and rectification of registered particulars) or paragraphs 13 and 28 of Schedule 2 (removal from Register).

(5) A certificate of registration, or a copy thereof issued and sealed by the Registrar, shall be received in evidence in all legal proceedings.

Pre-establishment contracts and obligations.

9. A contract or obligation that purports to be made by or on behalf of a foundation at a time when the foundation has not been established has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the foundation or as agent for it, and he is personally liable on the contract accordingly until such time that the contract is ratified by the Council on behalf of the foundation.

Change in and rectification of registered particulars.

10. (1) If during the continuance of a foundation –

- (a) there is a change in any particular of the foundation referred to in paragraph 7(3) or
- (b) a person becomes or ceases to be a foundation official,

notice of the change signed by any one or more of the foundation officials shall, within a period of 21 days from the date of the change, be filed with the Registrar, and, where the change is to the foundation's name or registered office, the change shall not be effective until the Registrar has issued a new certificate of registration, upon the issue of which the existing certificate shall cease to be valid.

(2) In default of compliance with subparagraph (1) –

- (a) the foundation and foundation official shall each be guilty of an offence,
- (b) the Registrar may impose such financial penalty to be

paid by such persons as the [Committee] may, by regulations under this paragraph, prescribe, and

- (c) the change may not be relied on by the foundation or by any foundation official or former foundation official thereof so as to affect adversely the rights of any third person.

(3) Upon receipt of notice under subparagraph (1) or as soon as is reasonably practicable thereafter, the Registrar shall make the appropriate entry in the Register.

(4) The Registrar may, in his absolute discretion and on such terms and conditions as he thinks fit, on an application by or on behalf of the founder or a foundation official, by order authorise the rectification of any typographical error or formal defect or formal omission –

- (a) in the entries relating to the foundation in the Register,
or
- (b) in any declaration or other document filed with the Registrar in relation to the foundation under or for the purposes of this Law.

(5) The Royal Court may, in its absolute discretion and on such terms and conditions as it thinks fit, on an application by or on behalf of the founder or a foundation official, by order authorise the rectification of any error, defect or omission –

- (a) in the entries relating to the foundation in the Register,
or

- (b) in any declaration or other document filed with the Registrar in relation to the foundation under or for the purposes of this Law.

Ancillary matters (including disqualification)

Power of councillors to bind the foundation.

11. (1) In favour of a person dealing with a foundation in good faith, the power of the councillors to bind the foundation, or authorise others to do so, is deemed to be free of any limitation under the Constitution.

(2) For this purpose--

- (a) a person "**deals with**" a foundation if he is a party to any transaction or other act to which the foundation is a party,
- (b) a person dealing with a foundation –
 - (i) is not bound to enquire as to any limitation on the powers of the councillors to bind the foundation or authorise others to do so,
 - (ii) is presumed to have acted in good faith unless the contrary is proved, and
 - (iii) is not to be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the councillors under the Constitution.

(3) This paragraph does not affect any right of any participant of the foundation to bring proceedings to restrain the doing of an action that is beyond the powers of the councillors.

(4) This paragraph does not affect any liability incurred by the councillors or any other person by reason of the councillors or that other person exceeding their powers.

(5) This paragraph has effect subject to paragraph 12 (transactions with councillors).

Constitutional limitations: transactions involving councillors.

12. (1) This paragraph applies to a transaction if or to the extent that its validity depends on paragraph 11 (power of councillors to bind the foundation).

Nothing in this paragraph excludes the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the foundation may arise.

(2) Where –

(a) a foundation enters into such a transaction, and

(b) the parties to the transaction include –

(i) a councillor of the foundation, or

(ii) a person connected with any such councillor,

the transaction is voidable at the instance of the foundation.

(3) Whether or not it is avoided, any such party to the transaction as is mentioned in subparagraph (2)(b), and any councillor who authorised the transaction, is liable –

- (a) to account to the foundation for any gain he has made directly or indirectly by the transaction, and
- (b) to indemnify the foundation for any loss or damage resulting from the transaction.

(4) The transaction ceases to be voidable if –

- (a) restitution of any money or other asset which was the subject matter of the transaction is no longer possible,
- (b) the foundation is indemnified for any loss or damage resulting from the transaction,
- (c) rights acquired bona fide for value and without actual notice of the councillors exceeding their powers by a person who is not party to the transaction would be affected by the avoidance,
- (d) the transaction is affirmed by the foundation, or
- (e) it is disclosed by the councillor mentioned in subparagraph (2)(b) to the other foundation officials and not avoided by the foundation within a period of 3 months after the date of disclosure.

(5) A person other than a councillor is not liable under subparagraph (3) if he shows that at the time the transaction was entered into he did not know that the councillors were exceeding their powers.

(6) Nothing in the preceding provisions of this paragraph affects the rights of any party to the transaction not within subparagraph (2)(b)(i) or (ii). But the Royal Court may, on the application of the foundation or any such party, make an order affirming, severing or setting aside the transaction on such terms as appear to the Court to be just.

(7) In this paragraph "**transaction**" includes any act.

Formal execution of documents.

- 13.** (1) A document is formally executed by a foundation –
- (a) by the affixing under writing of its common seal,
 - (b) if it is signed on behalf of the foundation –
 - (i) by two authorised signatories, or
 - (ii) by a councillor in the presence of a witness who attests the signature,
 - (c) if it is signed by a person authorised by power of attorney under paragraph (3), or
 - (d) by any other means specifically authorised by the Constitution.
- (2) References in this paragraph to a document being signed by a

councillor are to be read, where that office is held by a corporate councillor, as references to its being signed by an individual authorised by the corporate councillor to sign on its behalf.

(3) A foundation may, by power of attorney executed by the Council, authorise a person, either generally or in respect of specified matters, as its attorney to execute documents on its behalf.

(4) A document executed in accordance with subparagraph (1)(c), whether in Guernsey or elsewhere, has effect as if executed by the foundation.

Common seal.

14. (1) A foundation may but need not have a common seal.

(2) A foundation's name shall be engraved in legible characters on the seal.

(3) If there is a failure to comply with subparagraph (2) the foundation is guilty of an offence.

(4) A foundation official, or a person acting on behalf of a foundation, commits an offence if he uses, or authorises the use of, a seal purporting to be a seal of the foundation on which its name is not engraved as required by subparagraph (2).

Disqualification orders.

15. (1) Where the Royal Court considers that, by reason of a person's conduct in relation to any foundation or otherwise, that person is unfit to be concerned in the management of a foundation, the Court may, if satisfied that it is desirable in the public interest to do so, make and subsequently renew (on one or more occasions) an order against him (a "**disqualification order**") prohibiting him,

without the leave of the Court –

- (a) from being a foundation official of any foundation or any specified foundation,
- (b) from participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any foundation or any specified foundation.

(2) A disqualification order and any renewal thereof shall have effect for such period not exceeding 15 years as shall be specified therein.

(3) A disqualification order and any renewal thereof may contain such incidental and ancillary terms and conditions as the Royal Court thinks fit.

(4) The Court must provide the Registrar with a copy of any disqualification order.

(5) An application for a disqualification order or for a renewal thereof may be made by the Registrar, by Her Majesty's Procureur, by any foundation of which the person in question is, or has been, an official, by any liquidator, participant or official of such a foundation or, with the leave of the Court, by any other interested party.

(6) A person who contravenes any provision of a disqualification order or a renewal thereof –

- (a) shall be guilty of an offence, and
- (b) shall be personally liable for any debts and liabilities of

the foundation in relation to which the contravention was committed which were incurred at any time when he was acting in contravention of the disqualification order or the renewal thereof.

(7) A person's liability pursuant to subparagraph (6)(b) is joint and several with that of the foundation and of any other person so liable in relation to the foundation.

(8) In determining whether or not a person is unfit to be concerned in the management of a foundation, the Court shall have regard to the provisions of paragraph 17.

(9) A disqualification order may be renewed at any time before, or within a period of one month immediately succeeding, the date of the expiration of the order.

(10) For the removal of doubt, a disqualification order or renewal thereof may, with the agreement of the parties, and in the Court's absolute discretion, be granted by consent.

Revocation of disqualification order.

16. (1) A person subject to a disqualification order or renewal thereof may apply to the Royal Court for a revocation of the order or renewal on the ground that he is no longer unfit to be concerned in the management of a foundation; and the Court may grant the application if satisfied that –

- (a) it would not be contrary to the public interest to do so,
and
- (b) the applicant is no longer unfit to be concerned in the

management of a foundation.

(2) An application under subparagraph (1) for the revocation of a disqualification order or renewal shall not be heard unless the person upon whose application the disqualification order or (as the case may be) the renewal was made has been served with notice of the application to revoke not less than 28 days (or such other period as the Court may in its absolute discretion direct) before the date of the hearing; and, without prejudice to the foregoing, the Court may –

- (a) direct that notice of the application to revoke shall also be served on such other persons as the Court thinks fit, and
- (b) for that purpose adjourn the hearing of the application.

(3) For the removal of doubt, an application under subparagraph (1) for the revocation of a disqualification order or renewal, may, with the agreement of the parties, and in the Court's absolute discretion, be granted by consent.

Fit and proper person.

17. (1) Every person who is, or is to be, a foundation official of the foundation shall be a fit and proper person to hold that position.

(2) In determining whether a person is a fit and proper person to hold a particular position, regard shall be had to –

- (a) his probity, competence, solvency and soundness of judgement for fulfilling the responsibilities of that position,
- (b) the diligence with which he is fulfilling or likely to

fulfil those responsibilities,

- (c) whether the interests of participants or disenfranchised beneficiaries of the foundation are, or are likely to be, in any way threatened by his holding that position,
- (d) the rules, standards and guidelines of any relevant professional, governing, regulatory or supervisory authority,
- (e) his record of compliance with the provisions of this Law in acting as a foundation official or resident agent, and
- (f) his record of compliance with any provision contained in or made under the Companies Law in acting as a corporate services provider or resident agent within the meaning of that Law.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question.

Registrar to keep register of disqualification orders.

18. The Registrar shall keep a register of all disqualification orders, and all renewals and revocations thereof, made by the Royal Court under paragraphs 15 and 16, and the register shall form part of the public records of the Island.

Service of documents.

19. (1) Any document to be served on a foundation may be served –

Consolidated text

- (a) by being left at, or sent by post or transmitted to, the foundation's registered office, or
- (b) by being delivered to any councillor thereof or by being left at, or sent by post or transmitted to, his address shown in the Register.

(2) Any document to be served under or for the purposes of the provisions of this Law may be served on –

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) a legal person with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office,
- (c) a legal person without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,
- (d) an unincorporated body –
 - (i) by being served on any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or

- (ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) a department of the States, by being left at, or sent by post or transmitted to, the principal offices of that department in Guernsey,
- (f) on the Registrar, by being left at, or sent by post or transmitted to, the principal offices of the Registrar in Guernsey.

(3) If a person notifies the Registrar of an address for service within Guernsey for the purposes of the provisions of this Law, any document to be served on that person under those provisions may be served by being left at, or sent by post to or transmitted to, that address.

(4) Where the provisions of this Law authorise or require a document to be served on a person who is –

- (a) a minor, or
- (b) a person under legal disability,

the document may be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of those provisions.

(5) If service of a document cannot, after reasonable enquiry, be effected in accordance with this paragraph, the document may be served by being published on two occasions in *La Gazette Officielle*.

(6) Subparagraphs (2) to (5) are without prejudice to subparagraph (1); and subparagraphs (1) to (5) are without prejudice to any other lawful method of service and to the provisions of paragraph 20.

(7) Where a document is sent by post it shall, unless the contrary is shown, be deemed for the purposes of the provisions of this Law to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day.

(8) For the purposes of the provisions of this Law, service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(9) Notwithstanding the provisions of this paragraph and of any other rule of law in relation to the service of documents, no document to be served on the Registrar under or for the purposes of the provisions of this Law shall be deemed to have been served until it is received.

(10) In this paragraph and in paragraph 20 –

"by post" means by registered post, recorded delivery service or ordinary letter post,

"document" does not include a summons,

"non-business day" means –

- (a) a Saturday, a Sunday, Christmas Day and Good Friday, and
- (b) any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^h,

"served" includes given and submitted,

"summons" includes any document compelling a person's attendance before a court, and

"transmitted" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as served when it is received).

Documents to be submitted, etc, in electronic form.

20. (1) Any document to be served on the Registrar under or for the purposes of the provisions of this Law shall or, as the case may be, may be in such

^h Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Orders in Council No. XI of 1993; No. XIV of 1994 and No. IX of 2001.

electronic form and served by such electronic means as the Registrar may require or, as the case may be, permit, whether in any particular case or class of cases or generally; and, without limitation, this paragraph applies to any, and to anything accompanying any, application, statement, consent, declaration or signature.

(2) Accordingly, where under the provisions of this Law any information or document is required to be in such form or to be served by such means, or anything is required to be done in such manner, as (in whatever words) the Registrar may require, the Registrar may, without limitation, require the information or document to be in or, as the case may be, to be served, or the thing to be done, by electronic means.

(3) This paragraph is without prejudice to –

- (a) paragraph 19(9),
- (b) the Electronic Transactions (Guernsey) Law, 2000ⁱ, and
- (c) any regulations of the Registrar in relation to the practice and procedure of the Office of Registrar.

Recovery of fees and financial penalties.

21. A fee or financial penalty which may be imposed under the provisions of this Law shall be recoverable from the person on whom they are imposed as a civil debt.

Resident agent requests.

22. If a resident agent requests information [under Schedule 1A] and, on receipt of such request, the Council refuses to provide the resident agent with the

ⁱ Order in Council No. VIII of 2000.

information requested then –

- (a) the agent may apply to Registrar to be removed as resident agent, and
- (b) the Registrar on receipt of such application must, if satisfied that it is properly made –
 - (i) grant the application, on one month's notice to the Council, and
 - (ii) if no other resident agent is appointed –
 - (A) the Registrar may impose such financial penalty as may be prescribed for these purposes by regulations of the [Committee],
 - (B) an application may be made to the Royal Court under paragraph 24(1)(i) of Schedule 2, by any person mentioned in section 42(2), and
 - (C) if regulations made by the [Committee] under paragraph 30 of Schedule 2 so provide, the foundation may be struck off the Register.

Power to make regulations.

23. Without prejudice to paragraphs 7(6), 7(7) and 10(2), 22, the [Committee] may, after consultation with the Registrar, make regulations amending

the provisions of this Schedule.

NOTES

In Schedule 1,

first, paragraph 7(3)(f) and, second, the words, figure and letter in square brackets in paragraph 22 were substituted by the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, respectively section 21(6) and section 21(7), with effect from 15th August, 2017;

the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The following Regulations have been made under Schedule 1:

*Foundations (Guernsey) (Fees) Regulations, 2013;
Foundations (Annual Renewal) (Guernsey) Regulations, 2014;
Foundations (Guernsey) (Strike Off) Regulations, 2014;
Foundations (Annual Renewal) (Amendment) Regulations, 2017;
Foundations (Annual Renewal) (Amendment) Regulations, 2020.*

In accordance with the provisions of the Companies (Registrar) (Credit Arrangements) Regulations, 2015, regulation 1(b)(i), with effect from 18th December, 2015 and for the avoidance of doubt, for the purposes of paragraph 3(2) of this Schedule, the 2015 Regulations apply mutatis mutandis to the Registrar's functions conferred by or under this Law.

[SCHEDULE 1A
RESIDENT AGENTS

Resident agents.

1. (1) Subject to subparagraph (2), every foundation shall have a resident agent who is either –

- (a) an individual, resident in Guernsey, who is a foundation official, or
- (b) a corporate services provider.

(2) A foundation is exempted from the requirement contained in subparagraph (1) to have a resident agent if the foundation is a member of a class of foundations prescribed for this purpose by the Committee.

(3) A resident agent may request copies of –

- (a) the records of the foundation, and
- (b) any other information or documents necessary for the resident agent to comply with his duties as a licensed fiduciary,

at any time, by making a request in writing to the Council (see Schedule 1, paragraph 23 and see also section 22).

(4) The Committee may, by regulations, amend this paragraph.

Record of resident agent.

2. (1) A foundation shall keep a record of its resident agent, which shall comprise –

(a) in the case of a resident agent who is an individual, his name,

(b) otherwise, the resident agent's –

(i) corporate or firm name, and

(ii) address.

(2) A foundation must, within 14 days after the date of the occurrence of –

(a) any change in its resident agent, or

(b) any change in the details contained in its record of resident agent,

give notice to the Registrar of the change and of the date on which it occurred.

(3) A foundation which fails to comply with subparagraph (1) or (2) is guilty of an offence.

Duties of resident agent on registration.

3. (1) Before an application is made for the registration of a foundation the proposed first resident agent must take reasonable steps to ascertain the identity of the beneficial owners in relation to that foundation, and when such an application is made he must –

- (a) provide a statement of the required particulars of the beneficial owners in relation to the foundation (or, if no beneficial owners have been identified by the resident agent, a statement to that effect) to the Registrar of Beneficial Ownership,
- (b) take reasonable steps to verify the information in the statement, and provide with the statement a statement that the resident agent has taken reasonable steps to verify that information, and
- (c) serve copies of the statements on –
 - (i) the foundation, and
 - (ii) upon request, the proposed first foundation officials.

(2) In this paragraph, "**required particulars**" has the meaning given in section 10 of the Beneficial Ownership Law.

Restriction of interests for failure to disclose beneficial ownership.

4. (1) This paragraph applies when, in the opinion of the resident agent of a foundation, a beneficiary of the foundation or a beneficial owner in relation to the foundation has –

- (a) failed, without reasonable excuse, to comply with a notice served under section 9 or 11 of the Beneficial Ownership Law within the time specified in it,

- (b) failed, without reasonable excuse, to comply with the duty under section 15(2) or 16(2) of the Beneficial Ownership Law (in circumstances where those sections apply), or
- (c) made a statement under those sections which is false, deceptive or misleading in a material particular.

(2) This paragraph also applies when, in the opinion of the Registrar of Beneficial Ownership, a beneficiary of a foundation or a beneficial owner in relation to a foundation has failed to comply with a requirement of the Registrar of Beneficial Ownership under paragraph 4 of Schedule 2 to the Beneficial Ownership Law to produce information, or has made a statement under that paragraph which is false, deceptive or misleading in a material particular.

(3) When this paragraph applies by virtue of subparagraph (1), the resident agent must as soon as reasonably practicable notify the Registrar of the opinion referred to in subparagraph (1), and when this paragraph applies by virtue of subparagraph (2), the Registrar of Beneficial Ownership may notify the Registrar of the failure referred to in subparagraph (2); and a resident agent who fails to comply with a duty under this subparagraph is guilty of an offence.

(4) On the Registrar receiving a notification under subparagraph (3), or when he otherwise has reasonable grounds for believing that a member or beneficial owner has failed to comply with an obligation or duty under the Beneficial Ownership Law or has made a statement which is false, deceptive or misleading in a material particular in purported compliance with such an obligation or duty (whether he has reasonable grounds for that belief because he has received relevant information from the Commission or for some other reason), the Registrar may place such restrictions as he thinks fit on rights attaching to the relevant beneficiary's interest in the foundation; and a foundation which fails to comply with or give effect to

restrictions placed on rights attaching to beneficiary's interest under this subparagraph is guilty of an offence.

(5) For the avoidance of doubt, when the Registrar places restrictions on a beneficiary's interests under subparagraph (4) he must notify the beneficiary and the foundation.

(6) Any restriction under subparagraph (4) is removed if the foundation is terminated.

(7) A beneficiary may apply to the Royal Court to set aside any restriction under subparagraph (4).

(8) The Royal Court shall not hear an application under subparagraph (7) unless satisfied that the foundation has been notified of the date and time of the hearing.

(9) The Royal Court may make an order on such terms and conditions as it thinks fit on an application under subparagraph (7).

(10) For the avoidance of doubt, this paragraph is without prejudice to the powers and duties of resident agents under the Beneficial Ownership Law.

Disclosure of beneficial ownership information by resident agent.

5. (1) The resident agent shall, on receipt of a certificate described in subparagraph (2), disclose to (as the case may be) –

(a) Her Majesty's Procureur,

(b) the Commission,

- (c) a police officer, or
- (d) a customs officer,

any information required by that person which the resident agent is required to hold by virtue of his obligations under this Schedule and any other information he holds in respect of the beneficial ownership of a foundation.

(2) The certificate referred to in subparagraph (1) is a certificate signed by –

- (a) Her Majesty's Procureur,
- (b) the Director General of the Guernsey Financial Services Commission,
- (c) the Chief Officer of the salaried police force of the Island of Guernsey, or
- (d) the Chief Officer of Customs and Excise,

(as the case may be) or any person appointed by any of them for that purpose.

(3) The certificate shall state –

- (a) what information is required,
- (b) that the information is required for the purpose of –
 - (i) any criminal or regulatory investigation which is being or may be carried out, whether in

Guernsey or elsewhere,

- (ii) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,
 - (iii) the initiation or bringing to an end of any such investigation or proceedings, or
 - (iv) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end, and
- (c) that the person signing it has satisfied himself that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) Nothing in this paragraph prejudices any power to disclose information which exists apart from this paragraph.

(5) The information that may be disclosed by virtue of this paragraph includes information obtained before this Law came into force.

(6) A resident agent who without reasonable excuse –

- (a) fails to comply with this paragraph, or
- (b) makes a statement, in response to a certificate under this paragraph, which is misleading in a material particular, false or deceptive,

is guilty of an offence.

Tipping off.

6. (1) A resident agent is guilty of an offence if he knows or suspects that a certificate has been issued, or is proposed to be issued, under paragraph 5 in respect of a foundation for which he is a resident agent, and he discloses to any person information or any other matter which may prejudice –

- (a) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere, or
- (b) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,

which are connected with the issue of that certificate.

(2) Nothing in subparagraph (1) makes it an offence for an Advocate or other legal adviser to disclose any information or other matter –

- (a) to, or to a representative of, a client of his in connection with the giving by him of legal advice to the client, or
- (b) to any person –
 - (i) in contemplation of or in connection with legal proceedings, and
 - (ii) for the purpose of those proceedings.

(3) Subparagraph (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under this paragraph, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in subparagraph (1).

Privileged information.

7. (1) Nothing in this Schedule compels the production or divulgence by an Advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003), but an Advocate or other legal adviser may be required to give the name and address of any client.

(2) A requirement imposed by or under this Schedule has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.]

NOTES

Schedule 1A was inserted by the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, section 21(8), Schedule 3, with effect from 15th August, 2017.²

The following Regulations have been made under Schedule 1A:

Foundations (Investment Schemes) (Exemption) Regulations, 2017.

MIGRATION, REVOCATION, WINDING UP AND TERMINATION

PART I

MIGRATION

Registration of overseas foundation as a Guernsey foundation

Overseas foundation may be registered as Guernsey foundation.

1. (1) An overseas foundation may apply to the Registrar to be registered as a Guernsey foundation in accordance with the provisions of this Part.

(2) In this Part –

"**overseas foundation**" means a foundation with legal personality currently established under the law of any place outside Guernsey,

"**place**" includes a district or territory,

"**registered as a Guernsey foundation**" means –

- (a) ceasing to be registered as a foundation in the place in which it was established or where it is now registered, and
- (b) becoming registered as a foundation in the Register,

and "**registration**" as a Guernsey foundation shall be construed accordingly.

Registration must be authorised by foreign law.

2. An overseas foundation cannot be registered as a Guernsey foundation unless –

- (a) the foundation is able under the law of place in which it is currently established to be registered as a Guernsey foundation, and
- (b) the foundation has complied with the requirements of that law in relation to its registration as a Guernsey foundation.

Foundation cannot be bankrupt, etc.

3. An overseas foundation cannot be registered as a Guernsey foundation if –

- (a) the foundation is bankrupt or is otherwise being wound up,
- (b) a liquidator, receiver or administrator has been appointed, in relation to any property of the foundation,
- (c) an application has been made to a court, whether in Guernsey or elsewhere –
 - (i) to put the foundation into bankruptcy or to have it declared bankrupt,
 - (ii) to have the foundation wound up,
 - (iii) for the approval of a composition, compromise

or arrangement with creditors has been entered into in respect of it whereby its creditors will receive less than 100 pence in the pound, or

- (iv) for the appointment of a liquidator, receiver or administrator in relation to any property of the foundation,

and (in each case) the application has not been finally disposed of.

Application for registration as a Guernsey foundation.

4. (1) An application for registration as a Guernsey foundation shall be made to the Registrar.

(2) The application shall be in a form specified by the Registrar and shall include or be accompanied by –

- (a) the migration details (see paragraph 5),
- (b) such other information and documents, verified in such manner, as the Registrar may require,
- (c) a declaration of compliance (see paragraph 16), and
- (d) such fee as may be specified by the Registrar.

(3) The application may propose the date on which registration as a Guernsey foundation shall take effect, provided that that date is not later than 3 months after the date of the application.

(4) An application for registration as a Guernsey foundation may

only be made by a Guernsey licensed fiduciary.

Migration details.

5. (1) In this Part "**migration details**" means –
- (a) a copy of the foundation's certificate of establishment (if any) in the place in which it is currently established,
 - (b) a copy of the Charter which is to be binding on the foundation immediately after its registration in Guernsey, which must comply with the requirements of section 4 of this Law, together with, if different, a copy of the foundation's current Charter or equivalent document,
 - (c) a statement of the foundation's current foundation officials (see subparagraph (2)),
 - (d) a statement of the address of the foundation's registered office in the place in which it is currently established and as proposed in Guernsey,
 - (e) the proposed name under which the foundation is to be registered in Guernsey, which name shall comply with Schedule 1, paragraph 1,
 - (f) all other information and documents –
 - (i) that would be required to be filed under paragraph 7(3) of Schedule 1 from a person wishing to effect the registration of a

foundation, and

- (ii) as the Registrar may require,
- (g) evidence acceptable to the Registrar that –
 - (i) the foundation is not prohibited from being registered in Guernsey by paragraph 2 (registration must be authorised by foreign law) or 3 (foundation cannot be bankrupt),
 - (ii) on the date of registration, the foundation will cease to be established and registered under the law of any place outside Guernsey, and
 - (iii) the foundation has legal personality in the place in which it is established or registered.

(2) The statement of the foundation's current foundation officials shall comprise the full name of every foundation official and his address (being, in the case of a body corporate or a partnership, the address of its registered office or, if none, its principal office).

Effect of registration.

6. (1) Upon receipt of the application for registration as a Guernsey foundation under this Part –

- (a) the Registrar shall register the foundation in the Register by –
 - (i) inscribing its name therein, and

- (ii) allocating a registration number to the foundation,
- (b) subject to the provisions of this Part, the foundation shall be treated in all respects as a foundation established under this Law,
- (c) the Registrar shall issue a certificate of registration in respect of the foundation which shall –
 - (i) contain the matters detailed in Schedule 1, paragraph 8,
 - (ii) state the date on which the foundation was first established (in addition to the date on which it was established in Guernsey),
 - (iii) detail the place(s) in which the foundation was previously registered,
 - (iv) detail the name(s) with which the foundation was previously registered, and
 - (v) be conclusive evidence that the foundation is duly registered.

(2) If the application proposed a date on which registration as a Guernsey foundation was to have effect which date postdates the date of issue of the certificate of registration, then the foundation shall be established and registered as a Guernsey foundation on (and the date stated on the certificate shall be) the proposed

date.

Cancellation of registration.

7. (1) Where an overseas foundation is registered as a Guernsey foundation under this Part, the foundation shall, as soon as possible, file with the Registrar any certificate or other document issued under the law of the place in which the foundation has ceased to be established and registered evidencing the fact that the foundation has ceased to be established and registered under that law.

(2) If the Royal Court is satisfied that –

- (a) an overseas foundation has been registered as a Guernsey foundation pursuant to the provisions of this Part, and
- (b) the foundation continues to be established or registered under the law of any place outside Guernsey,

the Court may, in its absolute discretion on the application of –

- (i) the foundation or any of its participants or creditors, or
- (ii) the Registrar,

make an order for the removal of the foundation's name from the Register.

(3) An order under subparagraph (2) may be made subject to such terms and conditions and such penalty as the Royal Court thinks fit.

(4) On the making of an order under subparagraph (2) the

foundation's registration in Guernsey shall (unless the Court orders otherwise) be void ab initio.

Transfer of registration of foundations to overseas

Foundations may transfer registration.

8. (1) A foundation may apply to the Registrar to be removed from the Register in accordance with the provisions of this Part.

(2) In this Part "**removed from the Register**" means removed from the Register for the purposes of becoming established as a foundation with legal personality under the law of a place outside Guernsey.

Foundations cannot transfer registration without power to do so.

9. A foundation cannot be removed from the Register unless the Constitution permits such removal.

Foundations cannot transfer registration if in bankruptcy, etc.

10. A foundation cannot be removed from the Register if –

- (a) the foundation is bankrupt or is otherwise being wound up,
- (b) a liquidator, receiver or administrator has been appointed, in relation to any property of the foundation,
- (c) an application has been made to a court, whether in Guernsey or elsewhere –
 - (i) to put the foundation into bankruptcy or to have it declared bankrupt,

- (ii) to have the foundation wound up,
- (iii) for the approval of a composition, compromise or arrangement with creditors has been entered into in respect of it whereby its creditors will receive less than 100 pence in the pound, or
- (iv) for the appointment of a liquidator, receiver or administrator in relation to any property of the foundation,

and (in each case) the application has not been finally disposed of.

Foundations cannot transfer registration without giving notice to creditors and participants.

11. A foundation cannot be removed from the Register unless, before it applies to the Registrar under paragraph 12 for removal, it gives written notice to all its creditors and participants stating that it intends to so apply.

Application for transfer of registration.

12. (1) An application for removal from the Register shall be made to the Registrar.

(2) The application shall be in a form prescribed by the Registrar and shall include or be accompanied by –

- (a) confirmation from Her Majesty's Procureur and the [Director of the Revenue Service] that they have no objection to the removal of the foundation from the Register,

- (b) evidence acceptable to the Registrar that –
 - (i) the removal of the foundation from the Register is not prohibited by paragraphs 9 (cannot transfer registration without power to do so), 10 (cannot transfer registration if in bankruptcy) or 11 (cannot transfer registration without giving notice to creditors and participants),
 - (ii) on the date of the removal of the foundation's name from the Register the foundation will be established under the law of the place in question, and
 - (iii) the foundation will continue to have legal personality in accordance with the law of the place in question.
- (c) such other information and documents, verified in such manner, as the Registrar may require,
- (d) a declaration of compliance (see paragraph 16), and
- (e) such fee as may be specified by the Registrar.

(3) Upon receipt of the documents specified in subparagraph (2), the Registrar shall give notice of the proposed transfer in such manner and for such period as he thinks fit.

(4) An application for removal from the Register may only be

made by a Guernsey licensed fiduciary.

Effect of transfer.

13. Not less than 28 days after the day on which the Registrar gave notice under paragraph 12(3) –

- (a) any statement in the foundation's Constitution that its registered office is situated in Guernsey shall be deleted,
- (b) the foundation's name shall be removed from the Register,
- (c) the foundation shall thereupon cease to be a Guernsey foundation,
- (d) the Registrar shall file in the Register a notice stating that the foundation's name has, pursuant to the provisions of this paragraph, been removed from the Register for the purpose of the foundation becoming established under the law of the place specified in the notice, and
- (e) the Registrar shall publish the fact that the foundation has been removed from the Register in such manner and for such period as he thinks fit.

Cancellation of transfer.

14. (1) Where a foundation is removed from the Register under this Part, the foundation shall, as soon as possible, file with the Registrar any certificate or other document issued under the law of the place in which the foundation has become

established evidencing the fact that the foundation has become established under the law thereof.

- (2) If the Royal Court is satisfied that –
 - (a) a foundation's name has been removed from the Register pursuant to the provisions of this Part, and
 - (b) the foundation has not become established under the law of any place outside Guernsey,

the Court may, in its absolute discretion on the application of –

- (i) the foundation or any of its participants or creditors, or
- (ii) the Registrar,

make an order for the restoration of the foundation's name to the Register.

(3) An order under subparagraph (2) may be made subject to such terms and conditions and such penalty as the Court thinks fit.

(4) On the making of an order under subparagraph (2) the removal of the foundation's name from the Register shall (unless the Court otherwise orders) be void ab initio.

Power of Royal Court to make orders as to transfer of registration.

15. (1) If the Royal Court is satisfied that the removal of a foundation from the Register under paragraph 13 (effect of transfer) would unfairly prejudice a participant or creditor of the foundation or any other person to whom the foundation

is under any obligation or liability, the Court may, on the application of that person made at any time before the date on which the removal of the foundation takes place, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the removal, including, without prejudice to the generality of the foregoing, an order –

- (a) directing that the removal of the foundation shall not take place, or shall only take place subject to such terms and conditions as the Court thinks fit,
- (b) modifying the proposal for the removal of the foundation in such manner as may be specified in the order,
- (c) directing the foundation or its councillors to reconsider the proposal for the removal of the foundation or any part of the proposal.

(2) An order under subparagraph (1) may be made subject to such terms and conditions and such penalty as the Court thinks fit.

General

Declaration of compliance.

16. (1) A "**declaration of compliance**" is a declaration, signed by the person making the application under paragraph 4 or 12, as the case may be, that all the requirements of this Part in respect of registration as a Guernsey foundation, or the removal of a foundation from the Register, as the case may be, have been fulfilled.

(2) The Registrar, when performing his functions under this Part,

may rely upon a declaration of compliance in all respects and accordingly is not bound to enquire further as to whether, in relation to an application for registration as a Guernsey foundation, or an application for the removal of a foundation from the Register, as the case may be, the provisions of this Part have been complied with.

Documents in a language other than English.

17. Where a document provided to the Registrar under this Part is not in English, a translation of it in English verified or certified in such manner as the Registrar may require must also be provided, unless the Registrar waives this requirement.

Registration or transfer not to prejudice continuity of foundation's existence.

18. (1) Registration as a Guernsey foundation under this Part or removal of a foundation from the Register under this Part does not prejudice or affect the identity or continuity of the foundation's legal personality which shall be uninterrupted by the process of transfer.

(2) For the avoidance of doubt, upon registration as a Guernsey foundation or removal from the Register –

- (a) all property and rights to which the foundation was entitled immediately before registration or removal remain its property and rights,
- (b) the foundation remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject immediately before registration or removal,
- (c) all actions and other legal proceedings which immediately before registration or removal could have

been instituted or continued by or against the foundation may be instituted or continued by or against it after registration or removal, and

- (d) a conviction, ruling, order or judgment in favour of or against the foundation before registration or removal may be enforced by or against it after registration or removal.

Terminology used in other jurisdictions.

19. References in this Part to foundations, foundation officials, participants, certificates of establishment, liquidations or any other matter concerning a foundation include references to their equivalents in the law of the place outside Guernsey from which or to which a foundation is migrating.

PART II

Revocation and variation

Revocation or variation of powers.

20. (1) Subject to section 11, the terms of the Constitution may provide that any power or exercise of a power under the Constitution may be capable of –

- (a) revocation, in whole or in part, or
- (b) variation.

(2) No revocation or variation prejudices anything lawfully done by a foundation official in relation to the foundation before he receives notice of the revocation or variation.

Variation of terms of Constitution on application to Royal Court.

21. (1) The Royal Court, on the application of the foundation officials, may approve any arrangement which varies or revokes the terms of the Constitution or enlarges or modifies the powers of management or administration of the Council, if it is satisfied that the arrangement –

- (a) is now suitable or expedient, and
- (b) is consistent with the original intention of the founder and the spirit in which the foundation was established.

(2) The Royal Court may dispense with the consideration set out in subparagraph (1)(b) if satisfied that the original intention of the founder cannot be ascertained.

(3) An application to the Royal Court under subparagraph (1) may only be made upon notice to the participants (see section 30).

PART III

Winding up and termination

Winding up and termination.

22. (1) A foundation is terminated, and accordingly no longer exists or has legal personality, only if –

- (a) a winding up event has occurred (see paragraph 23),
- (b) after which, the winding up has been completed and the assets distributed (see paragraphs 25 and 27),
- (c) after which, an application has been submitted to the

Registrar for removal from the Register (see paragraph 28), and

- (d) as a result of which, the Registrar has removed the foundation from the Register.

(2) For the avoidance of doubt, a foundation is only terminated on the date of its removal from the Register in accordance with this Part.

Winding up events.

23. (1) A foundation shall be wound up by the Council on the occurrence of any of the following events ("**winding up events**") –

- (a) the expiry of its duration (if it is limited in duration),
- (b) the happening of any event or the exercise of any power specified in that behalf in the Constitution (including a power exercised under section 11),
- (c) the foundation no longer having any property or assets,
- (d) the bankruptcy of the foundation,
- (e) the completion, failure or lapse of its purpose –
 - (i) by order of the Royal Court, on the application of the councillors or participants, or
 - (ii) with the consent of the participants.
- (f) upon the making by the Royal Court of an order under

paragraph 24(1) (winding up by Royal Court) for the winding up of the foundation.

(2) Subject to the order of the Royal Court, immediately following a winding up event the foundation property shall, be distributed by the Council within a reasonable time in accordance with the provisions of paragraph 27.

Winding up of foundation by Royal Court.

24. (1) The Royal Court may order the winding up of a foundation on the application of any person mentioned in section 42(2) or any creditor thereof if in its opinion –

- (a) it is not reasonably practicable to carry on the foundation in conformity with the Constitution,
- (b) it was established by duress, fraud, mistake, undue influence or misrepresentation or in breach of fiduciary duty,
- (c) it is, or is being conducted in a way that is, immoral or contrary to public policy,
- (d) its terms are so uncertain that its performance is rendered impossible,
- (e) the foundation is bankrupt,
- (f) without prejudice to the generality of paragraph (e), the following conditions are satisfied –
 - (i) the foundation is indebted to a creditor in a sum

exceeding £750 or such other sum as may be prescribed by regulations of the [Committee],

- (ii) the creditor has, by Her Majesty's Sergeant, served a signification on the foundation demanding payment of the debt, and
 - (iii) the foundation does not, within a period of 21 days immediately following the date of service of that demand, pay the debt or give security for it to the creditor's satisfaction,
- (g) there has been, in relation to the foundation, a failure to comply with any provision of an order of the Royal Court under paragraph 1 of Schedule 1 (name of a foundation),
- (h) the guardian or registered agent has been denied access to the documents to which he is entitled under section 22,
- (i) the resident agent has been refused information requested under paragraph 22 of Schedule 1, or there is no resident agent where one is required by [Schedule 1A],
- (j) the affairs of the foundation are being conducted in such a way as to defraud creditors (whether of the foundation or of any other person) or in an unlawful manner,

- (k) there has been persistent default by the foundation in complying with the requirements or conditions imposed by or under the provisions of this Law,
- (l) the founder or councillors have, in connection with the formation or management of the foundation, been guilty of fraud, misfeasance, breach of duty or other misconduct in relation to the foundation, or
- (m) it is just and equitable to do so.

(2) Upon the making of an order under subparagraph (1) for the winding up of a foundation or at any time thereafter, the Royal Court may make such other orders in relation to the winding up as it thinks fit, including one for the appointment of one or more liquidators to wind up the foundation's affairs and distribute its assets, and to apply to the Registrar for removal of the foundation from the Register.

(3) Where an appeal is instituted under against a decision of the Court's order for the winding up of a foundation, the foundation shall not, by reason of the institution of the appeal, be wound up pending the final disposal or withdrawal of the appeal unless the Court before which the appeal is instituted, on the application of the person concerned, orders otherwise; and an order under this subparagraph may be made on such terms and conditions as the Court may direct.

(4) Where an application is made pursuant to subparagraph 1(i), the Court may order that the foundation be struck off the Register instead of being wound up, if it thinks just and equitable to do so in all the circumstances.

General provisions as to winding up of foundations.

25. (1) When a foundation is required to be wound up its affairs shall,

unless a liquidator has been appointed by the Royal Court under paragraph 24(2) or under subparagraph (5), be wound up by the Council, or by a liquidator appointed by the Council.

(2) Within two weeks after the date of the winding up event the Council, liquidator or resident agent, shall –

- (a) give notice to the participants of the winding up, and
- (b) publish notice that the foundation is being wound up in La Gazette Officielle or in such other manner and for such period as the Registrar thinks fit.

(3) From the commencement of the winding up of a foundation no foundation official may, except in accordance with the provisions of paragraph 27 (distribution of assets), claim as a creditor of the foundation.

(4) For the purposes of this Law, the winding up of a foundation is deemed to commence on the earlier of the following –

- (a) the date of the occurrence of the winding up event, or
- (b) the date of the order of the Royal Court under paragraph 24(1) for its winding up.

(5) Upon the commencement of the winding up of a foundation or at any time thereafter, the Royal Court may, on the application of any foundation official, participant, assignee or creditor thereof, make such orders in relation to the winding up as it thinks fit, including one for the appointment of one or more liquidators to wind up the foundation's affairs and distribute its assets.

(6) On the appointment of a liquidator (whether under this paragraph or under paragraph 24) all powers of the foundation officials cease, and a person who purports to exercise any power of a foundation official at a time when, pursuant to this subparagraph, those powers have ceased shall be guilty of an offence.

(7) From the commencement of the winding up of a foundation the foundation shall cease to carry any activities except to the extent necessary for its beneficial winding up, and where in relation to a foundation there is a contravention of this subparagraph, the foundation and each councillor thereof shall be guilty of an offence.

(8) All expenses properly incurred in the winding up of a foundation, including the liquidator's remuneration, are payable from the foundation's assets in priority to all other debts.

(9) From the commencement of the winding up of a foundation, the persons winding up the foundation's affairs, in the name of and for and on behalf of the foundation –

- (a) may, to the extent necessary for the beneficial winding up of the foundation, prosecute, defend or settle any civil or criminal action,
- (b) shall dispose of the foundation's property and realise its assets, and
- (c) shall, in accordance with the provisions of paragraph 27 (distribution of assets) –
 - (i) discharge the foundation's debts, and

- (ii) distribute any remaining assets of the foundation in accordance with the terms of the Constitution.
- (10) As soon as a foundation's affairs are fully wound up –
- (a) the persons who conducted the winding up shall –
 - (i) prepare an account of the winding up, giving details of the conduct thereof and the disposal of the foundation's property, and stating whether or not any state of affairs described in paragraph 26 (personal liability for certain defaults) has come to their attention,
 - (ii) provide all foundation officials with a copy of the said account, and
 - (iii) within a period of seven days beginning on the date of completion of the winding up, file with the Registrar, and publish in La Gazette Officielle or in such other manner and for such period as may be specified by the Registrar, notice of completion of the winding up,
 - (b) the Registrar shall, as soon as is reasonably practicable after such filing, delete the inscription relating to the foundation from the Register, and
 - (c) the foundation's certificate of registration shall thereupon cease to be valid and the foundation shall

thereupon be dissolved.

(11) Where there is a contravention of any provision of subparagraph (10)(a) in relation to a foundation, the persons who conducted the winding up shall each be guilty of an offence.

(12) The persons conducting the winding up of a foundation may seek the Royal Court's directions as to any matter arising in relation to the winding up, and upon such an application the Royal Court may make such order as it thinks fit.

Personal liability for certain defaults in event of bankruptcy.

26. (1) In any case where –
- (a) a foundation has been wound up and is unable to pay its debts, and
 - (b) there has been in relation to the foundation a contravention of any relevant provision which –
 - (i) has contributed to the inability of the foundation to pay its debts,
 - (ii) has materially misled or deceived any foundation official, participant or creditor as to, or has resulted in substantial uncertainty as to, the assets, liabilities or investment instruments of the foundation, or
 - (iii) has substantially impeded the orderly winding up of the foundation's affairs,

any foundation official who is responsible for the contravention shall (without prejudice to any civil liability or order under subparagraph (3)) be guilty of an offence.

(2) In a prosecution for an offence under this paragraph, it shall be a defence for the person charged to show that –

(a) he took all reasonable steps to secure compliance by the foundation with the relevant provisions, or

(b) he had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of or appointed by the foundation officials –

(i) was charged with the duty of ensuring that those provisions were complied with, and

(ii) was in a position to discharge that duty.

(3) In any case where the circumstances set out in subparagraph (1)(a) and (b) exist, the Royal Court may, on the application of any creditor, foundation official, participant or person conducting the winding up of the foundation, declare that the foundation official who is responsible for the contravention detailed in subparagraph (1)(b) shall be personally liable, without limitation of liability, for the debts of the foundation or such part thereof as may be specified by the Royal Court.

(4) Where the Royal Court makes a declaration under subparagraph (3) in relation to any person, it may –

- (a) give such directions as it thinks fit for the purpose of giving effect to the declaration, and
- (b) direct that the liability of that person under the declaration shall be a charge on –
 - (i) any debt due from the foundation to him, to any person on his behalf, to any person claiming as assignee from or through him or to any person acting on behalf of such an assignee, or
 - (ii) any charge on any foundation assets or any interest in any such charge held by or vested in him or any such person,

and the Court may also from time to time make such further orders as it thinks fit for the purpose of giving effect to any charge imposed under this subparagraph.

(5) In subparagraph (4) the expression "**assignee**" includes any person to whom or in whose favour, by the directions of the person liable, the debt, charge or interest was created, issued or transferred but does not include an assignee for valuable consideration given in good faith and without notice of any of the grounds upon which the declaration might have been made.

(6) The Royal Court shall not make a declaration under subparagraph (3) in respect of a person if it considers that –

- (a) he took all reasonable steps to secure compliance by the foundation with the relevant provisions, or

(b) he had reasonable grounds for believing and did believe that a competent and reliable person, acting under the supervision or control of or appointed by the councillors –

(i) was charged with the duty of ensuring that those provisions were complied with, and

(ii) was in a position to discharge that duty.

(7) Subparagraphs (3), (4), (5) and (6) are without prejudice to any other penalty, remedy or proceedings, whether civil or criminal, in respect of the contravention.

(8) For the purposes of this paragraph –

(a) the expression "**relevant provision**" means any provision of section 22 and any other provision for the time being prescribed by regulations of the [Committee], and

(b) a person shall be considered to be responsible for a contravention of a relevant provision if the contravention –

(i) was committed with his consent or connivance, or

(ii) was attributable to or facilitated by any neglect on his part.

Distribution of assets upon winding up.

27. Upon the winding up of a foundation, the assets shall be distributed in the following order –

- (a) firstly, to creditors other than foundation officials, participants or disenfranchised beneficiaries, to the extent otherwise permitted by law, in satisfaction of the foundation's debts,
- (b) secondly, to foundation officials, participants or disenfranchised beneficiaries who are creditors, to the extent otherwise permitted by law, in satisfaction of the foundation's debts,
- (c) finally, subject to the provisions of the Constitution, to the default recipient (see section 6).

Removal from Register.

28. (1) Following the winding up of a foundation and distribution of the assets in accordance with this Part an application for removal from the Register shall be submitted to the Registrar.

- (2) An application for removal from the Register must –
 - (a) state the winding up event that led to the winding up of the foundation,
 - (b) confirm that the winding up process had been completed in accordance with this Part,
 - (c) be provided by the Council, liquidator or resident agent,

or such other person as the Registrar may allow and,

- (d) contain any further information that the Registrar may require.
- (3) If the conditions of subparagraph (2) are satisfied then –
- (a) the foundation's name shall be removed from the Register,
 - (b) the foundation shall cease to exist and to have legal personality,
 - (c) the Registrar shall file in the Register a notice stating that the foundation's name has, pursuant to the provisions of this paragraph, been removed from the Register by virtue of its termination, and
 - (d) the Registrar shall publish the fact that the foundation has been terminated and removed from the Register in such manner and for such period as he thinks fit.

Reinstatement of foundations following order for winding up of foundation.

29. (1) Where a foundation has been removed from the Register under paragraph 28 as a result of an administrative error, the Registrar may reinstate it to the Register, on the application of any foundation official, participant or creditor thereof if –

- (a) the application is made within 6 months of the date of removal, or

- (b) within such greater time as the Registrar may allow, if he is satisfied that it was not possible for the application to be brought within time.

(2) Where the Register refuses, or is unable, to reinstate a foundation to the Register the Royal Court may, in its absolute discretion and on such terms and conditions as it thinks fit, on an application by or on behalf of the any person mentioned in section 42(2), by order authorise the reinstatement of a foundation to the Register, if –

- (a) the application is made within 6 months of the removal, or
- (b) within such greater time as the Court may allow, if it is satisfied that it was not possible for the application to be brought within time, and
- (c) if it thinks it just and equitable to do so in all the circumstances.

(3) An order under subparagraph (2) may contain such directions and make such provision as the Court thinks fit for placing the foundation and all other persons in the same position as nearly as may be as if the foundation had not been terminated, and, without prejudice to the generality of the foregoing, including provision for the return of the foundation's property, which may include any property (or the value thereof) which vested in the Crown upon termination.

(4) The reinstatement of a foundation's name pursuant to an order under subparagraph (2) shall, unless the Court otherwise directs, and without prejudice to any other term of the order, be conditional upon the payment by the applicant to the Registrar of –

- (a) all sums which would have been payable by the foundation if it had not been dissolved, and
- (b) any costs incurred by Registrar, if appropriate.

(5) Upon the restoration of a foundation's name in accordance with this paragraph, the foundation shall be deemed to have continued in existence.

Power to make regulations.

30. The [Committee] may, after consultation with the Registrar, make regulations –

- (a) amending the provisions of Parts II and III of this Schedule, and
- (b) making such provision for the striking off from the Register of foundations as the [Committee] thinks fit, including (without limitation) provision as to –
 - (i) the circumstances in which, and grounds upon which, a foundation may be struck off, whether on the application of the foundation or any other person or body or of the Registrar's own motion,
 - (ii) the circumstances in which –
 - (A) a foundation may not be struck off, or
 - (B) an application for striking off may not be made,

- (iii) the procedure to be followed by the Registrar and any other person or body in respect of striking off, including procedure preliminary to and consequential upon striking off,
- (iv) the consequences of striking off,
- (v) the giving and publication of notice of striking off and other prescribed matters,
- (vi) the making of representations in respect of striking off,
- (vii) the information, documents and evidence to be provided in support of striking off or applications therefor,
- (viii) the payment and recovery of costs in respect of striking off,
- (ix) the payment and recovery of fees, penalties, other sums, and interest thereon in respect of striking off or prior defaults,
- (x) the devolution of the foundation's property, rights, assets, debts, obligations and liabilities on striking off,
- (xi) the respective functions of the Court and the Registrar in respect of striking off,

- (xii) restoration to the Register and matters corresponding to those set out in subparagraphs (i) to (xi) in respect of striking off, and
- (xiii) ancillary matters.

NOTES

In Schedule 2,

the words in square brackets in paragraph 12 were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance;

the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016;

the word, figure and letter in square brackets in paragraph 24(1)(i) were substituted by the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, section 21(9), with effect from 15th August, 2017.

The following Regulations have been made under Schedule 2:

*Foundations (Guernsey) (Fees) Regulations, 2013;
Foundations (Guernsey) (Strike Off) Regulations, 2014.*

1 Prior to its substitution, section 12 was amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

2 Prior to its substitution, section 12 was amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.