

## Winding Up and Termination Of Foundations

A foundation is terminated, and accordingly no longer exists or has legal personality if a winding up event has occurred.

A winding up event can be instigated by the Foundation Council or the Royal Court.

### Winding Up by the Council

A winding up event is defined as:

- The expiry of the duration of a Foundation (if it is limited in duration)
- An event that is specified in the Foundation Constitution or the exercise of powers that are included in the Constitution
- The Foundation no longer having any property or assets
- The bankruptcy of the Foundation
- Upon the completion, failure or lapse of the foundation purpose, either by consent of the participants, or by the council or participants applying for an order of the Royal Court

### Circumstances under which the Royal Court may wind up a Foundation

The following persons may apply to the Royal Court for a winding up order: Her Majesty's Procureur, a foundation official, a participant, the Registrar, or any other person with leave of the Royal Court.

The Court may order the winding up of a Foundation if in its opinion:

- It is not reasonably practicable to carry on the Foundation in accordance with its constitution
- It was established by duress, fraud, mistake, undue influence or misrepresentation, or in breach of fiduciary duty
- It is, or is being conducted in a way that is, immoral or contrary to public policy
- Its terms are so uncertain that its performance is rendered impossible
- The Foundation is bankrupt
- The Foundation is indebted to a creditor in a sum exceeding £750 and has not paid the debt or given security for it to the satisfaction of its creditors within 21 days of receiving a service of notice from HM Sergeant
- There has been a failure to comply with any provision of an order of the Royal Court relating to the name of a Foundation
- The guardian or resident agent has been denied access to the documents to which he is entitled
- The resident agent has been refused information requested under para 22 of schd.1, or there is no resident agent where one is required **(Please note in this instance the Court may order that the Foundation be struck off the Register)**
- The affairs of the Foundation are being conducted in such a way as to defraud creditors, or in an unlawful manner
- There has been a persistent default by the Foundation in complying with the requirements or conditions imposed under the provisions of the Law
- The founder or councillors have, in connection with the formation or management of the Foundation, been guilty of fraud, misfeasance, breach of duty or other misconduct in relation to the Foundation
- It is just and equitable to do so

Upon the making of an order the Royal Court may make such other orders in relation the winding up as it thinks fit, including the appointment of one or more liquidators to wind up the Foundation affairs and the distribution of its assets, and to apply to the Registrar for the removal of the Foundation from the Register.

## General provisions in relation to the winding up process

The affairs of a Foundation shall be wound up by the Council, a liquidator appointed by the Council, or a liquidator appointed by the Royal Court.

Within two weeks of the date of the winding up event (see page 1 for definition of an event) the Council, liquidator or resident agent shall-

- Give notice to the participants of the winding up, and
- Publish a notice (stating that the Foundation is winding up) in such manner and for such period as the Registrar thinks fit. In this instance a notification must be filed with the Registrar the submission of an 'Foundation—Notification of Winding Up' and a notice will then be published on the Registry website accordingly. *There is nothing preventing a notice **also** being published in La Gazette Officielle should the Council, liquidator or resident agent see fit to do so.*

The winding up of a Foundation is deemed to commence on the earlier of the following-

- The date of the occurrence of the winding up event, or
- The date of the order of the Royal Court for its winding up

(Note: upon the commencement of the winding up or at any time thereafter, the Royal Court may, on the application of any foundation official, participant, assignee or creditor, make such order in relation to the winding up as it thinks fit, including the appointment of one or more liquidators to wind up the foundations affairs and distribute its assets.)

On appointment of a liquidator all powers of the foundation officials cease and anyone that purports to exercise any power of a foundation official at a time when those powers have ceased is guilty of an offence.

From the commencement of the winding up the Foundation shall cease to carry on any activities except to the extent necessary for its beneficial winding up.

All expenses properly incurred in the winding up of the Foundation, including the liquidator's remuneration, are payable from the Foundation's assets in priority to all other debts. No foundation official may claim as a creditor of the Foundation, except in accordance with the provisions relating to the distribution of assets.

The persons winding up the Foundation's affairs, in the name of and for and on behalf of the Foundation:

- May to the extent necessary for the beneficial winding up of the Foundation, prosecute, defend or settle any civil or criminal action
- Shall dispose of the Foundation's property and realise its assets, and
- Discharge the Foundation's debts, and distribute any remaining assets of the Foundation in accordance with the terms of the Constitution.

Upon the winding up of a Foundation, the assets shall be distributed in the following order-

- Firstly to the creditors other than the foundation officials, participants or disenfranchised beneficiaries in satisfaction of the Foundation's debts
- Secondly to the foundation officials, participants or disenfranchised beneficiaries who are creditors in satisfaction of the Foundation's debts
- Finally, subject to the provisions of the constitution, to the default recipient.

As soon as a Foundation's affairs are fully wound up the persons who conducted the winding up shall:

- Prepare an account of the winding up, giving details of the conduct and disposal of the foundations property, etc.
- Provide all foundation officials with a copy of the said account, and
- **Within 7 days** beginning on the date of completion of the winding up, file with the Registrar notice of completion of the winding up, via the submission of an 'Application for Removal from the Foundation Register'. A notice will then be published on the Guernsey Registry website. *There is nothing preventing a notice **also** being published in La Gazette Officielle should the persons conducting the winding up see fit to do so.*

## Notifications to the Registrar

Upon the commencement of the winding up of a Foundation, a 'Foundation - Notification of Winding Up' submission should be made to the Registrar.

The Registrar will then publish a notice detailing the date the winding up commenced, the winding up event and the name of the person(s) conducting the winding up.

Following the winding up of a Foundation and the distribution of the assets an application for the removal of the Foundation from the Register shall be made to the Registrar using the 'Application for Removal from the Foundation Register' submission form, see attached.

Upon receipt of this application the Registrar will then update the Register to reflect the dissolution of the Foundation by way of winding up, and publish a notice (for a period of 3 months) of the fact that the Foundation has been terminated and removed from the Register.

Upon the termination and dissolution of the Foundation, and its removal from the Register the Foundation shall cease to exist and have legal personality.

A Foundation is only terminated on the date of its removal from the Register.

Last updated: April 2016

### **Please note:**

The purpose of this guidance note is to provide information on certain issues that should be considered with regard to the winding up of a Foundation.

### **It is not definitive legal advice and should not be relied upon as such**

Independent legal advice is advised where there is any uncertainty