



FOUNDATIONS ACT 2011

FOUNDATIONS (CONTINUANCE) REGULATIONS 2011

*Approved by Tynwald
Coming into operation*

*December 2011
1 January 2012*

The Treasury makes these Regulations under section 61(1)(c) and (d) of the Foundations Act 2011¹.

1 Title

These Regulations are the Foundations (Continuance) Regulations 2011.

2 Commencement

If approved by Tynwald², these Regulations come into operation on 1 January 2012.

3 Interpretation

In these Regulations—

“the Act” means the Foundations Act 2011; and

“foreign foundation” means a legal person established and recognised as a foundation under the laws of a jurisdiction outside the Island.

Continuance of foreign foundations

4 Application for consent to be continued in the Island

(1) Subject to paragraph (2), a foreign foundation may apply to the Registrar for consent to be continued as a foundation established under the Act.

(2) A foreign foundation may not make an application under paragraph (1) if—

(a) it is subject to insolvency or analogous proceedings in any jurisdiction;

¹ 2011 c. 17

² As required by section 61(5) of the Act

- (b) a receiver or manager has been appointed in relation to any of its assets;
 - (c) it has entered into an arrangement with its creditors that has not been concluded;
 - (d) the laws of the jurisdiction in which it is established for the time being do not permit it to be continued in the Island; or
 - (e) an application made to a Court in any jurisdiction for the winding up of the foundation or for the foundation to be subject to insolvency or analogous proceedings has yet to be determined.
- (3) The application must be made in the form and manner published by the Registrar and must contain the information required by the Registrar.
- (4) The application must be made on behalf of the foreign foundation by the class 4 licenceholder who is to become registered agent upon the continuation of the foreign foundation in the Island (and who is named as such in the application form).
- (5) The application must include —
- (a) a copy of the foundation instrument which must comply with the Act; and
 - (b) the published fee.
- (6) The application must be accompanied by a declaration signed by the class 4 licenceholder making the application stating that—
- (a) it is their opinion that the foreign foundation is not precluded from making the application by reason of a matter specified in paragraph (2);
 - (b) the class 4 licenceholder is in possession of the foreign foundation's rules and that these comply with the Act;
 - (c) the address of the class 4 licenceholder in the Island, specified in the declaration, is to be the business address of the foundation; and
 - (d) the applicant has obtained all necessary authorisations required under the laws of the jurisdiction in which the foreign foundation was established to enable the application to be made on behalf of the foreign foundation.

5 Continuance and establishment of foundation in the Island

On receipt of an application for continuance that complies with the requirements of these Regulations, the Registrar must—

- (a) establish the foundation and enter in the register—
 - (i) the name and business address of the foundation;
 - (ii) its objects;
 - (iii) the names and addresses of the members of its council; and
 - (iv) the name and business address in the Island of the registered agent,and date the entries; and
- (b) issue the foundation with a registration number and a certificate of continuance.

6 Refusal of Registrar to consent to continuance

- (1) The Registrar must refuse to accept an application that does not comply with the requirements of these Regulations.
- (2) If the Registrar so refuses the Registrar must—
 - (a) inform the applicant of the refusal; and
 - (b) give reasons for the refusal.
- (3) An applicant may within one month of being informed of the refusal, appeal to the High Court against the decision of the Registrar.
- (4) The High court may confirm the decision or make such determination in the matter as it considers appropriate.

7 Effect of continuance

With effect from the date of the certificate of continuance issued under regulation 5(b) the foreign foundation will become a foundation to which the Act and all other laws of the Isle of Man apply as if it was established under the Act.

8 Consequence of continuance of foreign foundation

- (1) Upon continuance of a foreign foundation as a foundation under the Act—
 - (a) the assets of the foreign foundation continue to be the property of the continued foundation;
 - (b) the continued foundation continues to be liable for the obligations of the foreign foundation;

- (c) any existing cause of action, claim or liability to prosecution in respect of the foreign foundation is unaffected;
 - (d) any civil, criminal or administrative action or proceeding pending by or against the foreign foundation is unaffected; and
 - (e) any conviction against, or any ruling, order or judgment in favour of or against the foreign foundation may be enforced by or against the continued foundation.
- (2) Continuance of a foreign foundation under these Regulations does not—
- (a) create a new foundation; or
 - (b) prejudice or affect the continuity of the foundation that was formerly a foreign foundation and becomes a continued foundation.
- (3) The High Court must apply the laws of evidence and rules of procedure to ensure that no claimant against the continued foundation will be prejudiced in pursuing in or under the laws of the Isle of Man a claim that existed prior to the date of continuance and which could have been pursued under the laws then governing the foreign foundation.
- (4) Notwithstanding section 1 of the Judgements (Reciprocal Enforcement) (Isle of Man) Act 1968³, Part I of that Act applies in respect of judgments of any court outside the Island if—
- (a) the judgement debtor is a foreign foundation that has become a continued foundation;
 - (b) the judgement is given in proceedings in respect of a cause of action arising before the date of the certificate of continuance issued in respect of the continued foundation under regulation 5(b);
 - (c) at the time when the cause of action arose, the foundation was established under the laws of the jurisdiction of that court;
 - (d) the judgement is final and conclusive as between the parties to it; and
 - (e) there is payable under the judgement a sum of money.
- (5) For the purposes of paragraph (4)(d), a judgement will be deemed to be final and conclusive notwithstanding that an appeal is pending against

³ XX p.452

it, or that it may still be subject to appeal in the courts of the country of the original court.

- (6) Paragraph (4) applies in respect of judgements for taxes or other charges of a like nature or in respect of a fine or other penalty as it applies in respect of any other judgement under which there is payable a sum of money.
- (7) Except as provided by paragraph (8), section 1 of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 does not apply in respect of any judgment to which subsection (4) applies.
- (8) Where, apart from this regulation, Part I of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 applies to a judgment of any court, this regulation shall be treated as additional to and not in derogation of such application of that Part.

Discontinuance of Manx foundations

9 Application for consent to discontinuance

- (1) Subject to paragraph (2), a foundation established under the Act may apply to the Registrar for consent to be continued as a foreign foundation under the laws of a jurisdiction outside the Island and to be discontinued under the Act.
- (2) A foundation may not make an application under paragraph (1) if —
 - (a) if it is subject to insolvency or analogous proceedings in any jurisdiction;
 - (b) a receiver or manager has been appointed in relation to any of its assets;
 - (c) it has entered into an arrangement with its creditors that has not been concluded; or
 - (d) an application made to the High Court for the winding up of the foundation or for the foundation to be subject to insolvency or analogous proceedings has yet to be determined.
- (3) The application must be made in the form and manner published by the Registrar and must contain the information required by the Registrar.
- (4) The application must be made by the foundation's registered agent.
- (5) The application must include —
 - (a) a statutory declaration that is signed by each of the members of the foundation council that —

- (i) the foundation is solvent and can meet all of its liabilities and obligations; and
 - (ii) that the discontinuance will not adversely affect the interests or rights of creditors or any persons with sufficient interest (within the meaning of the Act) in respect of the foundation; and
- (b) the published fee.
- (6) The application must be accompanied by a declaration signed by the foundation's registered agent stating—
 - (a) the name of the jurisdiction outside the Island under the laws of which the foundation will be continued;
 - (b) the business address of the foundation in the jurisdiction outside the Island; and
 - (c) that the applicant has obtained all necessary authorisations required under the laws of the jurisdiction outside the Island to enable it to make the application.

10 Discontinuance of foundation in the Island

On receipt of the application for discontinuance that complies with the requirements of these Regulations, the Registrar must—

- (a) keep the application in accordance with section 49 of the Act;
- (b) issue a certificate of discontinuance; and
- (c) as soon as is reasonably practicable after such filing, amend the register to reflect that the foundation has been discontinued.

11 Refusal of Registrar to consent to discontinuance

- (1) The Registrar must refuse to accept an application for discontinuance that does not comply with the requirements of these Regulations.
- (2) If the Registrar so refuses the Registrar must—
 - (a) inform the applicant of the refusal;
 - (b) give reasons for the refusal.
- (3) An applicant may within one month of being informed of the refusal, appeal to the High Court against the decision of the Registrar.
- (4) The High Court may confirm the decision or make such determination in the matter as it considers appropriate.

12 Effect of discontinuance

- (1) On the date of the certificate of discontinuance the foundation ceases to be a foundation established under the Act.
- (2) Discontinuance of a foundation under these Regulations does not—
 - (a) create a new foundation; or
 - (b) prejudice or affect the continuity of the foundation that was formerly a foundation and becomes a discontinued foundation.
- (3) Where a foundation is discontinued under these Regulations service of legal process may be effected on the foundation and any member of its council holding office immediately prior to its discontinuance in the Island in any proceeding arising out of actions or omissions occurring prior to the discontinuance in the Island in any proceeding arising out of actions or omissions occurring prior to the discontinuance by serving the same on the person who was the registered agent immediately before the discontinuance of the foundation in the Island at the address that was the business address of the foundation immediately before discontinuance in the Island.
- (4) The following apply to a foreign foundation that has been continued in a jurisdiction outside the Island—
 - (a) the assets of the foundation continue to be the assets of the foreign foundation;
 - (b) liability of the foreign foundation in respect of its debts and obligations continues;
 - (c) any existing cause of action, claim or liability to prosecution in respect of the foundation is unaffected; and
 - (d) any conviction against, or any ruling, order or judgment in favour of or against the foundation may be enforced by or against the foreign foundation.

Made 16th November 2011

Hon W E Teare MHK
Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations permit foreign foundations to be continued under the Foundations Act 2011 as if they had been established under the Act, subject to certain conditions being met. These include:

- The foundation being solvent;
- The application being made in the form and manner published by the Registrar and containing all the information required by the Registrar; and
- The application being made by the class 4 licenceholder who is to become the registered agent of the foundation.

The Regulations also make provision for foundations established under the Foundations Act 2011 to apply to be discontinued in the Isle of Man. This is again subject to the foundation being solvent and making the application in the form and manner required by the Registrar.