

STATES OF JERSEY



DRAFT FOUNDATIONS (CONTINUANCE) (JERSEY) REGULATIONS 200-

Lodged au Greffe on 2nd June 2009
by the Minister for Economic Development

STATES GREFFE



Jersey

DRAFT FOUNDATIONS (CONTINUANCE) (JERSEY) REGULATIONS 200-

REPORT

The Foundations (Jersey) Law 200- (“the Law”) was adopted by the States on 22nd October 2008.

The Law will introduce a new type of wealth-management vehicle, to be known as a “foundation”. A foundation will be a distinct legal entity like a company, but, unlike a company, it will not have shareholders. It will have easily recognised liabilities and accountabilities, openly recorded on a public registry in the same way as a company. It will hold assets in its own name for the purposes set out in its constitutive documents.

Article 56(1) of the Law provides that –

- (1) *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-paragraphs (b) and (c) of this paragraph.

The Regulations introduce the concept of a ‘Recognized Entity’. These are bodies corporate, outside of Jersey, to be designated by the Minister for Economic Development as being suitable subjects of continuances. 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 will provide for 3 types of continuance. Firstly, they will provide for Jersey companies to continue as foundations. Secondly, they will provide for Recognized Entities to continue as foundations. Thirdly, they will provide for foundations to continue as Recognized Entities.

The provision for companies to continue as foundations is intended to allow for structures which already exist involving Jersey companies, but which would be better

structured as foundations now that that option is available. In order to safeguard shareholder interests, such a continuance will require the consent of all shareholders. There is also an additional requirement of Commission approval to protect the public interest.

The provisions for Recognized Entities to continue as foundations or for foundations to continue as Recognized Entities generally reflect the similar provision in Part 18C of the Companies (Jersey) Law 1991 for companies to continue into and out of Jersey. Again, the consent of the Commission is required for any continuance. Such consent will be refused if the continuance would be contrary to Jersey's: (a) reputation and integrity; (b) economic interests; or (c) international standing.

The Commission will charge a fee for considering continuance applications and will also be entitled to recover its expenses. It may require security in advance for its expenses, although it is anticipated that this will only rarely be required.

As a further protection, notice of any proposed continuance must be published and any person aggrieved by the proposed continuance may apply to the Royal Court for an order restraining the continuance. The Court will only make such an order if it is satisfied that the applicant will suffer unfair prejudice if the continuance takes place.

There are no measurable financial or manpower costs for the States. The Commission and the Registrar will have costs associated with considering proposed continuances for approval but these costs will be passed on to those seeking continuance. Overall, the measures will be revenue positive.

Explanatory Note

These Regulations permit Jersey companies and certain entities (called recognized entities in the Law) established or incorporated outside Jersey and designated by the Minister of Economic Development to apply to be incorporated as Jersey foundations.

They also provide that Jersey foundations may apply to the Commission for permission to cease to be foundations and to become recognized entities.



Jersey

DRAFT FOUNDATIONS (CONTINUANCE) (JERSEY) REGULATIONS 200-

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Jersey

DRAFT FOUNDATIONS (CONTINUANCE) (JERSEY) REGULATIONS 200-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 56 of the Foundations (Jersey) Law 200-, have made the following Regulations –

PART 1

INTERPRETATION AND RECOGNIZED ENTITIES

1 Interpretation

- (1) In these Regulations –
 - “Companies Law” means the Companies (Jersey) Law 1991¹;
 - “company” has the same meaning as in Companies Law;
 - “Foundations Law” means the Foundations (Jersey) Law 2009²;
 - “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 subparagraph (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

- (1) The Minister for Economic Development may designate classes of bodies corporate that are incorporated or established outside Jersey to be recognized entities for the purposes of these Regulations.
- (2) The Minister may designate classes of bodies corporate under paragraph (1) by notice published in a manner that will bring the notice to the attention of those who, in the opinion of the Minister, are likely to be affected by it.

PART 2**COMPANIES AND RECOGNIZED ENTITIES MAY CONTINUE AS FOUNDATIONS***Companies continuing as foundations***3 Company may be incorporated as a foundation**

If the requirements of this Part are complied with, a company may continue as a foundation.

4 Notice of proposed incorporation to be published

- (1) An application to the Commission by a company to be incorporated as a foundation can only be made by a qualified person acting on behalf of the company.
- (2) However, the qualified person must first publish a notice of the intention of the company to apply to the Commission for the company to be incorporated as a foundation.
- (3) The notice must be published at least once in the Jersey Gazette.
- (4) On or before publishing the notice under paragraph (3), the qualified person must send a copy of the notice –
 - (a) to each creditor who, after the qualified person has made reasonable enquiries, is known by the qualified person to have a claim against the company exceeding £5,000; and
 - (b) to the registrar.
- (5) The notice must state whether, were the company to be incorporated as a foundation, the foundation would, on its incorporation be solvent.
- (6) The notice must also contain a statement that a person aggrieved by the proposed incorporation may, within the 28 days after the first publication of the notice, apply to the Royal Court for an order to restrain the proposed incorporation.
- (7) If, within the 28 days after the first publication of the notice a person aggrieved by the proposed incorporation applies to the Royal Court for an order to restrain the proposed incorporation, the Royal Court may make the order applied for.

- (8) The Court may not make the order applied for unless it is satisfied that the interests of the person who made the application to the Court would be unfairly prejudiced if the proposed incorporation were to take place.
- (9) The Court may make the order subject to such terms, if any, as it thinks fit.

5 Continuance as an insolvent foundation

- (1) This Regulation applies if the notice under Regulation 4 does not state that, were the company to be incorporated as a foundation, the foundation would, on its incorporation, be solvent.
- (2) The qualified person acting on behalf of the company may not apply to the Commission for the company to be incorporated as a foundation unless an Act of the Royal Court has been obtained stating that the incorporation of the company as a foundation would not be prejudicial to the interests of its creditors.
- (3) The qualified person acting on behalf of the company must send a copy of its application to the Royal Court –
 - (a) to each creditor who, after the qualified person has made reasonable enquiries, is known to the qualified person, to have a claim against the company 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.

6 Application for incorporation of company as a foundation

- (1) An application by a qualified person for the incorporation of a company as a foundation must be made to the Commission in a form and manner published by the Commission.
- (2) It must be accompanied by –
 - (a) a copy of the charter the foundation would have if it were to be incorporated under the Foundations Law;
 - (b) unless another method of payment is agreed, the published fee;
 - (c) if any part of the proposed charter is not in English, a translation of the part into English;
 - (d) evidence satisfactory to the Commission that Regulation 4 has been complied with; and
 - (e) if Regulation 5 applies, a copy of the Act of the Royal Court.
- (3) The application must also be accompanied by a certificate signed by the qualified person making the application certifying –
 - (a) that a qualified person, named in the certificate, would become the qualified member of the council of the foundation were the company to be incorporated as a foundation;

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- (b) that the qualified person who signed the certificate is in possession of regulations for the foundation that have been approved by the company 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 would become the guardian of the foundation in accordance with its regulations were the company to be incorporated as a foundation.
- (4) The application must also be accompanied by a certificate signed by the qualified person making the application certifying –
- (a) that each shareholder in the company has approved the application; and
 - (b) that, if the company becomes incorporated as a foundation, the interests of the creditors of the company will not be unfairly prejudiced.
- (5) The application and any document accompanying it must be authenticated in any manner determined by the Commission.
- (6) For the purpose of paragraph (2)(d), Regulation 4 has not been complied with until –
- (a) the 28 days mentioned in Regulation 4(7) 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.
- (7) The Commission must, as soon as practical, forward to the registrar the documents that accompanied the application.

7 Commission may require security for its expenses

- (1) Following receipt of an application under Regulation 6, the Commission may –
 - (a) estimate the likely amount of its expenses in dealing with the application; and
 - (b) require the company to give it 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 company 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 person who made the application of the amount.
- (6) The expenses shall be a debt due and payable by the company to the Commission.
- (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 company on demand.

8 Commission may require further information

- (1) Following receipt of an application under Regulation 6, the Commission may require the qualified person 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 determined 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.

9 Refusal by Commission to accept an application to incorporate a company as a foundation

- (1) The Commission may refuse to accept an application for the incorporation of a company as a foundation 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 also refuse to accept an application for the incorporation of a company as a foundation, if –
 - (a) the Commission is not satisfied that the proposed 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 an application, it must, within 28 days, inform the qualified person who made the application of the refusal and the reason for the refusal.
- (4) The qualified person may, on behalf of the company, within 28 days of being informed of the refusal, appeal to the Royal Court.

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- (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 proposed 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.

10 Commission to instruct registrar to incorporate a company as a foundation

The Commission must instruct the registrar to incorporate a company as a foundation if –

- (a) the Commission accepts an application from a qualified person for the incorporation of the company as a foundation; or
- (b) an appeal to the Royal Court by the qualified person under Regulation 9 is successful.

11 Incorporation of a company as a foundation

- (1) To incorporate a company as a 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 person who is to be the qualified member of the council of the foundation as shown in the certificate mentioned in Regulation 6(3); and
 - (c) the name of the company to be incorporated as the foundation, and date the entries.
- (2) Upon doing so the registrar must –
 - (a) issue the foundation with a registration number and inform the qualified member of the council of the foundation of the incorporation of the foundation and its registration number; and
 - (b) remove the name of the company from the register kept under the Companies Law and add to that register a note that the company has ceased to be incorporated as a company and has been incorporated as a foundation, giving the name and registered number of the foundation.
- (3) An entry in the register of the name of the foundation is conclusive evidence –
 - (a) that, on the date mentioned in paragraph (1), the company was incorporated as a foundation; and

- (b) that the requirements of the Foundations Law and this Part were complied with in respect of all matters precedent or incidental to the incorporation of the company as a foundation.

12 Effect of incorporation of a company as a foundation

- (1) From the date of the incorporation of a company as a foundation under the Foundations Law, it ceases to be a company incorporated under the Companies Law but continues as a foundation with the name specified in respect of it in the register.
- (2) On the incorporation of the company as a foundation –
 - (a) the property and rights to which the company was entitled immediately before the incorporation of the foundation continue as 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 company was subject immediately before its incorporation as a foundation; and
 - (c) any action and other legal proceedings that, immediately before the incorporation of the company as a foundation, were pending by or against the company may be continued by or against the foundation.
- (3) On the incorporation of the company as a foundation the qualified person named under Regulation 6(3)(a) shall be taken to have become the qualified member of the council of the foundation under Article 23(1) of the Foundations Law.

Recognized entities continuing as foundations

13 Recognized entity may be incorporated as a foundation

If the requirements of this Part are complied with, a recognized entity may continue as a foundation.

14 Notice of proposed incorporation to be published

- (1) An application to the Commission by a recognized entity to be incorporated as a foundation can only be made by a qualified person acting on behalf of the entity.
- (2) However, the qualified person must first publish a notice of the intention of the recognized entity to apply to the Commission for the entity to be incorporated as a foundation.
- (3) The notice must be published in such manner as the registrar may direct.
- (4) On or before publishing the notice under paragraph (3), the qualified person must send a copy of the notice –

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- (a) to each creditor who, after the qualified person has made reasonable enquiries, is known by the qualified person to have a claim against the recognized entity exceeding £5,000; and
 - (b) to the registrar.
- (5) The notice must –
- (a) state that the recognized entity specified in the notice will be seeking to be incorporated as a foundation;
 - (b) specify the jurisdiction in which the recognized entity is established or incorporated; and
 - (c) specify the type of recognized entity that it is.
- (6) The notice must also state whether, were the recognized entity to be incorporated as a foundation, the foundation would, on its incorporation be solvent.
- (7) The notice must also contain a statement that a person aggrieved by the proposed incorporation may, within the 28 days after the first publication of the notice, apply to the Royal Court for an order to restrain the proposed incorporation.
- (8) If, within the 28 days after the first publication of the notice a person aggrieved by the proposed incorporation applies to the Royal Court for an order to restrain the proposed incorporation, the Royal Court may make the order applied for.
- (9) The Court may not make the order applied for unless it is satisfied that the interests of the person who made the application would be unfairly prejudiced if the proposed incorporation were to take place.
- (10) The Court may make the order subject to such terms, if any, as it thinks fit.

15 Continuance as an insolvent foundation

- (1) This Regulation applies if the notice under Regulation 14 does not state that, were the recognized entity to be incorporated as a foundation, the foundation would, on its incorporation, be solvent.
- (2) The qualified person acting on behalf of the recognized entity may not apply to the Commission for the recognized entity to be incorporated as a foundation unless an Act of the Royal Court has been obtained stating that the incorporation of the recognized entity as a foundation would not be prejudicial to the interests of its creditors.
- (3) The qualified person acting on behalf of the recognized entity must send a copy of its application to the Royal Court –
 - (a) to each creditor who, after the qualified person has made reasonable enquiries, is known to the qualified person, to have a claim against the recognized entity 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.

16 Application for incorporation of recognized entity as a foundation

- (1) An application by a qualified person for the incorporation of a recognized entity as a foundation must be made to the Commission in a form and manner published by the Commission.
- (2) It must be accompanied by –
 - (a) a copy of the charter the foundation would have if it were to be incorporated under the Foundations Law;
 - (b) unless another method of payment is agreed, the published fee;
 - (c) if any part of the proposed charter is not in English, a translation of the part into English;
 - (d) evidence satisfactory to the Commission that Regulation 14 has been complied with; and
 - (e) if Regulation 15 applies, a copy of the Act of the Royal Court.
- (3) The application must also be accompanied by a certificate signed by the qualified person making the application certifying –
 - (a) that a qualified person, named in the certificate, would become the qualified member of the council of the foundation were the recognized entity to be incorporated as a foundation;
 - (b) that the qualified person who signed the certificate is in possession of regulations for the foundation that have been approved by the recognized entity 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 would become the guardian of the foundation in accordance with its regulations were the recognized entity to be incorporated as a foundation.
- (4) The application must also be accompanied by a certificate signed by the qualified person making the application certifying –
 - (a) that the laws of the jurisdiction in which the recognized entity is established or incorporated do not prohibit the entity from making the application;
 - (b) 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;
 - (c) that, if the recognized entity becomes incorporated as a foundation, it will, in due course, cease to be an entity incorporated or established under the law of the jurisdiction in which it was previously incorporated or established; and
 - (d) that, if the recognized entity becomes incorporated as a foundation, the interests of the creditors of the entity will not be unfairly prejudiced.
- (5) The application and any document accompanying it must be authenticated in any manner determined by the Commission.

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- (6) For the purpose of paragraph (2)(d), Regulation 14 has not been complied until –
 - (a) the 28 days mentioned in Regulation 14(7) 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.
 - (7) The Commission must, as soon as practical, forward to the registrar the documents that accompanied the application.

17 Commission may require security for its expenses

- (1) Following receipt of an application under Regulation 16, the Commission may –
 - (a) estimate the likely amount of its expenses in dealing with the application; and
 - (b) require the recognized entity to give it 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 recognized entity 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 person who made the application of the amount.
- (6) The expenses shall be a debt due and payable by the recognized entity to the Commission.
- (7) Without prejudice to any other mode of recovery, the Commission may recover the expenses by realizing the security if the expenses are not paid by the recognized entity on demand.

18 Commission may require further information

- (1) Following receipt of an application under Regulation 16, the Commission may require the qualified person 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 determined 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.

19 Refusal by Commission to accept an application to incorporate a recognized entity as a foundation

- (1) The Commission may refuse to accept an application for the incorporation of a recognized entity as a foundation 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 also refuse to accept an application for the incorporation of a recognized entity as a foundation, if –
 - (a) the Commission is not satisfied that the proposed 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 an application, it must, within 28 days, inform the qualified person who made the application of the refusal and the reason for the refusal.
- (4) The qualified person may, on behalf of the recognized entity, 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 proposed 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.

20 Commission to instruct registrar to incorporate a recognized entity as a foundation

The Commission must instruct the registrar to incorporate a recognized entity as a foundation if –

- (a) the Commission accepts an application from a qualified person for the incorporation of the recognized entity as a foundation; or
- (b) an appeal to the Royal Court by the qualified person under Regulation 19 is successful.

21 Incorporation of a recognized entity as a foundation

- (1) To incorporate a recognized entity as a 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 person who is to be the qualified member of the council of the foundation as shown in the certificate mentioned in Regulation 16(3); and
 - (c) the name of the recognized entity to be incorporated as the foundation and the name of the jurisdiction in which it is established or incorporated,and date the entries.
- (2) Upon doing so the registrar must –
 - (a) issue the foundation with a registration number and inform the qualified member of the council of the foundation of the incorporation of the foundation and its registration number; and
 - (b) inform the appropriate official or public body in the jurisdiction mentioned in paragraph (1)(c) that the entity has been incorporated as a foundation.
- (3) The information to be provided under paragraph (2)(b) must be provided electronically or by some other means of instantaneous or near instantaneous transmission.
- (4) An entry in the register of the name of the foundation is conclusive evidence –
 - (a) that, on the date mentioned in paragraph (1), the recognized entity was incorporated as a foundation; and
 - (b) that the requirements of the Foundations Law and this Part were complied with in respect of all matters precedent or incidental to the incorporation of the recognized entity as a foundation.

22 Effect of incorporation of a recognized entity as a foundation

- (1) From the date of the incorporation of a recognized entity as a foundation under the Foundations Law, the recognized entity continues but as a foundation with the name specified in respect of it in the register.
- (2) On the incorporation of the recognized entity as a foundation –

- (a) the property and rights to which the entity was entitled immediately before the incorporation of the foundation continue as 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 entity was subject immediately before its incorporation as a foundation; and
 - (c) any action and other legal proceedings that, immediately before the incorporation of the entity as a foundation, were pending by or against the entity may be continued by or against the foundation.
- (3) On the incorporation of the recognized entity as a foundation the qualified person named under Regulation 16(3)(a) shall be taken to have become the qualified member of the council of the foundation under Article 23(1) of the Foundations Law.

PART 3

FOUNDATIONS MAY CONTINUE AS RECOGNIZED ENTITIES

23 Foundation may continue as a recognized entity

If the requirements of this Part are complied with, a foundation ceases to be incorporated under the Foundations Law on being established or incorporated as a recognized entity.

24 Notice of proposed continuance of a foundation as a recognized entity to be published

- (1) An application to the Commission for permission for a foundation to be established or incorporated as a recognized entity can only be made by the qualified member of its council acting on behalf of the foundation.
- (2) However, the qualified member must first publish a notice of the intention of the foundation to apply to the Commission for the foundation to be established or incorporated as a recognized entity.
- (3) The notice must be published in such manner as the Commission may direct.
- (4) On or before publishing the notice under paragraph (3), the qualified person must send a copy of the notice –
 - (a) to each creditor who, after the qualified person has made reasonable enquiries, is known by the qualified person to have a claim against the foundation exceeding £5,000;
 - (b) to the registrar; and
 - (c) to the guardian of the foundation.
- (5) The notice to the guardian must be accompanied by a copy of the documents required to establish or incorporate the foundation as a recognized entity.

- (6) The notice published under paragraph (3) must –
 - (a) state that the foundation specified in the notice has decided to be established or incorporated as a recognized entity of a type specified in the notice; and
 - (b) specify the jurisdiction in which it is intended to establish or incorporate the recognized entity.
- (7) The notice must also state whether, were the foundation to be established or incorporated as a recognized entity, the recognized entity would, on its establishment or incorporation be solvent.
- (8) The notice must also contain a statement that a person aggrieved by the proposed establishment or incorporation of the foundation as a recognized entity may, within the 28 days after the first publication of the notice, apply to the Royal Court for an order to restrain the proposed establishment or incorporation.
- (9) If, within the 28 days after the first publication of the notice a person aggrieved by the proposed establishment or incorporation of the foundation as a recognized entity applies to the Royal Court for an order to restrain the proposed establishment or incorporation, the Royal Court may make the order applied for.
- (10) The Court may not make the order applied for unless it is satisfied that the interests of the person who made the application would be unfairly prejudiced if the proposed establishment or incorporation were to take place.
- (11) The Court may make the order subject to such terms, if any, as it thinks fit.

25 Continuance as an insolvent recognized entity

- (1) This Regulation applies where the notice under Regulation 24 does not state that, were the foundation to be established or incorporated as a recognized entity, the recognized entity would, on its establishment or incorporation, be solvent.
- (2) The qualified member acting on behalf of the foundation may not apply to the Commission for permission for the foundation to be established or incorporated as a recognized entity unless an Act of the Royal Court has been obtained stating that the establishment or incorporation of the foundation as a recognized entity would not be prejudicial to the interests of its creditors.
- (3) The qualified member acting on behalf of the foundation must send a copy of its application to the Royal Court to each creditor who, after the qualified member has made reasonable enquiries, is known by the qualified member to have a claim against the foundation exceeding £5,000.
- (4) The Court must not hear the application for at least 28 days after it is made to the Court.

26 Application by foundation for permission to be established or incorporated as a recognized entity

- (1) An application to the Commission by the qualified member of the council of a foundation for permission for the foundation to be established or incorporated as a recognized entity must be made to the Commission in a form and manner published by the Commission.
- (2) It must be accompanied by –
 - (a) unless another method of payment of the amount is agreed, the published fee;
 - (b) the approval of the application by the guardian of the foundation;
 - (c) evidence satisfactory to the Commission that Regulation 24 has been complied with; and
 - (d) if Regulation 25 applies, a copy of the Act of the Royal Court.
- (3) The application must also be accompanied by a certificate signed by the qualified member certifying that the laws of the jurisdiction in which the foundation proposes to continue allow its continuance there as a recognized entity established or incorporated under those laws and that those laws provide that upon the continuance of the foundation as a recognized entity in that jurisdiction –
 - (a) the property and rights to which the foundation is entitled immediately before its establishment or incorporation as a recognized entity 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 is subject immediately before its establishment or incorporation as a recognized entity; and
 - (c) any actions and other legal proceedings that, immediately before the establishment or incorporation of the foundation as a recognized entity, are pending by or against the foundation may be continued by or against the recognized entity.
- (4) The application and any document accompanying it must be authenticated in any manner determined by the Commission.
- (5) For the purpose of paragraph (2)(c), Regulation 24 has not been complied until –
 - (a) the 28 days mentioned in Regulation 24(8) expires; or
 - (b) if during those 28 days a person applies to the Royal Court for an order to restrain the proposed establishment, the application is withdrawn or is determined,whichever last occurs.
- (6) The Commission must, as soon as practical, forward to the registrar the documents that accompanied the application.

27 Commission may require security for its expenses

- (1) Following receipt of an application under Regulation 26, the Commission may –
 - (a) estimate the likely amount of its expenses in dealing with the application; and
 - (b) require the foundation to give it 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 –
 - (a) it may require the foundation to give it security for that higher amount, to its satisfaction; and
 - (b) it may refuse to consider the application further until that security has been given.
- (4) 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 of the amount.
- (5) The expenses shall be a debt due and payable by the foundation to the Commission.
- (6) Without prejudice to any other mode of recovery, the Commission may recover the expenses by realizing the security if they are not paid by the foundation on demand.

28 Commission may require further information

- (1) Following receipt of an application under Regulation 26, the Commission may require the qualified member to supply to the Commission such other documents and 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 determined 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.

29 Commission may refuse an application

- (1) The Commission may refuse to accept an application by a foundation for permission for the foundation to be established or incorporated as a recognized entity 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 an application under paragraph (1), 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 foundation, within 28 days of being informed of the refusal, appeal to the Royal Court.
 - (4) An appeal on a refusal under paragraph (1) may be made of the grounds that the refusal by the Commission to accept the application was unreasonable in all the circumstances of the case.

30 Commission to give permission for a foundation to be established or incorporated as a recognized entity

The Commission must give its permission for a foundation to be established or incorporated as a recognized entity if –

- (a) the Commission accepts an application from the qualified member of the foundation for the establishment or incorporation of the foundation as a recognized entity; or
- (b) an appeal to the Royal Court by the qualified member under Regulation 29 is successful.

31 Registrar to be informed of continuance of a foundation as a recognized entity

- (1) If a foundation becomes established or incorporated as a recognized entity in accordance with permission given by the Commission under this Part, the qualified person who was the qualified member of the council of the foundation must, as soon as practicable, inform the registrar accordingly.
- (2) The information must be given to the registrar in a form and manner, and must be accompanied by such documents or evidence, as the registrar may publish.
- (3) Upon the notice under paragraph (1) being given to the registrar, the registrar must enter in the register, in respect of the foundation, a note that –
 - (a) states that the foundation has ceased to be a foundation because it has been established or incorporated as a recognized entity;
 - (b) specifies the name of the recognized entity and the type of recognized entity that it has become;
 - (c) specifies the jurisdiction in which the recognized entity is established or incorporated; and
 - (d) specifies the date on which the foundation was established or incorporated as a recognized entity in that jurisdiction.
- (4) The foundation ceases to be incorporated under the Foundations Law on the date mentioned in paragraph (3)(d).

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- (5) An entry in the register of a note in respect of a foundation under paragraph (3) is conclusive evidence –
 - (a) that, on the date mentioned in paragraph (3)(d), the foundation ceased to be incorporated under the Foundations Law; and
 - (b) that the requirements of the Foundations Law and this Part were complied with in respect of the foundation ceasing to be a foundation under the Foundations Law.
 - (6) If a foundation becomes established or incorporated as a recognized entity in accordance with permission given by the Commission under this Part, the qualified person who was the qualified member of the council of the foundation immediately before it became established or incorporated as a recognized entity, must retain the records or a copy of the records of the foundation that were in his or her possession at that time for 10 years after the foundation ceased to be incorporated under the Foundations Law.

PART 4

OFFENCES

32 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 person must not fail to comply with Regulation 31(1) or (6).

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

PART 5

CITATION AND COMMENCEMENT

33 Citation

These Regulations may be cited as the Foundations (Continuance) (Jersey) Regulations 200-.

34 Commencement

These Regulations come into force forthwith.

¹

chapter 13.125

²

Law currently awaiting Privy Council sanction