

STATES OF JERSEY



DRAFT FOUNDATIONS (MERGERS) (JERSEY) REGULATIONS 200-

**Lodged au Greffe on 6th October 2009
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT FOUNDATIONS (MERGERS) (JERSEY) REGULATIONS 200-

REPORT

The Foundations (Jersey) Law 2009 (“**the Law**”) was adopted by the States on 22 October 2008 and came into force on 17 July 2009.

The Law introduced a new type of wealth-management vehicle, known as a “foundation”. A foundation is a distinct legal entity like a company, but, unlike a company, it does not have shareholders. It has easily recognised liabilities and accountabilities, and is openly recorded on a public registry in the same way as a company. It holds assets in its own name for the purposes set out in its constitutive documents. For clients and authorities originating in jurisdictions not familiar with the concept of trust, a foundation may be a more acceptable offering.

As well as being used for wealth management and estate planning, foundations may also have applications in more specialized areas, such as long-term charitable aims or securitizations, where it is desirable that property be given to a legal entity and applied for specific purposes. As with companies and trusts, the use of foundations will be subject to compliance with the Commission’s policy on sensitive activities.

Article 56(1) of the Law provides that:

The States may, by Regulations, provide –

- (a) for the dissolution of foundations;
- (b) for the continuance in Jersey as foundations of bodies corporate, whether or not incorporated in Jersey;
- (c) for foundations incorporated in Jersey to be permitted to seek continuance outside Jersey; and
- (d) for the merger of foundations, including the merger of foundations with any bodies corporate, whether or not incorporated in Jersey.

These regulations are the regulations envisaged in sub-paragraph (d) of this paragraph.

As with the Continuance (Jersey) Regulations 2009, these regulations utilise the concept of ‘recognized entity’. These are bodies corporate, outside of Jersey, that the Minister for Economic Development designates as being appropriate vehicles to merge with Jersey foundations. In the first instance, it is intended that the following entities will be designated as Recognized Entities: Panama Private Interest

Foundations, Bahamas Foundations, Liechtenstein Stiftungs, Liechtenstein Anstalts, St Kitts Foundations and Nevis Multiform Foundations.

The regulations have three substantives parts, Parts 2, 3 and 4. These three parts run in close parallel with each other, but deal with different sorts of mergers. Part 2 deals with mergers where all parties are Jersey foundations. Part 3 deals with mergers where a foundation (or more than one) merges with a recognized entity (or more than one), and the result of the merger is a Jersey foundation. Part 4 deals with mergers between foundations and recognized entities where the result is a recognized entity.

In each case, there must be a formal merger agreement (Regulations 4, 14 and 26). Notice of the merger must be given to the creditors, who have an opportunity to object (Regulations 5, 15 and 27). If one of the parties is insolvent, the merger may only proceed with the permission of the Royal Court, on the basis that no creditor will be prejudiced (Regulations 6, 16 and 28).

Under Parts 3 and 4 (which deal with cross-border mergers), the permission of the Commission is also required (Regulations 17-20 and 29-32). This is because a cross-border merger poses a potential risk to the reputation of Jersey. The Commission may refuse an application (a) in order to protect the reputation and integrity of Jersey in financial and commercial matters; (b) in the best economic interests of Jersey; or (c) to protect the international standing of Jersey.

Financial and manpower implications

There are no manpower or resource implications for the States of Jersey as any costs will be levied on those parties wishing to implement a merger.

Explanatory Note

These Regulations provide how foundations may merge and continue as a single foundation.

They also provide how a foundation and a recognized entity incorporated or established outside Jersey may merge and continue either as a foundation incorporated in Jersey or as a recognized entity incorporated or established outside Jersey.



Jersey

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Jersey

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 56 of the Foundations (Jersey) Law 2009¹, have made the following Regulations –

PART 1

INTERPRETATION AND RECOGNIZED ENTITIES

1 Interpretation

- (1) In these Regulations, unless the context otherwise requires –
 - “Law” means the Foundations (Jersey) Law 2009²;
 - “merger agreement” means –
 - (a) in Part 2, an agreement entered into under Regulation 4(1);
 - (b) in Part 3, an agreement entered into under Regulation 14(1);
 - (c) in Part 4, an agreement entered into under Regulation 26(1);
 - “recognized entity” means a body corporate incorporated or established outside Jersey that is within a class of bodies corporate designated by the Minister under Regulation 2.
- (2) For the purposes of these Regulations a foundation or a recognized entity is solvent if, at the relevant time –
 - (a) it has no liabilities;
 - (b) it has liabilities that have fallen due, or that will fall due within 6 months, that it will be able to discharge in full within 6 months;
 - (c) it has other liabilities that it will be able to discharge in full as they fall due; or
 - (d) it has a combination of the liabilities mentioned in subparagraphs (b) and (c).

- (3) If a penalty is specified after a provision of these Regulations, it indicates that a contravention of the provision is an offence that is punishable by a penalty not exceeding the penalty so specified.

2 Minister may designate bodies corporate to be recognized entities

The Minister for Economic Development may, by published notice, designate classes of bodies corporate that are incorporated or established outside Jersey to be recognized entities for the purposes of these Regulations.

PART 2

MERGER OF FOUNDATIONS

3 Foundations may merge

- (1) If the requirements of this Part are complied with, 2 or more foundations may merge and continue as one foundation.
- (2) They may continue –
 - (a) as a new foundation; or
 - (b) as one of the merging foundations.

4 Merging foundations to enter into merger agreement

- (1) Foundations that intend to merge must first enter into a written agreement that states the terms and means of effecting the merger.
- (2) If the foundations intend to continue as a new foundation, the agreement must, in particular, set out details of the proposed charter for the foundation to be incorporated pursuant to the merger agreement.

5 Notice of merger agreement to be published

- (1) The qualified members of the councils of foundations that are parties to a merger agreement must, within the 28 days after the date of the agreement, jointly publish a notice of the agreement in the manner published by the registrar.
- (2) On or before publishing the notice, the qualified members must send a copy of the notice to –
 - (a) each creditor who, to the knowledge of the qualified members, has a claim against any of the merging foundations exceeding £5,000;
 - (b) the registrar; and
 - (c) the guardians of the merging foundations.
- (3) The notice to the guardians must be accompanied by a copy of the merger agreement.
- (4) The notice must state that the foundations specified in the notice intend to merge.

- (5) The notice must also state whether each of those foundations is solvent.
- (6) The notice must also include a statement that a person aggrieved by the proposed merger may, within the 28 days after the first publication of the notice, apply to the Royal Court for an order to restrain the proposed merger.
- (7) If, within the 28 days after the first publication of the notice a person aggrieved by the proposed merger applies to the Royal Court for an order to restrain the proposed merger, the Royal Court may make the order applied for.
- (8) The Court must not do so unless it is satisfied that the interests of the person who made the application would be unfairly prejudiced if the proposed merger were to take place.
- (9) The Court may make the order subject to such terms, if any, as it thinks fit.
- (10) If a creditor of a merging foundation –
 - (a) satisfies the qualified member of the council of the foundation that the creditor has a claim against the foundation exceeding £5,000; and
 - (b) applies for a copy of the merger agreement,the qualified member must supply the creditor with a copy of the agreement without any charge to the creditor.

6 Provision where a party to merger agreement is insolvent

- (1) This Regulation applies if the notice published under Regulation 5 does not state that each of the merging foundations is solvent.
- (2) The qualified members of the councils of the foundations that are parties to the merger agreement may not apply to the registrar for the merger agreement to be implemented unless an Act of the Royal Court has been obtained stating that the merger of the foundations to form a new or continuing foundation would not be prejudicial to the interests of creditors of the foundations.
- (3) The qualified members must send a copy of their application to the Royal Court –
 - (a) to each creditor who, after the qualified members have made reasonable enquiries, is known to the qualified members to have a claim against any of the merging foundations exceeding £5,000; and
 - (b) to the registrar.
- (4) The Court must not hear the application for at least 28 days after it is made to the Court.

7 Application to registrar to merge foundations

- (1) The qualified members of the councils of the foundations that are parties to the merger agreement must jointly apply to the registrar for the agreement to be implemented.
- (2) The application must be made in a form and manner published by the registrar.
- (3) It must be accompanied by –
 - (a) unless another method of payment is agreed, the published fee;
 - (b) the approval of the merger by the guardians of the merging foundations;
 - (c) evidence satisfactory to the registrar that Regulation 5 has been complied with; and
 - (d) if Regulation 6 applies, a copy of the Act of the Royal Court.
- (4) If the foundations intend to continue as a new foundation, the application must also be accompanied by –
 - (a) a copy of the proposed charter for the new foundation and, if any part of it is not in English, a translation of the part in English; and
 - (b) a certificate signed by the qualified members making the application certifying the matters set out in paragraph (5).
- (5) Those matters are –
 - (a) that a qualified person, named in the certificate, will become the qualified member of the council of the new foundation on the incorporation of the foundation;
 - (b) that the qualified members who signed the certificate are in possession of regulations for the proposed new foundation that have been approved by the merging foundations and by the qualified person named in the certificate;
 - (c) that the address in Jersey, specified in the certificate, is the business address in Jersey of the qualified person named in the certificate; and
 - (d) that a person has been selected who will become the guardian of the new foundation in accordance with its regulations on the incorporation of the foundation.
- (6) An application under this Regulation and any document accompanying it must be authenticated in any manner published by the registrar.
- (7) For the purpose of paragraph (3)(c), Regulation 5 has not been complied with until –
 - (a) the 28 days mentioned in Regulation 5(6) expire; or
 - (b) if during those 28 days a person applies to the Royal Court for an order to restrain the proposed merger, the application is withdrawn or is determined,whichever last occurs.

8 Refusal by registrar to accept merger agreement

- (1) This Regulation applies if an application to the registrar is for the implementation of a merger agreement that provides for the parties to the agreement to continue as a new foundation.
- (2) The registrar may refuse to accept the application if –
 - (a) the registrar is not satisfied that the objects of the foundation are lawful; or
 - (b) the registrar considers that the proposed name of the foundation is misleading or otherwise undesirable or that it does not end with the word “Foundation” or a word or words that mean that word in a foreign language.
- (3) If the registrar so refuses, the registrar must, within 28 days, inform the qualified members who made the application of the refusal and the reason for the refusal.
- (4) The qualified members may, within 28 days of being informed of the refusal, appeal to the Royal Court.
- (5) The Royal Court may order the registrar to accept the application if it considers –
 - (a) that the objects of the foundation are lawful; or
 - (b) that the proposed name of the foundation is not misleading or otherwise undesirable or that it does end with the word “Foundation” or a word or words that mean that word in a foreign language,as the case may be, but must otherwise confirm the registrar’s decision to refuse to accept the application.

9 Implementation of merger agreement

The registrar must implement a merger agreement that provides for the parties to the agreement to continue as a new foundation if –

- (a) the registrar accepts or is ordered by the Royal Court to accept the application to implement the agreement; and
- (b) the registrar is satisfied that the requirements of the Law and of this Part in respect of the merger of foundations have been complied with.

10 Means of incorporation of new foundations on implementation of merger agreement

- (1) This Regulation applies where a merger agreement provides that foundations are to merge and continue as a new foundation.
- (2) To incorporate the foundation, the registrar must enter in the register –
 - (a) the name of the foundation as shown in its proposed charter;
 - (b) the name and business address in Jersey of the qualified member of the council of the merged foundation as shown in the certificate mentioned in Regulation 7(4); and

- (c) the names of the foundations that merged to form the merged foundation,
and date each entry with the date the last entry was made.
- (3) The registrar must also issue the foundation with a registration number.
- (4) The registrar must also –
 - (a) enter in the register in respect of each of the foundations that merged, a note to the effect that the foundation has ceased to be a separate foundation because it has merged with another foundation or foundations, specified in the note, to form the new foundation, also specified in the note; and
 - (b) date the entry.
- (5) An entry in the register of the name of a merged foundation is conclusive evidence –
 - (a) that, on the date mentioned in paragraph (2), the foundation was incorporated under the Law; and
 - (b) that the requirements of the Law and of this Part were complied with in respect of all matters precedent or incidental to the incorporation of the foundation.

11 Effect of merger of foundations to form a new foundation

- (1) This Regulation applies where a new foundation is incorporated on the implementation of a merger agreement.
- (2) From the date of the incorporation of the new foundation, the foundations that were parties to the merger agreement continue as one foundation with the name specified in the register in respect of the new foundation.
- (3) On the incorporation of the new foundation –
 - (a) the property and rights to which each of the parties to the merger agreement was entitled immediately before the incorporation become the property and rights of the new foundation;
 - (b) the new foundation becomes subject to any criminal and civil liabilities, and any contracts, debts and other obligations, to which any of the parties to the merger agreement was subject immediately before the incorporation; and
 - (c) any action and other legal proceedings that, immediately before the incorporation, were pending by or against any of the parties to the merger agreement, may be continued by or against the new foundation.
- (4) On the incorporation of the new foundation the parties to the merger agreement cease to be separate foundations.
- (5) On the incorporation of the new foundation the qualified person named under Regulation 7(5)(a) shall be taken to have become the qualified member of the council of the new foundation under Article 23(1) of the Law.

12 Continuing as one of the merging foundations on implementation of merger agreement

- (1) This Regulation applies where the registrar accepts an application to implement a merger agreement that provides that the foundations that are the parties to the agreement are to merge and continue as one of those foundations.
- (2) The registrar must –
 - (a) enter in the register in respect of a foundation that is not to continue a note to the effect that it has ceased to be a separate foundation because it has merged with another foundation, specified in the note, to continue as part of that foundation;
 - (b) enter in the register in respect of the foundation that is to continue a note specifying the name of each foundation that is not to continue; and
 - (c) date each entry with the date the last entry was made.
- (3) The entries in the register under paragraph (2) are conclusive evidence –
 - (a) that, on the date mentioned in paragraph (2)(c), the foundations merged and continued as one of the merging foundations; and
 - (b) that the requirements of the Law and of this Part were complied with in respect of all matters precedent or incidental to the merger of the foundations.
- (4) On the date mentioned in paragraph (2)(c) –
 - (a) the property and rights to which a party to the merger agreement that is not to continue was entitled immediately before that date, become the property and rights of the foundation that is to continue;
 - (b) the continuing foundation becomes subject to any criminal and civil liabilities, and any contracts, debts and other obligations, to which a party to the merger agreement that is not to continue was subject immediately before that date; and
 - (c) any action and other legal proceedings that, immediately before that date, were pending by or against a party to the merger agreement that is not to continue, may be continued by or against the foundation that is to continue.
- (5) On the date mentioned in paragraph (2)(c) the parties to the merger agreement cease to be separate foundations.

PART 3

MERGER OF FOUNDATIONS WITH RECOGNIZED ENTITIES TO CONTINUE AS FOUNDATIONS

13 Foundation may merge with a recognized entity and continue as a foundation

- (1) If the requirements of this Part are complied with, one or more foundations may merge with one or more recognized entities and continue as a foundation.
- (2) They may continue –
 - (a) as a new foundation; or
 - (b) as the merging foundation or as one of the merging foundations.

14 Foundation and recognized entity to enter into merger agreement

- (1) A foundation that intends to merge with a recognized entity and to continue as a foundation must first enter into a written agreement with the recognized entity that states the terms and means of effecting the merger.
- (2) If the foundation and the recognized entity intend to continue as a new foundation, the agreement must, in particular, set out details of the proposed charter for the foundation to be incorporated pursuant to the merger agreement.
- (3) If more than one foundation is a party to a merger agreement a reference in this Part to the qualified member of the council of a foundation that has entered into a merger agreement is to be taken to be a reference to the qualified members of the councils of the foundations acting jointly.

15 Notice of merger agreement to be published

- (1) The qualified member of the council of a foundation that has entered into a merger agreement must, within the 28 days after the date of the agreement, publish a notice of the agreement in the manner published by the registrar.
- (2) On or before publishing the notice, the qualified member must send a copy of the notice to –
 - (a) each creditor who, to the knowledge of the qualified member, has a claim against a party to the merger agreement exceeding £5,000;
 - (b) the registrar; and
 - (c) the guardian of the foundation.
- (3) The notice to the guardian must be accompanied by a copy of the merger agreement.
- (4) The notice must state that the foundation and the recognized entity specified in the notice intend to merge and to continue as a foundation.

- (5) The notice must also state whether both the foundation and the recognized entity are solvent.
- (6) The notice must include a statement that a person aggrieved by the proposed merger may, within the 28 days after the first publication of the notice, apply to the Royal Court for an order to restrain the proposed merger.
- (7) If, within the 28 days after the first publication of the notice a person aggrieved by the proposed merger applies to the Royal Court for an order to restrain the proposed merger, the Royal Court may make the order applied for.
- (8) The Court must not do so unless it is satisfied that the applicant would be unfairly prejudiced if the proposed merger were to take place.
- (9) The Court may make the order subject to such terms, if any, as it thinks fit.
- (10) If a creditor of a party to the merger agreement –
 - (a) satisfies the qualified member that the creditor has a claim against that party exceeding £5,000; and
 - (b) applies for a copy of the merger agreement,the qualified member must supply the creditor with a copy of the agreement without any charge to the creditor.

16 Provision where a party to merger agreement is insolvent

- (1) This Regulation applies if the notice under Regulation 15 does not state that both the foundation and the recognized entity are solvent.
- (2) The qualified member of the council of the foundation may not apply to the Commission for the merger agreement to be implemented unless an Act of the Royal Court has been obtained stating that the merger of the foundation and the recognized entity to form a new or continuing foundation would not be prejudicial to the interests of the creditors of the parties to the merger agreement.
- (3) The qualified member must send a copy of his or her application to the Royal Court –
 - (a) to each creditor who, after the qualified member has made reasonable enquiries, is known to the qualified member, to have a claim against a party to the merger agreement exceeding £5,000; and
 - (b) to the Commission.
- (4) The Court must not hear the application for at least 28 days after it is made to the Court.

17 Application to Commission to implement merger agreement

- (1) The qualified member of the council of a foundation that is a party to a merger agreement must apply to the Commission for the agreement to be implemented.
- (2) The application must be made in a form and manner published by the Commission.
- (3) It must be accompanied by –
 - (a) unless another method of payment is agreed, the published fee;
 - (b) the approval of the merger by the guardian of the merging foundation;
 - (c) evidence satisfactory to the Commission that Regulation 15 has been complied with; and
 - (d) if Regulation 16 applies, a copy of the Act of the Royal Court.
- (4) If the parties to the merger agreement intend to continue as a new foundation, the application must also be accompanied by –
 - (a) a copy of the proposed charter for the new foundation and if any part of it is not in English, a translation of the part in English; and
 - (b) a certificate signed by the qualified member making the application certifying the matters set out in paragraph (5).
- (5) Those matters are –
 - (a) that a qualified person, named in the certificate, will become the qualified member of the council of the new foundation on the incorporation of the foundation;
 - (b) that the qualified member who signed the certificate is in possession of regulations for the proposed new foundation that have been approved by the parties to the merger agreement and by the qualified person named in the certificate;
 - (c) that the address in Jersey, specified in the certificate, is the business address in Jersey of the qualified person named in the certificate;
 - (d) that a person has been selected who will become the guardian of the new foundation in accordance with its regulations on the incorporation of the foundation;
 - (e) that the laws of the jurisdiction in which the recognized entity that is a party to the merger agreement is established or incorporated do not prohibit the application being made in respect of the entity;
 - (f) that if those laws or the constitution of the recognized entity requires that an authorization be given for the application, that it has been given;
 - (g) that, if the merger takes place the recognized entity will, in due course, cease to be an entity incorporated or established under the law of the jurisdiction in which it is presently incorporated or established; and
 - (h) that, if the merger takes place, the interests of the creditors of the recognized entity will not be unfairly prejudiced.

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- (6) An application under this Regulation and any document accompanying it must be authenticated in any manner published by the Commission.
 - (7) For the purpose of paragraph (3)(c), Regulation 15 has not been complied with until –
 - (a) the 28 days mentioned in Regulation 15(6) expire; or
 - (b) if during those 28 days a person applies to the Royal Court for an order to restrain the proposed merger, the application is withdrawn or is determined,whichever last occurs.
 - (8) The Commission must, as soon as practical, forward to the registrar the documents that accompanied the application.

18 Commission may require security for its expenses

- (1) Following receipt of an application under Regulation 17, the Commission may –
 - (a) estimate the likely amount of its expenses in dealing with the application; and
 - (b) require the merging foundation to give the Commission security for that amount, to the satisfaction of the Commission.
- (2) If the Commission requires security to be given under paragraph (1)(b), it need take no further action in respect of the application until the security has been given.
- (3) If the Commission, in the course of considering the application, subsequently forms the view that its expenses will be of a higher amount, it may require the merging foundation to give it security for that higher amount, to its satisfaction.
- (4) If the Commission requires security for a higher amount to be given under paragraph (3), it may refuse to consider the application further until that security has been given.
- (5) On determining the application, the Commission must –
 - (a) ascertain the actual amount of its expenses; and
 - (b) inform the qualified member of the council of the foundation who made the application of the amount.
- (6) The expenses shall be a debt due and payable by the merging foundation to the Commission.
- (7) Where the merger is of more than one foundation, their liability under paragraph (6) is joint and several.
- (8) Without prejudice to any other mode of recovery, the Commission may recover the expenses by realising the security if the expenses are not paid by the merging foundation on demand.

19 Commission may require further information

- (1) Following receipt of an application under Regulation 17, the Commission may require the qualified member who made the application to supply to the Commission such other document or information as the Commission may reasonably require to determine whether to accept the application.
- (2) Any such document or information must be authenticated in any manner published by the Commission.
- (3) If the Commission requires a document or information under paragraph (1), it need take no further action in respect of the application until the document or information has been supplied.

20 Refusal by Commission to accept an application to implement a merger agreement

- (1) The Commission may refuse to accept an application to implement a merger agreement, if it is satisfied that it is necessary to do so –
 - (a) in order to protect the reputation and integrity of Jersey in financial and commercial matters;
 - (b) in the best economic interests of Jersey; or
 - (c) to protect the international standing of Jersey.
- (2) The Commission may refuse to accept an application to implement a merger agreement, where the parties to the agreement intend to continue as a new foundation, if –
 - (a) the Commission is not satisfied that the objects of the foundation are lawful; or
 - (b) the registrar advises the Commission that the proposed name of the foundation is misleading or otherwise undesirable or that it does not end with the word “Foundation” or a word or words that mean that word in a foreign language.
- (3) If the Commission refuses to accept an application, it must, within 28 days, inform the qualified member who made the application of the refusal and the reason for the refusal.
- (4) The qualified member may, on behalf of the merging foundation, within 28 days of being informed of the refusal, appeal to the Royal Court.
- (5) An appeal on a refusal under paragraph (1) may be made on the grounds that the refusal by the Commission to accept the application was unreasonable in all the circumstances of the case.
- (6) An appeal on a refusal under paragraph (2)(a) may be made on the grounds that the objects of the foundation are lawful.
- (7) An appeal on a refusal under paragraph (2)(b) may be made on the grounds –
 - (a) that the proposed name of the foundation is not misleading or otherwise undesirable; or
 - (b) that the proposed name does end with the word “Foundation” or a word or words that mean that word in a foreign language.

- (8) The Royal Court may, on an appeal on a refusal under paragraph (1), order the Commission to accept the application if it considers that the refusal by the Commission to accept the application was unreasonable in all the circumstances of the case, but must otherwise confirm the Commission's decision to refuse to accept the application.
- (9) The Royal Court may, on an appeal on a refusal under paragraph (2), order the Commission to accept the application if it considers –
- (a) that the objects of the foundation are lawful; or
 - (b) that the proposed name of the foundation is not misleading or otherwise undesirable or that it does not end with the word "Foundation" or a word or words that mean that word in a foreign language,
- as the case may be, but must otherwise confirm the Commission's decision to refuse to accept the application.

21 Commission to instruct registrar to implement merger agreement

The Commission must instruct the registrar to implement a merger agreement if –

- (a) the Commission accepts an application from the qualified member of a merging foundation; or
- (b) an appeal to the Royal Court by the qualified member under Regulation 20 is successful.

22 Means of incorporation of new foundations on implementation of merger agreement

- (1) This Regulation applies where the Commission instructs the registrar to implement a merger agreement that provides that a foundation and a recognized entity are to merge and continue as a new foundation.
- (2) To incorporate the foundation, the registrar must enter in the register –
- (a) the name of the foundation as shown in its proposed charter;
 - (b) the name and business address in Jersey of the qualified member of the council of the merged foundation as shown in the certificate mentioned in Regulation 17(4)(b); and
 - (c) the names of the foundation and the recognized entity that merged to form the merged foundation,
- and date each entry with the date the last entry was made.
- (3) The registrar must also issue the foundation with a registration number.
- (4) The registrar must also –
- (a) enter in the register in respect of the foundation that merged, a note to the effect that the foundation has ceased to be a separate foundation because it has merged with a recognized entity, specified in the note, to form the new foundation, also specified in the note; and

- (b) date the entry.
- (5) An entry in the register of the name of a merged foundation is conclusive evidence –
 - (a) that, on the date mentioned in paragraph (2), the foundation was incorporated under the Law; and
 - (b) that the requirements of the Law and this Part were complied with in respect of all matters precedent or incidental to the incorporation of the foundation.

23 Effect of merger of foundation and recognized entity to form a new foundation

- (1) This Regulation applies where a new foundation is incorporated on the implementation of a merger agreement.
- (2) From the date of the incorporation of the new foundation, the parties to the merger agreement continue as a foundation with the name specified in the register in respect of the new foundation.
- (3) On the incorporation of the new foundation –
 - (a) the property and rights to which each of the parties to the merger agreement was entitled immediately before the incorporation become the property and rights of the new foundation;
 - (b) the new foundation becomes subject to any criminal and civil liabilities, and any contracts, debts and other obligations, to which any of the parties to the merger agreement was subject immediately before the incorporation; and
 - (c) any action and other legal proceedings that, immediately before the incorporation, were pending by or against any of the parties to the merger agreement, may be continued by or against the new foundation.
- (4) On the incorporation of the new foundation –
 - (a) the party to the merger agreement that was a foundation ceases to be separate foundation; and
 - (b) the party to the agreement that was a recognized entity ceases to be a recognized entity.
- (5) On the incorporation of the new foundation the qualified person named under Regulation 17(5)(a) shall be taken to have become the qualified member of the council of the new foundation under Article 23(1) of the Law.

24 Foundation continuing on merger with recognized entity

- (1) This Regulation applies where the Commission instructs the registrar to implement a merger agreement that provides that a foundation and a recognized entity are to merge and that the foundation is to continue as a foundation.
- (2) The registrar must –

- (a) enter in the register in respect of the foundation a note specifying the name of the recognized entity that it has merged with; and
 - (b) date the entry.
- (3) The entries in the register under paragraph (2) are conclusive evidence –
- (a) that, on the date mentioned in paragraph (2)(b), the specified recognized entity merged with the foundation and that the foundation continued as a foundation; and
 - (b) that the requirements of the Law and this Part were complied with in respect of all matters precedent or incidental to the merger of a foundation and a recognized entity.
- (4) On the date mentioned in paragraph (2)(b) –
- (a) the property and rights to which the recognized entity was entitled immediately before that date, becomes the property and rights of the foundation;
 - (b) the foundation becomes subject to any criminal and civil liabilities, and any contracts, debts and other obligations, to which the recognized entity was subject immediately before that date; and
 - (c) any action and other legal proceedings that, immediately before that date, were pending by or against the recognized entity, may be continued by or against the foundation.

PART 4

MERGER OF FOUNDATIONS WITH RECOGNIZED ENTITIES TO CONTINUE AS RECOGNIZED ENTITIES

25 Foundation may be permitted to merge with a recognized entity and continue as a recognized entity

- (1) If the requirements of this Part are complied with, one or more foundations may merge with one or more recognized entities and continue as a recognized entity.
- (2) They may continue –
 - (a) as a new recognized entity of the same type as the merging recognized entity or as one of the merging recognized entities; or
 - (b) as the merging recognized entity or as one of the merging recognized entities.

26 Foundation and recognized entity to enter into merger agreement

- (1) A foundation that seeks permission to merge with a recognized entity and to continue as a recognized entity must first enter into a written agreement with the recognized entity that states the terms and means of effecting the merger.
- (2) If more than one foundation is a party to a merger agreement a reference in this Part to the qualified member of the council of a foundation that has

entered into a merger agreement is to be taken to be a reference to the qualified members of the councils of the foundations acting jointly.

27 Notice of merger agreement to be published

- (1) The qualified member of the council of a foundation that has entered into a merger agreement must within the 28 days after the date of the agreement, publish a notice of the agreement in the manner published by the registrar.
- (2) On or before publishing the notice, the qualified member must send a copy of the notice to –
 - (a) each creditor who, to the knowledge of the qualified member, has a claim against a party to the merger agreement exceeding £5,000;
 - (b) the registrar; and
 - (c) the guardian of the foundation.
- (3) The notice to the guardian must be accompanied by –
 - (a) a copy of the merger agreement; and
 - (b) where the parties to the merger agreement are to continue as a new recognized entity, a copy of the documents required to establish or incorporate the recognized entity.
- (4) The notice must –
 - (a) state that the foundation is seeking permission to merge with the recognized entity, as specified in the notice, and to continue as a recognized entity of a type specified in the notice; and
 - (b) specify the jurisdiction in which the recognized entity is established or incorporated or, in the case of a new recognized entity, it is intended to establish or incorporate the recognized entity.
- (5) The notice must also state whether both the foundation and the recognized entity are solvent.
- (6) The notice must include a statement that a person aggrieved by the proposed merger may, within the 28 days after the first publication of the notice, apply to the Royal Court for an order to restrain the proposed merger.
- (7) If, within the 28 days after the first publication of the notice a person aggrieved by the proposed merger applies to the Royal Court for an order to restrain the proposed merger, the Royal Court may make the order applied for.
- (8) The Court must not do so unless it is satisfied that the applicant would be unfairly prejudiced if the proposed merger were to take place.
- (9) The Court may make the order subject to such terms, if any, as it thinks fit.
- (10) If a creditor of a party to the merger agreement –
 - (a) satisfies the qualified member that the creditor has a claim against that party exceeding £5,000; and

- (b) applies for a copy of the merger agreement, the qualified member must supply the creditor with a copy of the agreement without any charge to the creditor.

28 Provision where a party to merger agreement is insolvent

- (1) This Regulation applies if the notice under Regulation 27 does not state that both the foundation and the recognized entity are solvent.
- (2) The qualified member of the council of the foundation may not apply to the Commission for permission to implement the merger agreement unless an Act of the Royal Court has been obtained stating that the merger of the foundation and the recognized entity to form a new or continuing recognized entity would not be prejudicial to the interests of the creditors of the parties to the merger agreement.
- (3) The qualified member must send a copy of his or her application to the Royal Court –
 - (a) to each creditor who, after the qualified member has made reasonable enquiries, is known to the qualified member, to have a claim against a party to the merger agreement exceeding £5,000; and
 - (b) to the Commission.
- (4) The Court must not hear the application for at least 28 days after it is made to the Court.

29 Application to Commission for permission to implement merger agreement

- (1) The qualified member of the council of the foundation that is a party to a merger agreement must apply to the Commission for permission to implement the agreement.
- (2) The application must be made in a form and manner published by the Commission.
- (3) It must be accompanied by –
 - (a) unless another method of payment is agreed, the published fee;
 - (b) the approval of the merger by the guardian of the merging foundation;
 - (c) evidence satisfactory to the Commission that Regulation 27 has been complied with; and
 - (d) if Regulation 28 applies, a copy of the Act of the Royal Court.
- (4) The application must also be accompanied by a certificate, signed by the qualified member of the council of the foundation that is a party to the merger agreement, certifying that the laws of the relevant jurisdiction allow the merger and that those laws provide that upon the merger –
 - (a) the property and rights to which the foundation was entitled immediately before the merger will become the property and rights of the recognized entity;

- (b) the recognized entity will become subject to any criminal and civil liabilities, and any contracts, debts and other obligations, to which the foundation was subject immediately before merger; and
 - (c) any actions and other legal proceedings that, immediately before the merger, were pending by or against the foundation may be continued by or against the recognized entity.
- (5) In paragraph (4) –
- (a) the “recognized entity” is the entity as which the merging recognized entity and foundation will continue; and
 - (b) the “relevant jurisdiction” is the jurisdiction in which that entity is or will be established or incorporated.
- (6) An application under this Regulation and any document accompanying it must be authenticated in any manner published by the Commission.
- (7) For the purpose of paragraph (3)(c), Regulation 27 has not been complied with until –
- (a) the 28 days mentioned in Regulation 27(6) expire; or
 - (b) if during those 28 days a person applies to the Royal Court for an order to restrain the proposed incorporation, the application is withdrawn or is determined,
- whichever last occurs.
- (8) The Commission must, as soon as practical, forward to the registrar the documents that accompanied the application.

30 Commission may require security for its expenses

- (1) Following receipt of an application under Regulation 29, the Commission may –
 - (a) estimate the likely amount of its expenses in dealing with the application; and
 - (b) require the merging foundation to give the Commission security for that amount, to the satisfaction of the Commission.
- (2) If the Commission requires security to be given under paragraph (1)(b), it need take no further action in respect of the application until the security has been given.
- (3) If the Commission, in the course of considering the application, subsequently forms the view that its expenses will be of a higher amount, it may require the merging foundation to give it security for that higher amount, to its satisfaction.
- (4) If the Commission requires security for a higher amount to be given under paragraph (3), it may refuse to consider the application further until that security has been given.
- (5) On determining the application, the Commission must –
 - (a) ascertain the actual amount of its expenses; and
 - (b) inform the qualified member of the council of the foundation who made the application of the amount.

- (6) The expenses shall be a debt due and payable by the merging foundations to the Commission for which the merging foundations shall be jointly and severally liable.
- (7) Without prejudice to any other mode of recovery, the Commission may recover the expenses by realising the security if the expenses are not paid by the merging foundation on demand.

31 Commission may require further information

- (1) Following receipt of an application under Regulation 29, the Commission may require the qualified member who made the application to supply to the Commission such other document or information as the Commission may reasonably require to determine whether to accept the application.
- (2) Any such document or information must be authenticated in any manner published by the Commission.
- (3) If the Commission requires a document or information under paragraph (1), it need take no further action in respect of the application until the document or information has been supplied.

32 Refusal by Commission to accept an application for permission to implement a merger agreement

- (1) The Commission may refuse to accept an application for permission to implement a merger agreement, if it is satisfied that it is necessary to do so –
 - (a) in order to protect the reputation and integrity of Jersey in financial and commercial matters;
 - (b) in the best economic interests of Jersey; or
 - (c) to protect the international standing of Jersey.
- (2) If the Commission refuses to accept an application, it must, within 28 days, inform the qualified member who made the application of the refusal and the reason for the refusal.
- (3) The qualified member may, on behalf of the merging foundation, within 28 days of being informed of the refusal, appeal to the Royal Court.
- (4) An appeal may be made on the ground that the refusal by the Commission to accept the application was unreasonable in all the circumstances of the case.
- (5) The Royal Court may order the Commission to accept the application if it considers that the refusal by the Commission to accept the application was unreasonable in all the circumstances of the case, but must otherwise confirm the Commission's decision to refuse to accept the application.

33 Commission to permit the implementation of merger agreement

- (1) The Commission must give its permission to a merger agreement being implemented if –

- (a) the Commission accepts an application from the qualified member of the council of a merging foundation; or
 - (b) an appeal to the Royal Court by the qualified member under Regulation 32 is successful.
- (2) The Commission must inform the qualified member of the Commission's permission.

34 Qualified member to inform registrar of implementation of merger agreement

- (1) The qualified member who applied to the Commission for permission to implement the merger agreement must as soon as reasonably possible after the agreement has been implemented inform the Commission that it has been implemented and the date on which it was implemented.
- (2) The Commission must, as soon as practical, forward to the registrar the information received under paragraph (1).

35 Effect of implementation of merger agreement

- (1) This Regulation applies on the implementation of a merger agreement where the Commission has given its permission to implement the agreement.
- (2) The registrar must enter in the register in respect of the foundation that is a party to the merger agreement a note that –
 - (a) states that the foundation has ceased to be a foundation because it has merged with a recognized entity specified in the note and continued as a recognized entity;
 - (b) specifies the name of the recognized entity and the type of recognized entity that it is;
 - (c) specifies the jurisdiction in which the recognized entity is established or incorporated; and
 - (d) specifies the date when the merger agreement was implemented.
- (3) The foundation ceases to be a foundation with effect from the date mentioned in paragraph (2)(d).

PART 5

OFFENCES

36 Offences

- (1) A person must not, in connection with an application under these Regulations, knowingly or recklessly provide to the Commission or to the registrar –
 - (a) information that is false, misleading or deceptive, whether, in each case, by the inclusion or omission of any material information; or

(b) a document that contains any such information.

Penalty: Imprisonment for 2 years and a fine.

- (2) A person must not, in connection with an application under these Regulations knowingly or recklessly publish a notice that contains information that is false, misleading or deceptive in a material particular.

Penalty: Imprisonment for 2 years and a fine.

- (3) A qualified member must not fail to comply with Regulation 34(1).

Penalty: A fine of level 4 on the standard scale.

PART 6

CITATION AND COMMENCEMENT

37 Citation and commencement

These Regulations may be cited as the Foundations (Mergers) (Jersey) Regulations 200- and shall come into force forthwith.

¹ *L.23/2009*

² *L.23/2009*