

GUERNSEY STATUTORY INSTRUMENT

2014 No. 9

**The Foundations (Guernsey)  
(Strike Off) Regulations, 2014**

<i>Made</i>	<i>18<sup>th</sup> March, 2014</i>
<i>Coming into operation</i>	<i>18<sup>th</sup> March, 2014</i>
<i>Laid before the States</i>	<i>, 2014</i>

**THE COMMERCE AND EMPLOYMENT DEPARTMENT**, in exercise of the powers conferred upon it by section 51 of, and paragraph 22 of Schedule 1 and paragraph 30 of Schedule 2, to the Foundations (Guernsey) Law, 2012<sup>a</sup> ("**the Law**"), and all other powers enabling it in that behalf, hereby makes the following regulations:-

**Strike-off: general.**

1. A Guernsey foundation may be struck off the Register -
  - (a) by the Court, in accordance with paragraph 24(4) of Schedule 2 of the Law, or
  - (b) by the Registrar, in accordance with these regulations.

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<sup>a</sup> Order in Council No I of 2013.

**Strike-off by Registrar: grounds.**

2. (1) The Registrar may strike a Guernsey foundation off the Register -

(a) where, in his opinion -

(i) the foundation is no longer active, or

(ii) the foundation has persistently failed to comply with the Law, or

(b) where -

(i) an application has been made in accordance with these regulations, on behalf of the foundation, to strike the foundation off the Register, and

(ii) at the expiration of the period mentioned in regulation 4, the Registrar is not aware of any good reason why the foundation should not be struck off.

(2) In considering whether a foundation is no longer active, the Registrar may take into account, *inter alia* -

(a) if any post sent to the registered office has been returned as undelivered, and

- (b) if the foundation has failed to submit any documents or information to the Registrar.

(3) In considering whether a foundation has persistently failed to comply with the Law, the Registrar may take into account, *inter alia*, -

- (a) if, for a period of more than 6 months, the number of councillors is less than the number required by section 9 of the Law,
- (b) if, for a period of more than 6 months, there is no guardian, where one is required by section 10 of the Law,
- (c) if, for a period of more than 6 months, there is no resident agent, where one is required by section 12 of the Law,
- (d) whether the Registrar has received any request for the resident agent to be removed, in accordance with paragraph 22 of Schedule 1 of the Law,
- (e) if, for a period of more than 6 months, any annual renewal due under the Foundations (Guernsey) (Annual Renewal) Regulations, 2013 remains outstanding,
- (f) if, for a period of more than 6 months, any fees due under the Foundations (Fees) (Guernsey) Regulations,

2013<sup>b</sup> remain outstanding, or

- (g) if the foundation appears to be pursuing a commercial purpose contrary to section 7 of the Law.

**Strike-off by the Registrar under 2(1)(a): procedure.**

3. (1) Where the Registrar has determined that a Guernsey foundation should be struck off in accordance with regulation 2(1)(a), the Registrar must send a letter to the registered office of the foundation notifying the foundation of the intention to strike it off the Register.

(2) If, following the letter sent under paragraph (1), -

- (a) a response is received which demonstrates, to the satisfaction of the Registrar, that the foundation should not be struck off, and includes payment of any fees and penalties due, then the Registrar shall discontinue the strike off process,
- (b) if no satisfactory response is received, the Registrar must -
  - (i) send a further letter to the registered office, by registered post, confirming the intention to strike off, and
  - (ii) publish notice of the intention to strike off in Part A of the Register and shall additionally

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<sup>b</sup> G.S.I. No. 1 of 2013.

publish the fact that the foundation is to be struck off and removed from the Register in such manner, and for such period, as he thinks fit.

(3) If, following the publication of the notice of the intention to strike off under paragraph (2) -

(a) a response is received -

(i) by or on behalf of the foundation which demonstrates, to the satisfaction of the Registrar, that the foundation should not be struck off, and includes payment of any fees and penalties due, the Registrar shall discontinue the strike off process,

(ii) by or on behalf of any creditors or participants of the foundation which demonstrates, to the satisfaction of the Registrar, that it would be inequitable to strike the foundation off, the Registrar may proceed with, suspend, or discontinue the strike off process, as he considers fit, or

(b) no satisfactory response is received as to why the foundation should not be struck off, the Registrar must strike the foundation off the Register, following the expiration of 2 months from the date of publication of

the notice of the intention to strike off (under paragraph(2)(b)(ii)).

(4) If, under subparagraph (3)(a)(ii), the Registrar decides to suspend the strike off process, then the Registrar shall -

(a) notify the foundation, and any interested person, in writing -

(i) of the decision to suspend, and

(ii) the time at which the suspension is to be reviewed or lifted,

and,

(b) give the foundation and any interested person 2 month's notice of the decision to end the suspension, after which -

(i) the foundation may be struck off the Register, or,

(ii) the strike-off process may be discontinued,

as the Registrar considers fit.

(5) If, under the provisions of this regulation, the Registrar has decided to discontinue the strike off process, the Registrar shall notify the foundation in writing of the same.

**Strike-off by Registrar under 2(1)(b): procedure.**

4. (1) An application for the purposes of regulation 2(1)(b) may be made by the Council or guardian, in such form as the Registrar may require,

(2) The application -

(a) must be accompanied by a declaration of compliance, and

(b) contain such information as may be required by the Registrar.

(3) Upon receipt of an application under this regulation, the Registrar must give notice stating that, at the expiration of a period of 2 months beginning with the date of the notice, the foundation will be struck off the Register, unless cause is previously shown to the contrary.

(4) A notice given under subsection (3) shall be published in such manner and for such period as the Registrar thinks fit.

(5) At the expiration of the period mentioned in subsection (3) the Registrar shall, unless cause to the contrary has been shown, strike the foundation off the Register.

**Circumstances in which application not to be made.**

5. An application under regulation 4 cannot be made if -

(a) at any time in the 3 months preceding the date of the application, the foundation has changed its name,

- (b) the foundation is a party to any legal proceedings,
- (c) an application to strike off has been made in accordance with paragraph 24(4) of Schedule 2 of the Law,
- (d) the foundation is bankrupt, or
- (e) the foundation has outstanding debts or liabilities.

**Declaration of compliance.**

6. (1) A "**declaration of compliance**" is a declaration, signed by the person making the application under regulation 4, that -

- (a) none of the circumstances set out in regulation 5 applies, and
- (b) all the requirements of these regulations in respect of the striking off of a Guernsey foundation have been fulfilled.

(2) The Registrar, when performing his functions under these regulations, 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 striking off a Guernsey foundation, the provisions of these regulations have been complied with.

**Strike-off by Registrar: consequences.**

7. When the Registrar strikes a foundation off the Register -

- (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 strike off,
- (d) the Registrar shall publish the fact that the foundation has been struck off and removed from the Register in such manner and for such period as he thinks fit, and
- (e) the assets of the foundation, if any, shall belong to the default recipient.

**Restoration to the Register: general.**

8. Where a foundation has been struck off the Register it may be restored to the Register -

- (a) by the Court in accordance with regulation 9, or
- (b) by the Registrar, in accordance with regulation 10.

**Restoration to the Register: by the Court.**

9. (1) The Court may order that a foundation be restored to the register -

- (a) on the application of any person described in section 42(2) of the Law,
- (b) made within 5 years of the date of the decision to strike off, or within 2 months of the date of the Registrar's decision not to administratively restore the foundation to the Register under regulation 10, whichever is the later, and
- (c) provided notice is given to the participants, foundation officials, resident agent and default recipient,

if it is just and equitable to do so, in particular, taking into account the position of the default recipient.

(2) Prior to making an order under paragraph (1) the Court must be satisfied that it has adequate evidence of -

- (a) the registration and strike off of the foundation,
- (b) if possible, an explanation as to reasons for the strike off, and
- (c) the reason(s) restoration is sought.

(3) If the Court makes an order under paragraph (1) -

(a) it may make such order for costs, as it considers appropriate in accordance with section 44 of the Law, having regard also to the appropriateness of compensating the default recipient or Registrar for any losses that they may have suffered as a result of the application,

(b) it may direct that -

(i) any documents or information outstanding in respect of the Register at the time of strike off be filed, and

(ii) any fees or penalties owing to the Registrar at the time of strike off be paid (including any fees or penalties that would have been imposed had any documents outstanding at the time of strike off been filed prior to strike off),

as a precondition for the order to take effect,

(c) it may direct that the foundation be restored to the Register under the same name, or a different name if the previous name of the foundation is no longer available,

(d) it may make provision for any assets passed to the default recipient on strike off to be returned to the foundation by the default recipient, and

- (e) it shall direct the applicant to serve the Order upon the Registrar, for the Registrar to register the foundation accordingly.

**Restoration to the Register: by the Registrar.**

- 10. (1) The Registrar may restore a foundation to the register -
  - (a) on the application of the Council, guardian or resident agent, in such form as the Registrar may require,
  - (b) made -
    - (i) within 5 years of the date of strike off,
    - (ii) with the consent of the default recipient,and
  - (c) provided that -
    - (i) evidence is given of notice of the application having been given to the participants,
    - (ii) any documents or information outstanding in respect of the Register at the time of strike off are provided,
    - (iii) any fees or penalties owing to the Registrar at the time of strike off are paid (including any

fees or penalties that would have been imposed had any documents outstanding at the time of strike off been filed prior to strike off),

- (iv) an explanation is given to the Registrar of the reasons for strike off and for restoration,
- (v) the Registrar has consulted with Her Majesty's Procureur and the Guernsey Financial Services Commission, and
- (vi) payment is made of a fee equivalent to the amount of the fee payable under the Foundations (Fees) (Guernsey) Regulations, 2013 in connection with an application for reinstatement under paragraph 29 of Schedule 2 to the Law.

if the Registrar considers it appropriate to do so.

(2) If the Registrar decides, under paragraph (1), to restore a foundation to the Register, the Registrar -

- (a) must -
  - (i) make the appropriate entry on the Register, and
  - (ii) notify the applicant of that decision in writing, within 5 days of the date of the decision,

and

- (b) upon notice to the applicant, may restore the foundation to the Register under a different name if the previous name of the foundation is no longer available.

(3) If the Registrar decides, under paragraph (1), not to restore a foundation to the Register -

- (a) the Registrar must notify the applicant of that decision in writing, within 5 days of the date of the decision, and
- (b) the applicant may apply to the Court for restoration within 2 months of the date of that decision under regulation 9.

**Restoration to the Register: effect.**

11. Where a foundation is restored to the Register under regulation 9 or 10 the foundation shall be deemed to have continued in existence as if the strike off had never occurred, and any assets transferred on strike off to the default recipient shall be returned to the foundation, subject to any order of the Court under regulation 9.

**Interpretation.**

12. (1) In these regulations –

**"an interested person"** in the case of a foundation, includes -

- (a) the Council, guardian and resident agent of, and

(b) any person that the Registrar knows or believes to be a creditor of,

that foundation,

**"the Law"** means the Foundations (Guernsey) Law, 2012,

**"the Registrar"** means the Registrar of Foundations,

and other words or expressions have the same meaning as in the Law.

(2) The Interpretation (Guernsey) Law, 1948<sup>c</sup> applies to the interpretation of these regulations as it applies to the interpretation of an enactment.

(3) Any reference in these regulations to an enactment is a reference thereto as from time to time amended, repealed and replaced (with or without modification), extended or applied.

**Citation.**

13. These Regulations may be cited as the Foundations (Guernsey) (Strike Off) Regulations, 2014.

**Commencement.**

14. These Regulations shall come into force on the 18<sup>th</sup> March, 2014.

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<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.

Dated this 18<sup>th</sup> day of March, 2014

A handwritten signature in black ink, appearing to read 'K. Stewart', with a horizontal line drawn through the bottom of the signature.

DEPUTY K. STEWART

Minister of the Commerce and Employment Department  
For and on behalf of the Department

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EXPLANATORY NOTE

*(This note is not part of the regulations)*

These Regulations set out the circumstances in which a foundation may be struck off from the Register of Foundations and the circumstances under which a struck off foundation may be restored to the Register under the Foundations (Guernsey) Law, 2012.

The Regulations come into force on 18<sup>th</sup> March, 2014.