



Jersey

FOUNDATIONS (AMENDMENT OF LAW) (JERSEY) REGULATIONS 2015

*Made**10th March 2015**Coming into force**17th March 2015*

THE STATES, in pursuance of Article 52 of the Foundations (Jersey) Law 2009¹, have made the following Regulations –

1 Interpretation

In these Regulations “principal Law” means the Foundations (Jersey) Law 2009².

2 Amendment of Part 1

Article 1 of the principal Law is amended by deleting the definition “qualified person” and substituting the following definition –

“ ‘qualified person’ means –

- (a) in the case where such a person is to apply to the Registrar for the incorporation of a foundation, a person registered under the Financial Services (Jersey) Law 1998³ to carry on trust company business that permits the provision by the person of the services mentioned in Article 2(4)(a) of that Law; or
- (b) in the case where such a person is to act as a qualified member, 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 Article 2(4)(d) of that Law;”.

3 Amendment of Part 2

In Part 2 of the principal Law –

- (a) for the heading “INCORPORATION OF FOUNDATIONS” there shall be substituted the following heading –

“INCORPORATION AND OBLIGATIONS OF FOUNDATIONS”;

- (b) in Article 5 –
- (i) after paragraph (4) there shall be inserted the following paragraph –
- “(4A) It is sufficient, for the purposes of paragraph (3)(b), for the charter to provide that the specified purpose may be determined in accordance with the charter or regulations of the foundation.”;
- (ii) in paragraph (5) after the words “may be amended” there shall be inserted the word “, including”;
- (iii) in paragraph (6) for the words “Article 38” there shall be substituted the words “Articles 10 and 38”;
- (c) after Article 23 there shall be inserted the following cross-heading –
- “The obligations and liabilities of members of the council and others”;*
- (d) after Article 24 there shall be inserted the following Articles –

“24A Obligation to ensure proper and accurate accounting records

- (1) Each member of the council of a foundation shall take reasonable steps to ensure that the foundation’s records are prepared and kept properly and accurately and that, in particular, they contain entries of all sums of money received and expended by the foundation, the matters in respect of which the receipt and expenditure takes place and a record of the assets and liabilities of the foundation, including shares, interests and units held by the foundation in any other legal person or arrangement.
- (2) The records required to be kept under Article 36(c) and (e) must be such as to enable a member of the council of a foundation to comply with paragraph (1).
- (3) A member of the council of a foundation shall be entitled to inspect the accounting records required to be kept under Article 36(c) and (e) upon giving 2 working days’ notice in writing to the qualified member of the foundation.
- (4) Subject to any provision for the disposal of records on the winding up of a foundation pursuant to this Law or the Regulations made under Article 53, the accounting records that a foundation is required to keep under Article 36(c) and (e) must be preserved by the foundation for at least 10 years from the date on which they are made.

24B Criminal liability of members of council and other officers

- (1) This Article applies where an offence under this Law or any Regulations made under this Law committed by a foundation or other body corporate, a limited liability partnership or any other partnership with separate legal personality is proved –

- (a) to have been committed with the consent or connivance of a person mentioned in paragraph (2); or
 - (b) to be attributable to any neglect on the part of a person mentioned in paragraph (2).
- (2) The persons to whom paragraph (1) refers are –
- (a) in the case of a foundation, a member of the council of the foundation;
 - (b) in the case of an incorporated limited partnership, a general partner or a limited partner who is participating in the management of the partnership;
 - (c) in the case of any other body corporate, a director, manager or other similar officer of the body corporate;
 - (d) in the case of a limited liability partnership, a partner;
 - (e) in the case of a separate limited partnership or any partnership with a separate legal personality, except a limited liability partnership, a general partner or a limited partner who is participating in the management of the partnership; or
 - (f) in any case, any other person purporting to act in a capacity described in any of sub-paragraphs (a), (b), (c), (d) and (e).
- (3) Where this Article applies, the person shall also be guilty of the offence and liable to the penalty provided for that offence in the same manner as the foundation, incorporated limited partnership, other body corporate, limited liability partnership, separate limited partnership or other partnership with separate legal personality.
- (4) Where the affairs of a body corporate are managed by its members, paragraphs (1) and (3) shall apply in relation to acts and defaults of a member in connection with that member's functions of management as if the member were a director of the body corporate."

4 Citation and commencement

These Regulations may be cited as the Foundations (Amendment of Law) (Jersey) Regulations 2015 and shall come into force 7 days after the day they are made.

A.C. GOODYEAR

Assistant Greffier of the States

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- ¹ *chapter 13.265*
² *chapter 13.265*
³ *chapter 13.225*