



Jersey

## FOUNDATIONS (JERSEY) LAW 2009

### Arrangement

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Jersey

## FOUNDATIONS (JERSEY) LAW 2009

A LAW to provide for the incorporation of foundations and for related purposes.

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<i>Adopted by the States</i>	<i>22nd October 2008</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>10th June 2009</i>
<i>Registered by the Royal Court</i>	<i>19th June 2009</i>

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### PART 1

#### PRELIMINARY

#### 1 Interpretation

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

“assigned”, in respect of a right a founder of a foundation has in respect of the foundation or its assets, means assigned by the founder or by a person to whom the right has been assigned;

“beneficiary”, in respect of a foundation that has the provision of a benefit to a person or to a class of persons as its objects or as one of its objects, means a person who is or is a member of a class of persons that –

- (a) is specified in the charter of the foundation; or
- (b) has been determined in accordance with the charter or regulations of the foundation,

for the purpose of those objects or that object;

“business address” means –

- (a) in respect of the qualified member of the council of a foundation, the business address of the member as it appears in the register;

- (b) in respect of a foundation, the business address of the qualified member of its council or, if there is no such qualified member, its last qualified member;

“Commission” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998<sup>1</sup>;

“foundation” means a foundation incorporated under this Law;

“founder” in respect of a foundation, means the person who instructed the qualified person to apply for the incorporation of the foundation and includes any person who subsequently becomes a founder of the foundation under Article 19;

“functions” includes powers and duties;

“person appointed under the regulations of the foundation”, in respect of a foundation, means –

- (a) a member of the council of the foundation;
- (b) the guardian of the foundation; and
- (c) any other person appointed under the regulations of the foundation to carry out a function in respect of the foundation;

“person with standing”, in respect of a foundation, means –

- (a) the foundation;
- (b) a founder of the foundation;
- (c) a person, other than a founder of the foundation, who has endowed the foundation;
- (d) if any rights a founder of a foundation had in respect of the foundation and its assets have been assigned to some other person, that other person;
- (e) a person appointed under the regulations of the foundation;
- (f) a beneficiary of the foundation;
- (g) a creditor of the foundation;
- (h) in respect of a specified purpose mentioned in Article 5(3)(b), a person who, in the view of the Royal Court, can reasonably claim to speak on behalf of that purpose; or
- (i) the Attorney General;

“published” means –

- (a) in respect of a fee payable by virtue of this Law, published by the Commission in accordance with Article 15(5) of the Financial Services Commission (Jersey) Law 1998<sup>2</sup>; or
- (b) in any other case, published in a manner likely to bring it to the attention of those affected;

“qualified member”, in respect of the council of a foundation, means the qualified person who is the qualified member of the council by virtue of Article 23;

“qualified person” means a person registered under the Financial Services (Jersey) Law 1998 to carry on trust company business that permits the

provision by the person of the services mentioned in Articles 2(4)(a) and (d) of that Law;

“record” means information stored in any form;

“register”, as a noun, means the register kept by the registrar for the purposes of this Law;

“registrar” means the registrar of companies appointed pursuant to Article 196 of the Companies (Jersey) Law 1991<sup>3</sup>.

- (2) Where a penalty is specified after a provision of this Law, it indicates that a contravention of the provision is an offence that is punishable by a penalty not exceeding the penalty so specified.

## **PART 2**

### INCORPORATION OF FOUNDATIONS

#### *Application for the incorporation of a foundation*

#### **2 Application for the incorporation of a foundation**

- (1) A qualified person may, on behalf of any other person, apply to the registrar for the incorporation of a foundation.
- (2) The application must be made in a manner and form published by the registrar.
- (3) It must be accompanied by –
  - (a) a copy of the proposed charter of the foundation;
  - (b) unless another method of payment is agreed, the published fee; and
  - (c) if any part of the proposed charter is not in English, a translation of the part in English.
- (4) 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, will become the qualified member of the council of the foundation on the incorporation of the foundation;
  - (b) that the qualified person who signed the certificate is in possession of regulations for the proposed foundation that have been approved by both the founder of the foundation 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 foundation in accordance with its regulations on the incorporation of the foundation.

- (5) The application and any document accompanying it must be authenticated in any manner determined by the registrar.

*The charter of a foundation*

**3 Foundation must have a charter**

A foundation must have a charter that complies with the requirements of this Law.

**4 The charter of a foundation – name of foundation**

- (1) The charter of a foundation must specify the name of the foundation.
- (2) The name –
- (a) must not be misleading or otherwise undesirable; and
  - (b) must end with the word “Foundation” or a word or words that mean that word in a foreign language.

**5 The charter of a foundation – its objects**

- (1) The charter of a foundation must specify the objects for which the foundation was established.
- (2) Those objects –
- (a) must be lawful; and
  - (b) may be charitable, non-charitable or both.
- (3) The objects may be –
- (a) to benefit a person or a class of persons; or
  - (b) to carry out a specified purpose,
- or to do both.
- (4) It is sufficient, for the purpose of paragraph (3)(a), for the charter to provide that the person or class of persons may be determined in accordance with the charter or regulations of the foundation.
- (5) If a foundation has the provision of a benefit to a person or to a class of persons as its objects or as one of its objects, the charter or regulations of the foundation may provide for the manner in which those objects or that object may be amended –
- (a) to exclude a person or a class of persons;
  - (b) to apply to a different person or to a different class of person; or
  - (c) to include an additional person or an additional class of persons,
- as the case may be.
- (6) Paragraph (5) is without prejudice to Article 38.



**6 The charter of a foundation – first council members**

- (1) The charter of a foundation may specify the names and addresses of the first members of the council of the foundation.
- (2) If it does so, any subsequent change in those names and addresses is not an amendment of the charter for the purposes of Article 38.

**7 The charter of a foundation – its endowment**

- (1) A foundation need not have an initial endowment.
- (2) However, if it does have one, the details of the endowment must be specified in its charter.
- (3) If, after the incorporation of a foundation, the foundation may be further endowed, this must be stated in its charter.

**8 The charter of a foundation – winding up**

- (1) The charter of a foundation must specify what is to happen to any assets of the foundation that remain should the foundation be wound up and dissolved.
- (2) It is sufficient, for the purpose of paragraph (1), for the charter to provide that the assets that remain shall be disposed of in the manner specified in the regulations of the foundation.

**9 The charter of a foundation – its term**

- (1) If a foundation is to be wound up and dissolved upon –
  - (a) the happening of some event; or
  - (b) the expiration of a fixed period of time,details of the event or period must be specified in its charter.
- (2) If a person has the right to apply to have a foundation wound up and dissolved, details of the right must be specified in its charter.
- (3) Paragraph (2) does not apply to, and is without prejudice to, any right arising under an enactment or by customary law.

**10 The charter of a foundation – general**

- (1) The charter of a foundation may, in addition to the matters required to be set out in it by this Law, provide for any other matter in respect of the foundation.
- (2) It may, in particular –
  - (a) provide for the manner in which the charter or the regulations of the foundation may be amended; and
  - (b) contain any provisions that must or may be included in the regulations of a foundation.

*The regulations of a foundation***11 Foundation must have regulations**

- (1) A foundation must have regulations that comply with this Law.
- (2) However, paragraph (1) is satisfied in respect of a provision that must or may be included in the regulations of a foundation if it is included in its charter.
- (3) In any such case, a reference in this Law to the provision in the regulations of a foundation shall be taken to be a reference to the provision as it appears in its charter.

**12 The regulations of a foundation – its council**

- (1) The regulations of a foundation must –
  - (a) establish a council to administer the foundation's assets and to carry out its objects;
  - (b) provide for the appointment, retirement, removal and remuneration (if any) of its members;
  - (c) set out how the decisions of the council are to be made and, if any decision requires the approval of any other person, specify the decisions and that person; and
  - (d) set out the functions of the council, and, if they must or may be delegated or exercised in conjunction with any other person, the extent to which this must or may be done.
- (2) In particular, the regulations of a foundation must set out a procedure that ensures that a qualified person is appointed to be the qualified member of its council as soon as reasonably practicable if its qualified member –
  - (a) dies;
  - (b) retires; or
  - (c) otherwise ceases to act or to be able to act.
- (3) Despite any provision of the regulations of a foundation to the contrary, if the qualified member of its council –
  - (a) retires; or
  - (b) is removed,the retirement or removal does not take effect until immediately before the appointment of a new qualified person to be the qualified member of the council has taken effect.

**13 Foundation must have a guardian**

- (1) A foundation must have a guardian.
- (2) The guardian of a foundation –
  - (a) must be appointed in accordance with this Law; and

- (b) shall have, in respect of the foundation, the functions specified in this Law and in the charter and regulations of the foundation.

#### **14 The regulations of a foundation – its guardian**

- (1) The regulations of a foundation must provide for the appointment of its guardian.
- (2) Accordingly, the regulations of a foundation must –
  - (a) identify the initial guardian of the foundation;
  - (b) provide how a guardian of the foundation may retire;
  - (c) provide how a new guardian is to be appointed; and
  - (d) provide for the guardian's remuneration (if any).
- (3) Apart from –
  - (a) a founder of a foundation; and
  - (b) the qualified member of its council,a person may not be both a member of its council and its guardian.
- (4) The guardian of a foundation must take such steps as are reasonable in all the circumstances to ensure that the council of the foundation carries out its functions.
- (5) Accordingly, the guardian of a foundation may require its council to account to the guardian for the way in which it has –
  - (a) administered the foundation's assets; and
  - (b) acted to further the foundation's objects.
- (6) The regulations of a foundation may give its guardian the power to approve or disapprove any specified actions of its council.
- (7) Except to the extent that the regulations of a foundation provide otherwise, the guardian of a foundation may, if he or she considers that it is appropriate to do so, sanction or authorize any action taken or to be taken by the council of the foundation that would not otherwise be permitted by the charter or regulations of the foundation.
- (8) However, the guardian must not do so unless he or she is satisfied –
  - (a) that it is in the best interests of the foundation to do so; and
  - (b) that the council, in taking the action, acted or will be acting in good faith.
- (9) If the guardian of a foundation, acting under paragraph (7), sanctions or authorizes any action of the council of the foundation, the council shall, in taking that action, be taken for all purposes to have acted in accordance with the charter and regulations of the foundation.
- (10) Nothing in paragraph (7) shall be construed as permitting the guardian of a foundation to sanction or to authorize any action taken or to be taken by the council of the foundation that would be inconsistent with this Law or any other enactment.

**15 The regulations of a foundation – reimbursement of expenses**

The regulations of a foundation may provide for a person appointed under the regulations of the foundation to be reimbursed by the foundation any reasonable expenses incurred by the person in carrying out his or her functions in respect of the foundation.

**16 The regulations of a foundation – general**

- (1) The regulations of a foundation may, in addition to the matters required to be set out in them by this Law, provide for any other matter in respect of the foundation.
- (2) They may, in particular, provide for –
  - (a) the manner in which the charter or the regulations of the foundation may be amended; and
  - (b) the appointment, retirement, removal and remuneration (if any) of persons (other than the members of the council of the foundation and its guardian) to carry out functions in respect of the foundation.

**17 The regulations of a foundation – supply of copies**

- (1) Unless the regulations of a foundation provide otherwise, a foundation need not supply a copy of its regulations to a person other than to a person appointed under the regulations of the foundation.
- (2) Paragraph (1) is without prejudice to any obligation of a foundation to supply a copy of its regulations imposed by an enactment or by an order of a court.

*The founder of a foundation*

**18 The founder of a foundation**

- (1) A founder of a foundation has such rights (if any) in respect of the foundation and its assets as are provided for in its charter and regulations.
- (2) Any rights a founder of a foundation may have in respect of the foundation and its assets may be assigned to some other person if the charter or regulations of the foundation so provide.
- (3) Where –
  - (a) a founder of a foundation has rights in respect of the foundation and its assets; or
  - (b) a person has been assigned any rights of a founder in respect of a foundation and its assets,and the founder or person, as the case may be –
  - (c) dies; or
  - (d) in the case of a founder or a person that is not an individual, ceases to exist,

those rights vest in the guardian of the foundation unless its charter or regulations provide otherwise.

### **19 Further endowment of a foundation**

Unless the regulations of a foundation provide otherwise, the endowment of a foundation by a person does not –

- (a) make the person a founder; or
- (b) vest in the person a right vested in a founder of the foundation.

#### *The council of a foundation*

### **20 Foundation must have a council**

A foundation must have a council –

- (a) to administer the assets of the foundation; and
- (b) to carry out its objects.

### **21 The council of a foundation – membership**

- (1) The council of a foundation may have one or more members.
- (2) It must include a qualified person.
- (3) A member must be at least 18 years old.
- (4) A member must not be –
  - (a) a person in respect of whom a curator has been appointed in pursuance of Article 43 of the Mental Health (Jersey) Law 1969<sup>4</sup>, or a corresponding provision of the law of a jurisdiction outside Jersey; or
  - (b) a person who is disqualified for being a member of the council of a foundation or a director of a company under this or any other enactment.

### **22 The council of a foundation – acts of members**

- (1) The members of the council of a foundation must conduct the foundation's affairs in accordance with its charter and regulations and this Law.
- (2) The members of the council of a foundation must –
  - (a) act honestly and in good faith with a view to the best interests of the foundation; and
  - (b) exercise the care, diligence and skill that reasonably prudent persons would exercise in comparable circumstances.
- (3) An act of a member of the council of a foundation is valid despite any defect that may afterwards be found in –

- (a) the appointment of the member; or
- (b) the member's qualifications.

### **23 The council of a foundation – qualified member**

- (1) On the incorporation of a foundation the qualified person named under Article 2(4)(a) becomes the qualified member of the council of the foundation.
- (2) A qualified person subsequently appointed to be the qualified member of the council of the foundation must notify the registrar of his or her –
  - (a) appointment; and
  - (b) business address in Jersey.
- (3) Notification must be given in a form and manner published by the registrar.
- (4) Unless another method of payment is agreed the notification must be accompanied by the published fee.
- (5) The appointment of a qualified person to be the qualified member of the council of a foundation takes effect when the registrar enters a note of the name and business address of the qualified person in the register and dates the entry.
- (6) Although the council of a foundation may include more than one qualified person it may not have more than one qualified member at any one time.
- (7) Accordingly the registrar may refuse to enter in the register a note of the name of a qualified person as the qualified member of the council of a foundation until the registrar is satisfied that the person mentioned in the register as the qualified member of the council –
  - (a) has ceased to act in that capacity; or
  - (b) under Article 12(3), will cease to act in that capacity upon the appointment of the new qualified member of the council.

### **24 The members of the council and others – personal liability**

- (1) This Article applies, in respect of a foundation, to a person appointed under the regulations of the foundation when acting or purporting to be acting in the course of that appointment.
- (2) Nothing –
  - (a) in the charter or regulations of the foundation; or
  - (b) in a contract between the foundation and a person to whom this Article applies,shall relieve, release or excuse the person from any liability for the person's fraud, wilful misconduct or gross negligence.
- (3) Any insurance purchased and maintained by the foundation in respect of a person to whom this Article applies must not include insurance in respect of –

- (a) any liability the person may incur –
  - (i) to the foundation, or
  - (ii) to pay a fine in respect of an offence; or
- (b) any costs the person may incur –
  - (i) in defending criminal proceeding in which the person is convicted, or
  - (ii) in defending civil proceeding brought by the foundation in which judgement is given against the person.

*The rights of persons under a foundation*

**25 Rights of beneficiaries under a foundation**

- (1) A beneficiary under a foundation –
  - (a) has no interest in the foundation's assets; and
  - (b) is not owed by the foundation or by a person appointed under the regulations of the foundation a duty that is or is analogous to a fiduciary duty.
- (2) However, if –
  - (a) a beneficiary under a foundation becomes entitled to a benefit under the foundation in accordance with the charter or the regulations of the foundation; and
  - (b) the benefit is not provided,the beneficiary may seek an order of the Royal Court ordering the foundation to provide the benefit.
- (3) Except as provided by paragraph (4), the beneficiary must seek the order within the period of 3 years from the time when the beneficiary became aware of his or her entitlement to the benefit.
- (4) If the beneficiary has not attained the age of 18 years when he or she became aware of his or her entitlement to the benefit, the period referred to paragraph (3) begins to run on the day on which the beneficiary attains that age.

**26 Foundations not obliged to provide information**

- (1) Except as specifically required by or under this Law or by the charter or regulations of the foundation, a foundation is not required to provide any person (whether or not a beneficiary) with any information about the foundation.
- (2) The information mentioned in paragraph (1) includes, in particular, information about –
  - (a) the administration of the foundation;
  - (b) the manner in which its assets are being administered;
  - (c) its assets; and

- (d) the way in which it is carrying out its objects.
- (3) Paragraph (1) is without prejudice to any other obligation of a foundation to supply any information about the foundation imposed by an enactment or by an order of a court.

*The incorporation of a foundation*

**27 Registrar may refuse application for incorporation**

- (1) The registrar may refuse to accept an application for the incorporation of a foundation if –
  - (a) the registrar is not satisfied that its proposed objects are lawful; or
  - (b) the registrar considers that its proposed name 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.
- (2) If the registrar does so refuse, the registrar must inform the applicant of the refusal and the reason for the refusal.
- (3) The applicant may, within 28 days of being informed of the refusal, appeal to the Royal Court.
- (4) The Royal Court may order the registrar to accept the application if it considers –
  - (a) that the proposed 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.
- (5) This Article also applies, with necessary amendments, to any application to register a change in the charter of a foundation that involves a change in its objects or a change of its name.

**28 Incorporation**

The registrar must incorporate a foundation if –

- (a) the registrar accepts an application from a qualified person for the incorporation of the foundation on behalf of a person; and
- (b) the registrar is satisfied that the requirements of this Law in respect of the incorporation of the foundation have been complied with.

**29 Means of incorporation**

- (1) To incorporate a foundation the registrar must enter in the register –
  - (a) the name of the foundation; and



- (b) the name and business address in Jersey of the qualified member of the council of the foundation as shown in the certificate mentioned in Article 2(4),  
and date the entries.
- (2) The registrar must also issue the foundation with a registration number.
- (3) An entry in the register of the name of a foundation is conclusive evidence –
  - (a) that, on the date mentioned in paragraph (1), the foundation was incorporated under this Law; and
  - (b) that the requirements of this Law were complied with in respect of all matters precedent or incidental to the incorporation of the foundation.

*The effect of the incorporation of a foundation*

**30 Corporate status**

- (1) A foundation is an incorporated body with the name specified in respect of it in the register.
- (2) Except as provided by paragraph (3), a foundation, acting through its council, is capable of exercising all the functions of a body corporate.
- (3) A foundation may not directly –
  - (a) acquire, hold or dispose of immovable property in Jersey; or
  - (b) engage in commercial trading that is not incidental to the attainment of its objects.

**31 Legal competence of foundations**

- (1) The doctrine of *ultra vires* does not apply in respect of a foundation.
- (2) Accordingly, the capacity of a foundation is not limited by –
  - (a) anything in its charter or regulations; or
  - (b) any act by a person appointed under the regulations of the foundation.

*The application of laws to a foundation*

**32 Jersey law to prevail in respect of foundations**

- (1) A question that arises in respect of –
  - (a) a foundation; or
  - (b) the endowment of a foundation,must be determined in accordance with the law of Jersey without reference to the law of a jurisdiction outside Jersey.

- (2) The question may be (without limiting the generality of paragraph (1)) a question as to –
- (a) the capacity of the founder of a foundation to seek the incorporation of the foundation or the capacity of a person to endow it;
  - (b) the validity, interpretation or effect of the charter or regulations of a foundation or of an amendment of them;
  - (c) the administration of the foundation, whether it is conducted in Jersey or elsewhere, including questions as to the functions, appointment and removal of a person appointed under the regulations of a foundation; or
  - (d) the existence and extent of functions in respect of a foundation, including (without limiting the generality of this provision) powers of amendment, revocation and appointment, and the validity of the exercise of such a function.
- (3) Paragraph (1) –
- (a) does not validate the endowment of a foundation with property that is neither owned by a founder or by some other person endowing a foundation nor the subject of a power of disposition vested in a founder or in such other person;
  - (b) does not affect the recognition of the law of a jurisdiction outside Jersey in determining whether a founder of a foundation or some other person endowing a foundation is or was the owner of property or the holder of such a power;
  - (c) is subject to an express provision to the contrary in the charter or regulations of a foundation;
  - (d) does not, as regards the capacity of a corporation, affect the recognition of the law of its place of incorporation;
  - (e) does not affect the recognition of the law of a jurisdiction outside Jersey prescribing (without reference to the existence of the foundation or the terms of its charter and regulations) the formalities for the disposition of property;
  - (f) does not validate a trust or disposition of immoveable property situate in a jurisdiction outside Jersey that is invalid under the law of the jurisdiction; and
  - (g) does not validate a testamentary disposition that is invalid under the law of the testator's last domicile.
- (4) The –
- (a) incorporation of a foundation; or
  - (b) the endowment of a foundation,
- is not void, voidable, liable to be set aside, invalid or subject to an implied condition because of a reason specified in paragraph (6), (7) or (8).
- (5) None of the following, namely –
- (a) a foundation;
  - (b) a founder of a foundation;

- (c) an assignee of a right a founder of a foundation may have had in respect of the foundation or its assets;
- (d) a person, other than a founder of a foundation, endowing a foundation;
- (e) a person appointed under the regulations of a foundation;
- (f) a beneficiary under a foundation;
- (g) a third party,

is subject to an obligation or liability or deprived of a right, claim or interest arising from or under the foundation because of a reason specified in paragraph (6), (7) or (8).

- (6) The first reason is that the law of a jurisdiction outside Jersey –
  - (a) prohibits or does not recognize foundations; or
  - (b) prohibits the endowment of foundations.

- (7) The second reason is that –
  - (a) the incorporation of a foundation; or
  - (b) the endowment of a foundation,

avoids or defeats or potentially avoids or defeats a right, claim, interest, obligation or liability conferred or imposed by the law of a jurisdiction outside Jersey on a person –

- (c) by reason of a personal relationship to –
  - (i) a founder,
  - (ii) a person, other than a founder of the foundation, endowing the foundation,
  - (iii) an assignee of a right a founder of a foundation may have had in respect of the foundation or its assets, or
  - (iv) a beneficiary under the foundation; or
- (d) by way of foreign heirship rights.

- (8) The third reason is that –
  - (a) the incorporation of a foundation; or
  - (b) the endowment of a foundation,

contravenes or potentially contravenes a rule of law or a judicial or administrative judgment, order or action of a jurisdiction outside Jersey intended to recognize, protect, enforce or give effect to a right, claim, interest, obligation or liability mentioned in paragraph (7) whether –

- (c) by seeking to invalidate the incorporation of the foundation or the endowment of the foundation; or
- (d) by imposing an obligation, a liability or a limitation or other condition or restriction on –
  - (i) the foundation,
  - (ii) a founder of the foundation,
  - (iii) a person, other than a founder of the foundation, endowing the foundation,

- (iv) an assignee of a right a founder of the foundation may have had in respect of the foundation or its assets,
  - (v) a person appointed under the regulations of the foundation,
  - (vi) a beneficiary under the foundation, or
  - (vii) a third party.
- (9) Despite any other enactment or rule of customary law, a judgment or order of a court of a jurisdiction outside Jersey that concerns a question mentioned in paragraph (1) shall not –
- (a) be recognized, enforced or otherwise given effect to; or
  - (b) give rise to a right, obligation or liability or raise any estoppel,
- if the court in giving the judgment or making the order failed to take the operation of this Article into account.
- (10) This Article applies –
- (a) wherever and whenever a foundation is endowed; and
  - (b) despite any other provision of this Law.
- (11) The reference in paragraph (1) to the law of Jersey shall not be taken to include the Jersey rules of private international law other than as provided by this Article.
- (12) In relation to –
- (a) a foundation; and
  - (b) an endowment of a foundation,
- the law of Jersey relating to *legitime* and the rights of a surviving spouse do not apply except where a founder or any other person endowing the foundation is domiciled in Jersey.

### **33 Rule *donner et retenir ne vaut* not to apply**

The rule *donner et retenir ne vaut* shall not apply to –

- (a) a question concerning the validity, effect or administration of a foundation; or
- (b) a transfer of property by or to a foundation or by or to an entity owned in whole or in part by a foundation.

## **PART 3**

### **ADMINISTRATION OF FOUNDATIONS**

### **34 Service of documents**

A document required to be served on a foundation must be served on the foundation by leaving it at, or by sending it by post to, its business address.

**35 Foundation to include name and address in its written communications**

A foundation must include its name and business address in its written communications, including those transmitted by electronic means.

**Penalty:** Fine of level 3 on the standard scale.

**36 Documents to be kept at business address of foundation**

A foundation must keep at its business address –

- (a) a copy of its charter and regulations as they are for the time being in force;
- (b) a register showing the names and addresses of the members of its council;
- (c) records sufficient to show and explain its transactions;
- (d) a record of the appointment of the guardian of the foundation showing the date of his or her appointment and his or her name and address;
- (e) records that disclose, with reasonable accuracy, its financial position;
- (f) a register of the names and addresses of those who have endowed the foundation.

**Penalty:** Fine of level 3 on the standard scale.

**37 Foundation to pay fees and charges**

- (1) A foundation must pay to the registrar the published annual administration fee.
- (2) The fee must be paid before the end of February of each year following the foundation's year of incorporation.
- (3) The annual administration fee must be accompanied by such additional amount as the States may determine by Regulations.
- (4) The registrar must pay the additional amount to the Treasurer of the States.
- (5) The published annual administration fee or any additional amount mentioned in paragraph (3) is, in each case, a debt due to the registrar from the foundation and may be sued for accordingly.

**38 Amendment of charter**

- (1) A foundation must notify the registrar of any amendment it proposes be made to its charter.
- (2) The notification must be given in a form and manner published by the registrar.
- (3) It must be accompanied by –
  - (a) a copy of the proposed charter as amended;
  - (b) unless another method of payment is agreed, the published fee; and

- (c) if any part of the proposed charter as amended is not in English, a translation of the part in English.
- (4) The proposed charter as amended takes effect as the charter of the foundation when the registrar enters the charter in the register and dates the entry.
- (5) An attempt to amend the charter of a foundation otherwise than –
  - (a) in accordance with its charter and regulations; or
  - (b) by an order of the Royal Court,is of no effect.

## **PART 4**

### **REGISTRAR**

#### **39 Exercise of functions of the registrar**

A function of the registrar under this Law may, to the extent authorized by the registrar, be exercised by an officer on the staff of the Commission.

#### **40 Register to be kept and made available for public inspection**

- (1) The registrar must keep a register for the purposes of this Law.
- (2) The registrar must include in the register the charter of each foundation.
- (3) The registrar must on payment of any published fee, make the register available for public inspection at any reasonable time.
- (4) On payment of any published fee, the registrar must supply a person with a certificate stating whether or not a named body is a foundation and, if it is, the following details as they appear in the register –
  - (a) the date of its incorporation;
  - (b) its registration number;
  - (c) whether it has paid its last annual administration fee and any additional amount determined by the States by Regulations; and
  - (d) the name and business address of the qualified member of its council or, if there is no such qualified member, its last qualified member.
- (5) On payment of any published fee, the registrar must supply a person with a certified copy of the charter of a foundation as included in the register.
- (6) There is admissible in evidence in legal proceedings –
  - (a) a certificate supplied under paragraph (3); or
  - (b) a certified copy of the charter of a foundation supplied under paragraph (5).

**41 Keeping of records by registrar**

- (1) A record delivered to the registrar under this Law may be kept by the registrar in any form –
  - (a) that is approved by the Commission; and
  - (b) that is capable of being reproduced in a legible form.
- (2) The registrar is to be taken to have complied with an obligation to keep a record if the registrar has complied with paragraph (1) in respect of the record.
- (3) The registrar may destroy a record kept by the registrar if –
  - (a) it is an original record and the registrar has recorded and kept the information in it in accordance with paragraph (1); or
  - (b) it relates solely to a foundation that has been dissolved more than 10 years previously.

**42 Registrar may change registration number of foundation**

- (1) The registrar may, for good cause, change the registration number of a foundation.
- (2) The registrar must inform the foundation if he or she does so.

**PART 5****POWERS OF THE ROYAL COURT****43 Applications to Royal Court**

- (1) A person with standing in respect of a foundation may apply to the Royal Court for the Court to take, in respect of the foundation, any of the actions specified in this Part.
- (2) Where the question or one of the questions to be determined by the Royal Court is whether a person is a person with standing in respect of a foundation, the reference in paragraph (1) to a person with standing shall be taken, for the purpose of determining that question, to include such a person.

**44 Powers of Royal Court to order compliance**

- (1) If the Royal Court is satisfied that, in respect of a foundation, a person has failed to comply with –
  - (a) a requirement of this Law or of the charter or regulations of the foundation; or
  - (b) an obligation imposed on the person by this Law or the charter or regulations of the foundation,the Court may, by order, require the person to comply with the requirement or obligation.

- (2) If the Royal Court is satisfied that a foundation, acting through its council, has failed to carry out its objects or any of them, the Court may, by order, require the foundation to do so.
- (3) An order under this Article may specify the action the person or foundation is required to take.

#### **45 Powers of Royal Court to order amendment of charter or regulations of foundation**

- (1) The Royal Court may, by order, propose amendments to the charter of a foundation or amend the regulations of a foundation if the Court is satisfied –
  - (a) that the change will assist the foundation to administer its assets or to attain its objects; or
  - (b) that those objects are no longer attainable and that the change will assist the foundation to attain objects as near as reasonably possible to those objects.
- (2) If the order proposes amendments to the charter of the foundation, Article 38 shall have effect as if the proposal to amend the charter was that of the foundation.

#### **46 Power of Royal Court to give directions**

- (1) This Article applies if the Royal Court is satisfied –
  - (a) that if it gives a direction it will assist a foundation to administer its assets or to carry out its objects; or
  - (b) that it is otherwise desirable for the Court to give a direction.
- (2) The Court may give a direction as to –
  - (a) the meaning and effect of a provision or term in the charter or regulations of the foundation;
  - (b) the manner in which the council of the foundation is required to carry out the administration of the foundation's assets or the carrying out of its objects;
  - (c) the functions of the council of the foundation or of any of its members;
  - (d) the functions of any other person appointed under the regulations of the foundation;
  - (e) whether a person is a beneficiary;
  - (f) the rights of beneficiaries under the foundation as between themselves or as between themselves and the foundation; or
  - (g) such other matters as the Royal Court considers relevant to the foundation, its charter, its regulations, the administration of its assets or the carrying out of its objects.
- (3) The Royal Court may, in addition to giving a direction under paragraph (2), make such an order as it thinks fit to give effect to the direction.



**47 Power of Royal Court to protect interests under a foundation**

The Royal Court may, in respect of a foundation, by order, appoint a person to protect the interests of a person the Court is satisfied is or may come to be a beneficiary under the foundation, where –

- (a) the person is unborn; or
- (b) the Court is satisfied that the person is unable to act on his or her own behalf.

**48 Power of Royal Court to dismiss or appoint a qualified member**

(1) If the Royal Court is satisfied that it is in the interest of a foundation to do so, it may, by order –

- (a) remove the qualified member of the council of the foundation; or
- (b) appoint a qualified person to be the qualified member of the council of the foundation,

or do both.

(2) Paragraphs (2), (3), (4) and (5) of Article 23 shall apply in respect of a qualified person appointed by an order of the Court to be the qualified member of the council of a foundation.

**49 Power of Royal Court to take action on behalf of others**

(1) This Article applies where the Royal Court is satisfied, in respect of a foundation, that a person has failed to comply with –

- (a) a requirement of this Law or of the charter or regulations of the foundation; or
- (b) an obligation imposed on the person by this Law or by the charter or regulations of the foundation.

(2) The Royal Court may, by order, comply with the requirement or obligation on behalf of the person who has failed to do so.

(3) The Court shall not do so unless it is satisfied –

- (a) that to do so will assist the foundation in the administration of its assets or the attainment of its objects; or
- (b) that it is otherwise desirable that it should do so.

(4) Where the Court does so, its order shall have the same effect as if it were an action taken by the person required to comply with the requirement or obligation.

**50 General power of Royal Court in respect of orders**

(1) An order made by the Royal Court under this Part in respect of a foundation may, in particular, provide for the appointment or removal of a person appointed under the regulations of the foundation.

(2) Any order made by the Court under this Part –

- (a) may be made on such terms; and
  - (b) may impose such conditions,
- as the Court thinks fit.

### **51 Limitation on certain actions in the Royal Court**

- (1) This Article applies, in respect of a foundation, to a breach of duty by a person appointed under the regulations of the foundation when carrying out or when purporting to be carrying out the functions of the appointment.
- (2) Except as otherwise provided by paragraphs (3) and (4), the period within which an action founded on a breach of duty to which this Article applies may be brought in the Royal Court is –
  - (a) the period of 3 years from the time when the person bringing the action became aware of the breach; or
  - (b) the period of 18 years from the date of the breach,being whichever period first expires.
- (3) Except as otherwise provided by paragraph (4), the period within which an action founded on a breach of duty to which this Article applies may be brought in the Royal Court against a person appointed under the regulations of a foundation who has ceased to hold the appointment is –
  - (a) the period of 3 years from the date on which the person ceased to hold the appointment; or
  - (b) the period mentioned in paragraph (2),being whichever period first expires.
- (4) The limitations mentioned in paragraphs (2) and (3) in respect of a breach of duty to which this Article applies do not apply –
  - (a) in respect of any fraud to which a person appointed under the regulations of the foundation was privy; or
  - (b) to the recovery from a person appointed under the regulations of the foundation –
    - (i) of any property of the foundation that is in the person's possession or under the person's control, or
    - (ii) of property in the person's possession or under the person's control that is the proceeds of any property of the foundation.

## **PART 6**

### **AMENDMENT OF THIS LAW AND OF OTHER LEGISLATION**

### **52 Power to amend Parts 1 and 2 by Regulations**

- (1) The States may amend Parts 1 and 2 of this Law by Regulations.

- (2) The power conferred on the States by paragraph (1) includes the power to make Regulations –
  - (a) to make such transitional provisions; and
  - (b) to make such consequential, incidental or supplementary amendments to any other provision of this Law or to any other enactment,as appear to the States to be necessary or expedient.

### **53 Companies (Jersey) Law 1991 amended**

- (1) For Article 78 of the Companies (Jersey) Law 1991<sup>5</sup> there is substituted the following Article –

#### **“78 Disqualification orders**

- (1) If it appears to the Minister, the Commission, or the Attorney General, that it is expedient in the public interest that a person should not without the leave of the court –
    - (a) be a director of or in any way whether directly or indirectly be concerned or take part in the management of a company;
    - (b) be a member of the council of a foundation incorporated under the Foundations (Jersey) Law 2009<sup>6</sup> or in any other way directly or indirectly be concerned or take part in the management of such a foundation; or
    - (c) in Jersey in any way whether directly or indirectly be concerned or take part in the management of a body incorporated outside Jersey,the Minister, the Commission, or the Attorney General may apply to the court for an order to that effect against the person.
  - (2) The court may, on such an application, make the order applied for if it is satisfied that the person’s conduct in relation to a body corporate makes the person unfit to be concerned in the management of a body corporate.
  - (3) An order under paragraph (2) shall be for such period, not exceeding 15 years, as the court directs.
  - (4) A person who acts in contravention of an order made under this Article is guilty of an offence.”.
- (2) Schedule 1 to the Companies (Jersey) Law 1991 is amended by omitting from column 1 “78(6)” and substituting “78(4)”.

### **54 Bankruptcy (Désastre) (Jersey) Law 1990 amended**

- (1) The Bankruptcy (Désastre) (Jersey) Law 1990<sup>7</sup> is amended in accordance with this Article.
- (2) In Article 1(1) of the Law –

- (a) for the definition “company” there is substituted the following definition –
- “ ‘company’ means –
- (a) a company registered under the Companies Law (including a company originally registered under the Loi (1861) sur les Sociétés à Responsabilité Limitée);
  - (b) a foundation;
  - (c) a corporation constituted under Article 4 of the Loi (1862) sur les teneurs en fidéicomis et l’incorporation d’associations<sup>8</sup>;
  - (d) an association constituted by Act of the States; and
  - (e) a body corporate incorporated outside Jersey,
- and references to directors and other officers of a company and to voting power at a general meeting of a company shall be interpreted with the necessary modifications;”;
- (b) for the definition “director” there is substituted the following definitions –
- “ ‘director’ means any person occupying the position of –
- (a) director; or
  - (b) in the case of a foundation, a member of the council of the foundation,
- by whatever name called;
- ‘foundation’ means a foundation incorporated under the Foundations (Jersey) Law 2009<sup>9</sup>;”;
- (c) for the definition “registrar” there is substituted the following definition –
- “ ‘registrar’ means, in relation to –
- (a) a company registered under the Companies Law;
  - (b) a foundation; or
  - (c) a limited liability partnership,
- the registrar appointed pursuant to Article 196 of the Companies Law;”.
- (3) For Article 3(1)(c) of the Law there is substituted the following subparagraph –
- “(c) the Commission, in the case of a person who –
- (i) holds or has held a permit under the Insurance Business (Jersey) Law 1996 or the Collective Investment Funds (Jersey) Law 1988,
  - (ii) is or was registered under the Banking Business (Jersey) Law 1991 or the Financial Services (Jersey) Law 1998, or
  - (iii) is a foundation.”.

- (4) For Article 36(2) of the Law there is substituted the following paragraph –
- “(2) If the debtor is –
- (a) a company registered under the Companies Law; or
  - (b) a foundation,
- the Viscount must notify the registrar in writing of the date of payment of the final dividend.”.
- (5) For Article 38(2) of the Law there is substituted the following paragraph –
- “(2) Subject to paragraph (3), if the debtor is –
- (a) a company registered under the Companies Law; or
  - (b) a foundation,
- it shall be dissolved with effect from the date on which the registrar receives the notice under Article 36(2), which notice the registrar shall thereupon register.”.

## **55 Financial Services (Jersey) Law 1998 amended**

- (1) The Financial Services (Jersey) Law 1998<sup>10</sup> is amended in accordance with this Article.
- (2) In Article 1(1) of the Law, after the definition “financial service business”, there is inserted the following definition –
- “‘foundation’ means a foundation incorporated under the Foundations (Jersey) Law 2009<sup>11</sup>.”.
- (3) For Article 2(3), (4), (5) and (6) of the Law there is substituted the following paragraphs –
- “(3) A person carries on trust company business if the person carries on a business that involves –
- (a) the provision of company administration services;
  - (b) the provision of trustee or fiduciary services; or
  - (c) the provision of services to foundations,
- and in the course of providing those services the person provides any of the services specified in paragraph (4).
- (4) Those services are –
- (a) acting as a company formation agent, a partnership formation agent or a foundation formation agent;
  - (b) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company;
  - (c) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a partner of a partnership;

- (d) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a member of the council of a foundation;
  - (e) acting or arranging for another person to act as secretary, alternate, assistant or deputy secretary of a company;
  - (f) providing a registered office or business address for a company, a partnership or a foundation;
  - (g) providing an accommodation, correspondence or administrative address for a company, a partnership or a foundation or for any other person;
  - (h) acting as or fulfilling or arranging for another person to act as or fulfil the function of trustee of an express trust;
  - (i) acting as or fulfilling or arranging for another person to act as shareholder or unitholder as a nominee for another person.
- (5) In this Article a reference to a company, trust, partnership or foundation is a reference –
- (a) to a company, trust, partnership or foundation wherever incorporated or otherwise established; and
  - (b) to any similar or equivalent structure or arrangement, howsoever named.
- (6) For the purposes of this Article a person acts as a company formation agent, a partnership formation agent or a foundation formation agent if the person arranges for the registration, formation or incorporation, or the sale, transfer or disposal, of companies, partnerships or foundations, as the case may be.”.

## **PART 7**

### **CLOSING PROVISIONS**

#### **56 Regulations**

- (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.
- (2) Regulations made under paragraph (1) may create offences and prescribe penalties.
- (3) Regulations made under paragraph (1) may –
  - (a) provide for the Minister of Economic Development to exercise a discretion in respect of matters prescribed by the Regulations;

- (b) permit the Commission to publish fees that may be imposed by the Regulations; and
- (c) permit the Commission and the registrar to publish material in respect of matters prescribed by the Regulations.

**57 Citation and commencement**

- (1) This Law may be cited as the Foundations (Jersey) Law 2009.
- (2) It shall come into force 28 days after it is registered.

**M.N. DE LA HAYE**

*Greffier of the States*

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- <sup>1</sup> *chapter 13.225*  
<sup>2</sup> *chapter 13.250*  
<sup>3</sup> *chapter 13.125*  
<sup>4</sup> *chapter 20.650*  
<sup>5</sup> *chapter 13.125*  
<sup>6</sup> *L.23/2009*  
<sup>7</sup> *chapter 04.160*  
<sup>8</sup> *chapter 04.120*  
<sup>9</sup> *L.23/2009*  
<sup>10</sup> *chapter 13.225*  
<sup>11</sup> *L.23/2009*