

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE FOUNDATIONS (GUERNSEY) LAW, 2012 (AMENDMENT) ORDINANCE, 2023

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Foundations (Guernsey) Law, 2012 (Amendment) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Law amends the Foundations (Guernsey) Law, 2012 (as amended by recent regulations). It makes further provision in relation to records to be kept by a foundation at its registered office, including a requirement to keep a record of the beneficiaries of the foundation, and makes it an offence for a foundation not have a resident agent.

The Ordinance comes into force on a date or dates to be appointed in regulations made by the Committee for Economic Development.

The Foundations (Guernsey) Law, 2012 (Amendment) Ordinance, 2023

THE STATES, in pursuance of their Resolution of the ** July, 2023^a, and in exercise of the powers conferred on them by section 51 of the Foundations (Guernsey) Law, 2012^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of Foundations Law.

1. (1) The Foundations (Guernsey) Law, 2012 is amended as follows.

(2) At the end of section 22(1), insert ", including, for the avoidance of doubt and without limitation –

- (a) a record of its name,
- (b) a record of the address of its registered office,
- (c) a record of the names and addresses of the foundation officials, and
- (d) the record of beneficiaries required to be kept under section 22A.

(3) After section 22(1), insert –

^a Article * of Billet d'Etat No. * of 2023.

^b Order in Council No. I of 2013; this enactment has been amended.

"(1A) The Council shall also ensure that a foundation shall keep a copy of the foundation's certificate of registration, a record of the date of registration of the foundation and a record of the registration number of the foundation at the registered office.

(1B) The foundation shall –

- (a) ensure that the records of the foundation are accurate, maintained and kept up to date, and that the copy certificate and records referred to in subsection (1A) are preserved,
- (b) record any changes to the records of the foundation when such changes occur, and
- (c) keep that record, and the records of the foundation as so amended, at its registered office."

(4) After section 22 (duty to maintain records), insert –

"Duty to maintain record of beneficiaries.

22A. (1) A foundation shall keep a record of the beneficiaries of the foundation at its registered office.

(2) The record of beneficiaries referred to in subsection (1) shall include the following information in respect of each beneficiary's interest in the foundation –

- (a) whether the beneficiary is an enfranchised beneficiary or a disenfranchised beneficiary within the meaning of section 31,
- (b) whether the beneficiary has received any benefit as a beneficiary,
- (c) whether the beneficiary has disclaimed his or her interest in the foundation or any part of it, and
- (d) whether the beneficiary has any restrictions on his or her rights attaching to his or her interest in the foundation or any part of it.

(3) A foundation that fails to comply with subsection (1) or subsection (2) is guilty of an offence and liable to a civil penalty.

(4) The Committee may amend the list at paragraphs (a) to (d) of subsection (3) by regulations made for this purpose.

(5) For the avoidance of doubt, and without prejudice to any other powers under this Law or any other enactment, the record of beneficiaries shall be open to inspection and copying by the persons listed at section 490(10) of the Companies (Guernsey) Law, 2008."

(5) After section 47 (false or misleading information), insert –

"Failure to have resident agent.

47A. A foundation that fails to comply with paragraph 1(1) of Schedule 1A (resident agents) is guilty of an offence and liable to a civil penalty."

Citation.

2. This Ordinance may be cited as the Foundations (Guernsey) Law, 2012 (Amendment) Ordinance, 2023.

Commencement.

3. This Ordinance shall come into force on the day appointed for this purpose by regulations made by the Committee; and different days may be appointed for different provisions.