

PROJET DE LOI

ENTITLED

The Foundations (Guernsey) (Amendment) Law, 2023

THE STATES, in pursuance of their Resolution of the 20th day of July, 2023^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Amendment of Foundations Law.

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

(2) At the end of paragraph 2(3) of Schedule 1A (resident agents), insert ", and liable to a civil penalty".

(3) In paragraph 4(2) of Schedule 1A, for "paragraph 4" substitute "paragraphs 4 to 4D".

(4) For paragraph 5 of Schedule 1A, substitute –

""Disclosure of information by resident agent.

5. (1) A person listed in subparagraph (10) may, in the course

^a Article XIX of Billet d'État No. XII of 2023.

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

of exercising his or her functions, serve a notice under this paragraph ("**an information notice**") on the resident agent of a foundation requiring, within such time as may be specified in the information notice, the disclosure by the resident agent of information falling within subparagraph (4) and specified in the information notice, including information held by a person other than the resident agent; and for the avoidance of doubt, an information notice is lawful authority for the disclosure to the person serving it of the information specified in it.

(2) For the avoidance of doubt, an information notice may be served by a person acting on behalf of a person listed in subparagraph (10).

(3) An information notice shall –

- (a) be signed by the person listed in subparagraph (10) serving it (or by an individual appointed by that person for that purpose, in which case it shall identify the appointing person),
- (b) specify what information is required under it (including to which foundation it relates),
- (c) state that the information is required by the person listed in subparagraph (10) serving it (or on whose behalf it is served, as the case may be) for the proper and proportionate exercise of his or her functions,

(d) state that any person served by the resident agent with a copy of the information notice under subparagraph (5) and who holds information specified in the information notice is required to provide it to the resident agent, and

(e) set out the offences at subparagraph (8).

(4) The information that may be specified in an information notice is –

(a) any information required by that person which the resident agent is required to hold by virtue of his obligations under this Schedule and any other information he holds in respect of the beneficial owners of the foundation,

(b) the records specified in paragraphs (a) to (d) of section 22(1),

(c) the records and copy certificate required to be kept under section 22(1A),

(d) a copy of the Constitution,

(e) any other information specified in the notice as being required –

- (i) to ascertain the identity of the beneficial owners of the foundation, or
 - (ii) with respect to the prevention, detection, investigation or prosecution of money laundering, drug trafficking, bribery and corruption, the financing of terrorism, the financing of the proliferation of weapons of mass destruction, and any other form of financial crime, and
- (f) any other information in a category specified in regulations made for this purpose by the Committee.

(5) The resident agent shall take reasonable steps to ascertain the information required under an information notice; and if the resident agent does not hold information required under an information notice but knows or reasonably suspects that another person ("P") holds it, the resident agent shall take reasonable steps to serve a copy of the information notice on P and request P to disclose the information to the resident agent, in order that that the resident agent may disclose the information to the person who served the information notice on the resident agent.

(6) Nothing in this paragraph prejudices any power to disclose or obtain information which exists apart from this paragraph.

(7) The information that may be disclosed under this paragraph includes information obtained before this paragraph came into force.

(8) A resident agent or any other person who, without reasonable excuse –

(a) fails to comply with this paragraph, or

(b) makes a statement, in response to an information notice, which is false, deceptive or misleading in a material particular,

is guilty of an offence and liable to a civil penalty.

(9) For the avoidance of doubt, this paragraph is without prejudice to the powers and duties of resident agents under the Beneficial Ownership Law.

(10) The persons referred to in subparagraph (1) are -

(a) the Director General of the Guernsey Financial Services Commission,

(b) His Majesty's Procureur,

(c) the Chief Officer of Police,

(d) the Chief Officer of Customs,

- (e) the Director of the Economic and Financial Crime Bureau,
- (f) the Head of the Financial Intelligence Unit,
- (g) the Registrar of Companies, including in his or her capacity under the Limited Partnerships (Guernsey) Law, 1995,
- (h) the Registrar of Limited Liability Partnerships,
- (i) the Registrar within the meaning of the Companies (Alderney) Law, 1994,
- (j) the Registrar of Beneficial Ownership,
- (k) His Majesty's Greffier,
- (l) any body or person with the function of implementing or enforcing international sanctions measures within the Bailiwick,
- (m) the Greffier within the meaning of the Government of Alderney Law, 2004 (including in his or her capacity as the Registrar under the Beneficial Ownership of Legal Person (Alderney) Law, 2017),

- (n) the Alderney Gambling Control Commission,
- (o) the Director of the Revenue Service,
- (p) the Registrar of Charities and other Non Profit Organisations under the Charities etc. (Guernsey and Alderney) Ordinance, 2021,
- (q) the Registrar of Non-Profit Organisations appointed under the Charities and Non Profit Organisations (Registration) (Sark) Law, 2010, and
- (r) any other person specified in regulations made for this purpose by the Committee.

(11) In this paragraph, "**information**" includes documents.

Disclosure of information by resident agent: supplementary.

5A. (1) A person listed in paragraph 5(10) ("P"), or a person acting on P's behalf, may, by notice in writing, require a resident agent to attend at such times and places as may be specified in the notice, and to answer such questions as P requires the resident agent to answer in respect of, or arising out of any response to, an information notice served under paragraph 5 on the resident agent by or on behalf of P.

(2) A person who, without reasonable excuse –

- (a) fails to comply with a notice served under subparagraph (1), or fails to answer a question asked under subparagraph (1), or
- (b) makes a statement, in response to a notice served or questions asked under subparagraph (1), which is false, deceptive or misleading in a material particular,

is guilty of an offence and liable to a civil penalty."

(5) In paragraph 6 (tipping off) of Schedule 1A, for "a certificate" substitute "an information notice", and for "that certificate" substitute "that notice".

Citation.

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

Commencement.

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