

<u>The Registry</u> Basic information <i>Application to register</i>	1. The Registry is proposing to update s.4 of FA11 regarding the particulars in, or to accompany, the application form for the establishment of a foundation. 2. The Registry is proposing that the application must also include: a) the 'relevant particulars' of the Council Members, b) the 'relevant particulars' of the Enforcer (if there is one), c) the proposed activities and the geographic location of those activities. 3. The Registry is proposing to insert into FA11, alongside the other corporate laws, a regulation making power to prescribe the categories of business activities (with it being anticipated that the Standard Industrial Classification Codes (2007), with such additional codes and designations as are necessary, being used).
<u>Registry</u> Basic information Accuracy <i>Considering the application</i>	<i>Information gathering</i> 1. As stated, it is proposed that the Registrar in administering FA11, does so in a manner that promotes the Island's reputation as an international financial centre. This would involve identifying and assessing risks to that reputation, including the accuracy of information submitted upon application for formation. 2. For such purposes the Registrar may, in considering an application for registration, request further information/ documentation. It is proposed that where a person fails to provide such information/ documentation, the Registrar may refuse the application. 3. The Registry is also proposing that the Registrar may refuse an application for registration where the Registrar reasonably concludes that it would be in the public interest to do so (appealable).
<u>Registry</u> Basic information Accuracy	1. Presently, section 6 makes provision regarding a change of name, namely: a) subject to the Instrument not prohibiting any change, b) the <i>Company and Business Names etc Act 2012</i> has effect,

Foundation name

- c) the Registrar must be notified in accordance with s.45 (given it entails an amendment to the Instrument),
- d) having been approved, the Registrar must enter the new name in the Register of Foundations (and date the entry).

- 2. In contrast to the other Corporate Laws, under s.34 of FA11 it is the entry in the Register of Foundations (as opposed to the certificate of establishment issued under s.34(2)) that demonstrates conclusive evidence of a foundation's establishment, and compliance with the requirements of FA11 as to establishment.
- 3. Notwithstanding that, the Registry proposes that upon the Registrar approving a change of name, in addition to updating the Register, that the Registrar issue the foundation with a certificate of change of name.

Registry
Basic information
Adequacy

the Public Register

- 1. Presently, section 48 requires the Registrar to keep a Register of Foundations, specifying what it must include and that it is to be available for public inspection.
- 2. As stated, the Registry is proposing to standardise the wording across the Corporate Laws so that it is clear on the face of each Act that:
 - a) the Registrar must establish and maintain a Register [of Foundations]
 - b) specify the information on the Register that is to be publicly available, subject to any prescribed fee, for inspection,
 - c) specify what information constitutes confidential information and thus is not to be a matter of public record.
- 3. The Registry is therefore proposing to revise s.48. In essence the Register of Foundations would consist of two parts. Part 'A' would specify the information available for public inspection, being:
 - a) name of the Foundation (including any former names),
 - b) date of establishment,
 - c) certificate of establishment,
 - d) change of name certificate (if any),
 - e) business address in the Isle of Man,

Registry
Up to date
Basic information
Change in details

- f) unique identifier (registration number),
 - g) legal form and status,
 - h) the Instrument,
 - i) the information specified in the Rules (in accordance with s.4(4)(aa)),
 - j) the relevant particulars of each Council member (noting that a Council member may elect a service address and that the date of birth will show month and year),
 - k) the relevant particulars of the Enforcer (as above),
 - l) name and address of the registered agent,
 - m) such other information (but not confidential information), prescribed in regulations.
4. It is proposed that Part 'B' of the Register would contain confidential information to be held by the Registrar but would not be a matter of public record (notably a natural person's full date of birth and, where they have elected a service address for the public register and their residential address).
1. Presently, section 45 specifies the changes that require a notification to the Registrar, namely a change to the foundation instrument or to the information in the rules specified in section 4(4)(aa).
2. As a result, the following basic foundation information held by the Registry is updated within a month of its occurrence:
- a) a change to the composition of council members or to the names and addresses of existing members,
 - b) a change in the details of the registered agent (name or address),
3. Regarding what basic information is held by the Registrar, as stated above this would include further particulars on council members and particulars regarding the enforcer (if there is one).
4. The Registry is therefore proposing to require foundations to notify the Registrar of any changes to such particulars (within one month) and of any changes to:
- a) the activities of the foundation,
 - b) the geographic location of those activities.

Foundation
Basic information
held

1. Presently, there are four key aspects to s.41, stating:
 - a) the physical location where a foundations must keep its records,
 - b) who it must notify, and when, if that location changes, and
 - c) what the records are,
 - d) who may inspect those records.
2. Regarding the physical location of a foundations records, the Registry is proposing to update section 41(3). Where the records are kept at a place other than the business address, in addition to providing the registered agent with notice of that address, the foundation must also notify the Registrar.
3. Similarly, where there is a change to the location of the records, in addition to a foundation providing the registered agent with notice of that change, the Registry is proposing that the Registrar is also notified of the change.
4. The records and documents that a foundation is required to keep is set out under subsection (2). The Registry is proposing to update subsection (2), firstly to add to the list and secondly, in some instances, to add to the particulars of the documents already specified.
5. Therefore, the Registry is proposing that a foundation must also keep at its address in the Island, the following:
 - a) registration number,
 - b) certificate of establishment,
 - c) certificate of change of name (if any).
6. Regarding the registers/ records of:
 - a) council members (s.41(2)(b)),
 - b) enforcer, if there is one (s.41(2)(d)),
 - c) dedicators (s.41(2)(f)),
 - d) founders (s.41(2)(g)),
 - e) beneficiaries, to the extent that they are known (s.41(2)(h)),

... in addition to their names and addresses, the Registry is proposing that a foundation must also record, in respect of each, their “relevant particulars” (defined above) and, where relevant, the date of their appointment and date of cessation.

7. Where a member, enforcer, dedicator (etc.) who is a natural person elects for the relevant register/ record to specify a service address or, in respect of their date of birth, the month and year only, the Registry is proposing that a foundation must keep a separate record, that is not open to public inspection, of residential address/ full date of birth.

1. As such a person would have to make a written request to the foundation for that information to be disclosed, stating in the request:

- a) their name and address,
- b) the reason why the information is being requested and what the information will be used for,
- c) whether the information will be disclosed to any other person (and if so that person's details and the reason why they require that information and the purpose for which they will use it).

8. Should the company decline to disclose the information, ultimately the person who has made the request may make an application to Court.

Public inspection

9. Presently, the inspection of documents (etc) that a foundation is required, under s.41, to maintain is limited to the registered agent. However, s.41 is complemented by s.31 which gives "persons with sufficient interest" a power to receive (upon request) information on the matters specified in subsection (2).

Up to date and accurate

10. The Registry is proposing the insertion of a provision into FA11 that foundation have a duty to ensure that the statutory records and documents maintained, are accurate and up to date.

Offence

11. Lastly, the Registry is proposing to make it an offence, should a foundation be in breach of such requirements, and thus liable to a fine.

End