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CONSOLIDATED TO 20TH DECEMBER, 2021

FOUNDATIONS ACT, 2009

(Act 32 of 2009)

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PART I - PRELIMINARY

Short title

1. This Act may be cited as the Foundations Act, 2009.

Interpretation

2. In this Act —

"accounting records" means documents relating to assets and liabilities of the Foundation including receipts and expenditure, sales and purchases and other transactions;

"assets" means any property in which a Foundation has any interest or over which it has any rights;

"beneficiary", in relation to a Foundation, means a person designated as such pursuant to the charter, regulations or by any amendment to the charter or regulations;

"charter" means the charter of a Foundation adopted under section 4;

"council" means the council of a Foundation referred to under section 32;

"councillor" means a person appointed as a member of a council under section 34;

"court" means the Supreme Court of Seychelles;

"to endow" means to transfer or covenant to transfer, the title in property, absolutely, with or without consideration, to a Foundation so that the property becomes an asset of the Foundation;

"Foundation" means a foundation established under section 3;

"founder" means a person who subscribes the person's name to the charter establishing a Foundation acting on that person's own account or on behalf of another, and who endows the Foundation with its initial assets;

"initial assets", in relation to a Foundation, means the initial assets endowed by a founder to and which are the properties of a Foundation;

"legal person" means a company, a corporation or any other entity having separate legal personality;

"Minister" means the Minister responsible for finance;

"minor" means an individual who is less than 18 years of age;

“Official Seal” means the official seal of the Registrar;

“person” means a natural person or legal person;

“protector”, in relation to a Foundation, means a person, if any, appointed under section 52, 53 or 57;

“record” —

(a) means —

(i) information kept in a bound or loose-leaf book or photographic film; or

(ii) information entered or recorded by a system of mechanical or electronic data processing; and

(b) includes any other information storage device, which is capable of reproducing the required information in intelligible written form;

“Register” means the Register of Foundations kept by the Registrar under section 107(1);

“registered”, in relation to a Foundation, means registered as a Foundation under this Act;

“registered agent”, in relation to a Foundation registered under this Act, means the registered agent of a Foundation holding such office under section 28;

“Registrar” means the Financial Services Authority established under the Financial Services Authority Act (*Act 19 of 2013*);

“remaining beneficiary”, in relation to the surplus assets, means a person who, according to the charter or regulations, is entitled to receive any surplus assets;

“regulations” means the regulations of a Foundation, if any, adopted under section 13;

“resolution of councillors”, in relation to a Foundation, means —

(a) a resolution approved at a duly convened and constituted meeting of the councillors by the affirmative vote of a simple majority, or a larger majority as may be specified in the charter or regulations, of the councillors present at the meeting, in person or by alternate or proxy, who voted; or

(b) a resolution consented to in writing by a simple majority of the councillors or by such larger majority of councillors, as may be specified in the charter or regulations:

Provided that, for the purpose of this provision, “simple majority” means, in the event that a Foundation has only two councillors, both councillors;

“supervisory person” —

- (a) means a person having supervisory powers in relation to a Foundation and includes the protector and any other person appointed by the founder or protector as such; but
- (b) does not include a councillor, except where the councillor has supervisory powers in relation to a Foundation otherwise than in the capacity of councillor;

“surplus assets” means the assets of a Foundation, if any, remaining after its dissolution;

“unanimous resolution of councillors”, with respect to a Foundation, means —

- (a) a resolution approved at a duly convened and constituted meeting of the councillors by the affirmative vote of all the councillors present at the meeting, in person or by alternate or proxy, who voted; or
- (b) a resolution consented to in writing by all of the councillors.

PART II — ESTABLISHMENT OF FOUNDATIONS

Establishment

3.(1) Subject to this Act, a Foundation is established —

- (a) by a charter made in writing and signed by one or more founders, as the case may be, and submitted to the Registrar; and
- (b) on the issuance of a certificate of registration by the Registrar under section 22(1)(b).

(2) Notwithstanding a provision of a written law or of a written law of any other country, a Foundation, other than a Foundation with beneficiaries being beneficiaries in terms of section 59, shall be a Foundation established to carry on a specified purpose.

Charter of Foundations

4.(1) A Foundation shall have a charter that complies with this Act.

- (2) A charter shall specify the following —
 - (a) the name of the Foundation;

- (b) the name and address of the founder or of each of the founders;
- (c) the object for which the Foundation has been established;
- (d) the initial assets of the Foundation;
- (e) where the Foundation has been established to carry on a specified purpose, the details of the specified purpose;
- (f) the establishment of a council;
- (g) the name and address of the Foundation's registered agent in Seychelles;
- (h) the address of the Foundation's registered office in Seychelles;
- (i) that —
 - (i) the Foundation is to be wound up and dissolved upon the happening of an event or the expiration of a fixed period of time including details of the event or period; or
 - (ii) the period of time for which the Foundation has been established is indefinite; and
- (j) the manner in which a beneficiary of a Foundation is appointed.

(3) Subject to this Act, the charter may, in addition to the details in subsection (1)

- (a) provide for the Foundation to be endowed with supplementary assets;
- (b) provide for the name and address of each of the initial councillors;
- (c) provide for the appointment and removal of a councillor;
- (d) establish the manner in which decisions of the council are to be made;
- (e) provide for —
 - (i) the designation of any initial beneficiaries or any beneficiaries to be designated at a later date;
 - (ii) the names and addresses of any beneficiaries; and
 - (iii) the identification of any remaining beneficiary upon the winding up of the Foundation;
- (f) provide for the addition or removal of a beneficiary;

- (g) provide for —
 - (i) the appointment of one or more persons to act as protector or protectors respectively;
 - (ii) the duties, powers, functions and rights, including the rights to remuneration, of a protector; and
 - (iii) the removal of a protector;
- (h) provide for the making of regulations;
- (i) provide for the appointment of a person by power of attorney or otherwise, to carry out particular duties on behalf of the Foundation;
- (j) provide for the appointment, term of office and removal of an auditor, if any, of the Foundation;
- (k) provide for the procedure by which the charter or regulations may be amended;
- (l) provide for —
 - (i) the circumstances, if any, in which the Foundation may be continued in or outside Seychelles; and
 - (ii) the conditions to be satisfied in respect of such continuation in or outside Seychelles;
- (m) provide for the reservation of rights or powers to its founder or founders, as the case may be;
- (n) provide for the appointment, term of office and removal of any other supervisory person to the Foundation; and
- (o) provide for any other lawful matter in respect of the Foundation.

Language of charter

5.(1) A charter shall be in writing and executed by or on behalf of each of the founders.

(2) Where the language of a charter is a language other than English or French, the charter shall be accompanied by a translation of it, in the English or French language, certified as true and accurate, by a registered agent.

(3) The registered agent shall not give a certificate under subsection (2), unless the translation has been obtained from or confirmed by a qualified translator or such other person as may be acceptable to the Registrar.

Amendment of charter

- 6.(1) The charter may make provision for its amendment.
- (2) Where the charter makes no provision for its amendment, it shall be amended in writing —
- (a) in the case of a Foundation established by one founder, by the founder during the founder's lifetime; or
 - (b) in the case of a Foundation established by 2 or more founders, by the founders jointly during their joint lifetimes or by the surviving founder or founders jointly.
- (3) Where there is no surviving founder at the time of a proposed amendment under subsection (2), the councillors may, subject to subsections (4) and (5), by a resolution of councillors approve the proposed amendment, as in their opinion is necessary in the circumstances to maintain the object of the Foundation.
- (4) A resolution of councillors approving an amendment to the charter under subsection (3) shall be of no effect unless it is confirmed by the court under subsection (5).
- (5) On an application to the court, the court may make an order confirming or rejecting an amendment, wholly or in part, on such terms and conditions as it thinks fit, or make such other order as it thinks fit for carrying into effect an amendment.
- (6) A Foundation, the charter of which has been amended under this section —
- (a) shall submit for registration to the Registrar within 14 days of such amendment, a certified extract of the amendment, accompanied by the fee set out in Part 2 of Schedule 1; and
 - (b) may file with the Registrar within 14 days of submitting the certified extract of amendment under paragraph (a), an amended replacement charter.
- (7) Amendments to the charter if any, shall be executed —
- (a) by or on behalf of —
 - (i) each founder; or
 - (ii) each councillor, if they are made under subsection (3); or
 - (b) as may otherwise be provided in the charter.
- (8) A Foundation that contravenes subsection (6)(a) is liable to a penalty of US\$50 for each day or part thereof in respect of which the contravention continues.

Objects of Foundation

7.(1) The objects of a foundation —

- (a) may be charitable, non-charitable or both;
- (b) shall include the management of its assets and income, and the distribution thereof, as the council may by a resolution of councillors determine pursuant to the charter or regulations —
 - (i) to the beneficiaries of the Foundation;
 - (ii) in the case of a Foundation established to carry on a specified purpose, in the fulfilment of that purpose, or both (i) and (ii); and
- (c) may include any other objects that do not contravene subsection (2).

(2) The objects of a Foundation shall not include —

- (a) the carrying on of any activity which is unlawful, immoral or contrary to any public policy of Seychelles;
- (b) the carrying on in or from within Seychelles of any activity in respect of which a licence or authorisation under any written law is required, and no such licence or authorisation has been granted to the Foundation; or
- (c) the carrying on of business in Seychelles, except so far as may be necessary for the carrying on of the Foundation's business outside of Seychelles, and for the purposes of this paragraph, a Foundation shall not be treated as carrying on business in Seychelles by reason only that—
 - (i) it opens and maintains an account with a bank licensed under the Financial Institutions Act, 2004;
 - (ii) it engages the services of or otherwise deals with counsel and attorneys, accountants, bookkeepers, international corporate service providers, Foundation service providers, mutual fund administrators or managers, securities' dealers, investment advisers or other similar persons carrying on business in Seychelles;
 - (iii) it prepares or maintains its books and records in Seychelles;
 - (iv) it holds, in Seychelles, meetings of its councillors or supervisory persons; or
 - (v) it holds a lease of immovable property in accordance with section 11(2), for use only as an office from which to communicate with councillors, supervisory persons or

beneficiaries, or where its books and records are prepared or maintained.

Initial assets of Foundations

8. The Registrar shall not register a Foundation unless the charter requires it to have initial assets of a value of not less than US\$1 or the equivalent thereof in any other currency.

Origin of assets

9. The assets of a Foundation may originate from any lawful source and consist of present or future assets of any nature.

Enforcement of undertaking to endow assets to Foundation

10. Where a founder or any other person has made an undertaking, recorded in the charter or other document, to endow assets to a Foundation, the Foundation may enforce that undertaking against the founder or such other person, as the case may be.

Assets of Foundation

11.(1) The assets of a Foundation —

(a) may include —

- (i) any interest or entitlement as a beneficiary of another Foundation registered under this Act;
- (ii) any shares, debentures or other interests in a company incorporated under the International Business Companies Act;
- (iii) any shares, debentures or other interests in a company licensed under the Companies (Special Licences) Act;
- (iv) any shares, debentures or other interests in a company incorporated under the Protected Cell Companies Act;
- (v) any interest in a partnership registered under the Limited Partnerships Act;
- (vi) any interest or entitlement as a beneficiary under a trust registered under the International Trusts Act;
- (vii) any company, trust or other entity licensed as a mutual fund under the Mutual Fund and Hedge Fund Act; or
- (viii) any funds in an account with a bank licensed under the Financial Institutions Act; and

- (b) shall not include immovable properties or other properties in Seychelles, including shares, debentures or other interests in a legal person incorporated or registered, in Seychelles.

(2) Notwithstanding subsection (1)(b), a Foundation may, subject to the written laws, lease immovable properties in Seychelles, only for any of the purposes mentioned in section 7(2)(c)(v).

Management of assets of Foundation

12.(1) The assets of a Foundation shall be exclusively managed, including being realised, applied, administered, invested and disbursed in accordance with the charter, regulations and this Act, for the attainment of the objects specified in the charter and authorised by this Act.

(2) A Foundation may, in the course of the management and administration of its assets exercise such powers and perform such functions as are necessary for the proper management and administration of its assets, including the selling of its assets and engaging in any other acts or activities that are not prohibited under any written law, but such acts or activities shall be ancillary or incidental to its main objects.

Foundation's regulations

13.(1) A Foundation may have regulations that comply with this Act.

(2) The regulations may —

- (a) provide for the distribution of assets made, or to be made, by the councillors;
- (b) provide for the determination of the minimum level of assets of the Foundation in the absence of which no distribution of such assets shall be made to a beneficiary;
- (c) provide for the particulars relating to beneficiaries referred to in section 4(3)(e);
- (d) provide for —
 - (i) the name and address of each of the initial councillors;
 - (ii) the appointment and removal of a councillor; and
 - (iii) the manner in which decisions of the council are to be made;
- (e) set out the functions of the council, and if, they may or shall be delegated to or performed in conjunction with, any other person, the extent to which this may or shall be done; and
- (f) provide for any other matter in respect of the Foundation, in addition to the matters required to be set out in the regulations by this Act.

(3) The regulations shall be in writing and shall be signed and executed by each founder or each councillor, if there is no surviving founder.

Language of regulations

14.(1) The regulations may be written in —

- (a) the English or French language; or
- (b) a language other than English or French, in which case they shall be accompanied by a translation in the English or French language, certified as true and accurate, by a registered agent.

(2) A registered agent shall not give a certificate under subsection (1)(b), unless such translation has been obtained from or confirmed by a qualified translator or such other person as may be acceptable to the Registrar.

Charter to prevail in event of inconsistency

15. Unless otherwise provided in the charter or regulations, in the event of an inconsistency between a term in the charter and regulations, the term in the charter shall prevail to the extent of the inconsistency.

Amendment of regulations

16. Subject to the terms of the charter or regulations, the council may amend or replace the regulations by a unanimous resolution of councillors.

Name of Foundations

17.(1) Subject to subsection (3), the name of a Foundation shall end with the word “Foundation”.

(2) A proposed Foundation shall not be registered by a name —

- (a) which includes —
 - (i) “limited” or an abbreviation of “limited”;
 - (ii) “company” or an abbreviation of “company”;
 - (iii) “partnership” or an abbreviation of “partnership”;
 - (iv) a translation of any words conveying a similar meaning to “limited”, “company” or “partnership”, in the language or practice of any other country; or
 - (v) an abbreviation of any such translation as is referred to in subparagraph (iv);

- (b) which in the Registrar's opinion is the same as or similar to the name of an existing Foundation in Seychelles;
- (c) which in the opinion of the Registrar is misleading, offensive or otherwise objectionable;
- (d) which contains the words “Assurance”, “Bank”, “Building Society”, “Chamber of Commerce”, “Chartered”, “Cooperative”, “Insurance”, “Municipal”, “Trust”, “Stock Exchange”, “Securities”, “Royal”, “Fund” or a word conveying a similar meaning; or
- (e) any other word that, in the opinion of the Registrar, suggests or is calculated to suggest the patronage or any connection with the Government of Seychelles or the Government of any other country.

(3) The name of a Foundation may be expressed in any language, but where the name is not in the English or French language, a direct translation of the name in the English or French language shall be given to the Registrar, certified as true and accurate, by a registered agent.

(4) Where a direct translation of the name of a Foundation does not reflect the meaning of it, a representation of the name in the English or French language shall be given to the Registrar, certified as true and accurate, by a registered agent.

(5) A registered agent shall not give a certificate under subsection (3) or (4), unless it has obtained or confirmed such translation or representation from a qualified translator or such other person as may be acceptable to the Registrar.

(6) Where the name of a Foundation is not in the English or French language, the Registrar shall include the name and a translation or representation of it, as the case may be, in the English or French language on the certificate of registration issued under section 22(1)(b).

Reservation of name

18.(1) Subject to this section, the Registrar may upon a request made by a registered agent, reserve for 30 days a name for future adoption by a Foundation under this Act.

(2) On the expiry of the 30 day period referred to in subsection (1), the Registrar may, on payment by the registered agent of the fee set out in Part 2 of Schedule 1, for each 30 day period thereafter, continue reserving the name for future adoption by a Foundation under this Act.

Registrar may require change of name

19.(1) Where a Foundation has been registered by a name which —

- (a) is the same as or, in the opinion of the Registrar, so nearly resembles a name appearing at the time of registration in the Register; or

- (b) in the opinion of the Registrar is misleading, offensive or otherwise objectionable,

the Registrar may in writing, direct the Foundation to change its name within such period as the Registrar may specify.

- (2) If it appears to the Registrar that —
 - (a) misleading information has been given for the purpose of the registration of a proposed Foundation with a particular name; or
 - (b) undertakings or assurances have been given for such registration and have not been fulfilled,

the Registrar may in writing, direct the Foundation to change its name within such period as the Registrar may specify.

(3) Where a direction has been given under subsection (1) or (2), the Registrar may in writing, further extend the period within which the Foundation shall change its name at any time before the end of that period.

Change of name of Foundation

20.(1) A Foundation may, if permitted to do so by its charter or as otherwise provided for in section 6, change its name.

(2) Where a Foundation changes its name, the Registrar shall enter the new name in the Register in the place of the former name, and issue a certificate of registration on change of name.

(3) A change of name under subsection (2) shall not affect any rights or obligations of the Foundation, or render defective any legal proceedings by or against it, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

(4) Where a Foundation proposes to change its name, section 17 shall apply to the name by which the Foundation proposes to change its name, as it applies to the name by which it was first registered.

Registration of Foundation

21.(1) For the purpose of registering a Foundation under this Act, a registered agent shall submit a charter to the Registrar for registration, accompanied by the registration fee set out in Part 1 of Schedule 1.

- (2) The Registrar shall satisfy itself before registering a charter that —
 - (a) it complies with this Act; and
 - (b) its objects are lawful.

(3) If the Registrar is not satisfied that a charter complies with subsection (2), it shall in writing within one month after receipt of the charter, inform the registered agent, stating its reasons.

Effects of registration

22.(1) Upon the registration of a charter, the Registrar shall —

- (a) allocate a registration number to the Foundation; and
- (b) issue a certificate of registration stating —
 - (i) the name;
 - (ii) the registration number; and
 - (iii) the date of registration,

of the Foundation.

(2) A certificate of registration issued by the Registrar shall be prima facie evidence of compliance by a Foundation with all the requirements of this Act in respect of registration.

Legal personality

23. A Foundation shall be a legal entity on and from the date of registration stated in the certificate of registration.

Annual renewal fees

24.(1) A registered agent shall, with respect to a Foundation which is on the Register, pay to the Registrar on the date of each anniversary of its registration under this Act, the annual renewal fee set out in Part 1 of Schedule 1.

(2) Where the annual renewal fee referred to in subsection (1) is not paid in the manner set out in that subsection, there shall be payable by a Foundation other than the annual renewal fee, an additional fee equal to 10 percent of the annual renewal fee for each month or part thereof during which the annual renewal fee and any additional fee imposed by this section remains unpaid.

(3) The Registrar may, for good cause, waive all or any part of the additional fee imposed under subsection (2).

(4) The Registrar may sue for any unpaid annual renewal fee, and the court may order the payment of such fees and penalties accrued in respect of late payment of such fees.

(5) For the purposes of subsection (2), “month” means each successive period of 30 days commencing from the date of the annual renewal fee falling due under subsection (1).

PART III – FOUNDER OF FOUNDATIONS

Powers and obligations of founder

25. Unless the charter or regulations provide otherwise, where a Foundation has more than one founder, their powers under the charter or regulations and this Act may only be exercised by all of them acting jointly.

Assignment of rights by founder

26.(1) A founder may, in the charter or by any other written instrument, assign or transfer all or any part of the founder's rights, powers and obligations as founder under the charter or regulations, to such person as the founder may determine.

(2) Where the rights, powers and obligations are so assigned or transferred by a founder under subsection (1), any reference to the founder in the charter, regulations and this Act shall be deemed to be a reference to the assignee or transferee, as the case may be.

(3) Any assignment or transfer under subsection (1) shall not be effective until written notice of it is provided to the council and registered agent.

Reservation of rights to founder or other person

27. A founder may reserve, in the charter or regulations, for the founder or any other person, any of the following rights, namely, the right to direct or approve the following —

- (a) investment activities of the Foundation;
- (b) amendment of the charter or regulations;
- (c) appointment or removal of a councillor;
- (d) appointment or removal of any supervisory person;
- (e) rights, entitlements and restrictions of a beneficiary;
- (f) addition or exclusion of a beneficiary;
- (g) proposed continuation of the Foundation as a foundation registered or otherwise established under the written laws of a jurisdiction other than Seychelles;
- (h) dissolution of the Foundation:

Provided that no disposition of any assets of a Foundation shall be made other than through a resolution of councillors, which shall give effect to the exercise of the reserved powers in accordance with the terms of the charter, regulations or procedures laid down by the council, as the case may be.

PART IV – FUNCTIONARIES OF FOUNDATIONS

Sub-Part I – Registered Agent of Foundations

Registered agent

28.(1) A Foundation shall at all times have a registered agent in Seychelles.

(2) A person shall not be or agree to be a registered agent unless it is licensed under the International Corporate Service Providers Act, to conduct Foundation services.

(3) The founder or founders of a Foundation shall, before a Foundation is registered, appoint a person to be its registered agent.

(4) Unless otherwise provided in this Act, all documents and all applications required to be delivered to the Registrar by a Foundation shall be —

- (a) signed; and
- (b) submitted to the Registrar,

by its registered agent.

Change of registered agent

29.(1) The councillors may, by a resolution of councillors amend the charter to effect a change of registered agent, notwithstanding any term to the contrary in the charter or regulations.

(2) Where a Foundation amends its charter to effect such a change under subsection (1), it shall submit for registration to the Registrar, an extract of the resolution certified by the registered agent within 14 days after the resolution is passed, accompanied by the fee set out in Part 2 of Schedule 1.

(3) A Foundation that contravenes subsection (2) is liable to a penalty of US\$50 for each day or part thereof in respect of which the contravention continues.

Resignation of registered agent

30.(1) A registered agent may resign as follows —

- (a) by giving written notice in accordance with its contractual obligations or in the absence thereof, not less than 30 days written notice of its intention to resign as registered agent on the date specified in the notice to a person specified in subsection (2);
- (b) by giving, together with the written notice referred to in paragraph (a), a list of all approved registered agents in Seychelles with their names and addresses; and

- (c) by filing with the Registrar a copy of the notice before the expiration of the period referred to in paragraph (a) above.

(2) A notice under subsection (1) shall be served on any councillor or, if the registered agent is not aware of the identity or current address of any councillor, on the person that last gave it instructions, in respect of the Foundation.

(3) In the event that a Foundation appoints a new registered agent before the expiration of the notice of resignation under subsection (1)(a), the resignation of the outgoing registered agent shall take effect as from the date of appointment of the new registered agent.

(4) A registered agent that contravenes subsection (1) or (2) is liable to a penalty of US\$50 for each day or part thereof in respect of which the contravention continues.

Preservation of records by registered agent

30A. (1) A registered agent shall, in respect of each Foundation (including a Foundation whose name has been struck-off the Register or which is dissolved or which has continued outside Seychelles) to which it was or is acting as registered agent, preserve for at least 7 years

- (a) the registers specified in section 77(1), from the date of the last striking-off or dissolution of the Foundation;
- (b) the accounting records of the Foundation in the possession of the registered agent, from the date of completion of the transactions or operations to which they each relate.

(2) Where a registered agent ceases to hold a licence to provide foundation services under the International Corporate Service Providers Act (Cap 275), that person shall hand over all the records specified under subsection (1) to the Registrar or any other person approved by the Registrar.

(3) All records to be handed over under subsection (2) shall be preferably in digital form or in such form as agreed upon between the Registrar and the registered agent.

(4) If the registered agent fails to comply with the requirements of this section, the registered agent shall be liable to a penalty not exceeding US\$10,000.

Registered office

31.(1) A Foundation shall have a registered office situated in Seychelles, the address of which shall be the same as that of its registered agent.

(2) Documents may be served on a Foundation by service of such documents on its registered agent at the registered office of the Foundation.

(3) Notwithstanding any term to the contrary in the charter or regulations, the councillors may change the situation of a Foundation's registered office by a resolution of councillors.

(4) Upon amending its charter to effect such a change under subsection (1), a Foundation shall submit for registration to the Registrar, an extract of the resolution effecting the amendment certified by the registered agent within 14 days after the resolution is passed, accompanied by the fee set out in Part 2 of Schedule 1.

(5) A Foundation that contravenes subsection (4) is liable to a penalty of US\$50 for each day or part thereof in respect of which the contravention continues.

Sub-Part II – Council of Foundations

Council

32. A Foundation shall have a council which consists of one or more persons.

Duties of council

33. The duties of a council are —

- (a) to carry out the objects of the Foundation;
- (b) to manage and administer the assets of the Foundation; and
- (c) to do such other acts as may be provided by the charter, regulations and this Act.

Appointment and qualification of councillor

34.(1) A councillor shall be appointed —

- (a) by the founder or founders, if appointed before registration of the Foundation; or
- (b) in accordance with the terms of the charter or regulations, if appointed otherwise than under paragraph (a).

(2) Subject to the terms of the charter or regulations, where a councillor is not appointed to a Foundation or the number of councillors appointed is less than that required by the charter, an application may be made to the court by a founder, a supervisory person or a beneficiary, for the appointment by the court of one or more councillors for the purposes of complying with the requirements of this Act.

(3) Where the court is satisfied that without an order of the court, the requirements of the charter or regulations and this Act in respect of the appointment of a councillor will not be met, it may appoint one or more fit and proper persons that are not disqualified under section 35 to be the councillor or councillors, as the case may be.

(4) The charter or regulations and this Act in respect of a councillor shall apply to any councillor appointed under subsection (3).

(5) The appointment of a person as a councillor is personal to that person and shall not be assigned.

Disqualification

35. A person shall not be appointed or remain as a councillor —

- (a) in the case of a natural person, if the person is a minor or mentally incapacitated or an undischarged bankrupt;
- (b) in the case of a legal person, if the person is wound up or otherwise dissolved;
- (c) in the case of a protector, if the protector will be the sole councillor;
- (d) in the case of a founder, if the founder will be the sole councillor; and
- (e) in any case, if the person is otherwise disqualified from being a councillor under this Act or any other written law.

Notice of appointment of councillor

36.(1) Where —

- (a) a councillor is appointed under section 34, the Foundation shall give written notice of the full name and address of the councillor to its registered agent; and
- (b) the name and address of a councillor appointed under section 34 are specified in the charter or regulations, the Foundation may file with the Registrar notice of the full name and address of that councillor in the approved form, accompanied by the fee set out in Part 2 of Schedule 1,

within 14 days of such appointment.

(2) A Foundation that contravenes subsection (1)(a) is liable to a penalty of US\$50 for each day or part thereof in respect of which the contravention continues.

Duty of care of councillor

37.(1) A councillor shall act in accordance with the charter, regulations and this Act.

(2) A councillor, in the discharge of the duties, exercise of the powers and performance of the functions of the councillor, shall —

- (a) act honestly and in good faith with a view to the best interests of the Foundation; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in similar circumstances.

(3) A councillor shall take all such steps and do or cause to be done all such things as may be necessary to properly administer the Foundation to achieve the objects of the Foundation.

(4) The duties of a councillor imposed by this section are owed to the Foundation alone.

Remuneration of councillor

38. Subject to the charter or regulations, the councillors may, by a resolution of councillors, fix the remuneration of each councillor in respect of services to be rendered to the Foundation in any capacity.

Validity of acts of councillor

39. The acts of a councillor are valid notwithstanding any defect that the Foundation may afterwards discover in the appointment or qualification of that councillor.

Transaction or agreement not to be void or voidable

40.(1) Subject to any limitations in the charter or regulations, if the requirements of subsection (2) are satisfied, no agreement or transaction between a Foundation and —

- (a) one or more of its councillors; or
- (b) any person in which any councillor has a financial interest or to whom any councillor is related, including as a councillor of that other person,

shall be void or voidable for this reason only or by reason only that a councillor is present at the meeting of councillors that approves the agreement or transaction, or that the vote or consent of the councillor is counted, for that purpose.

(2) An agreement or transaction referred to in subsection (1) is valid if —

- (a) the material facts of the interest of each councillor in the agreement or transaction or the interest in or relationship of each councillor to any other party to the agreement or transaction is disclosed in good faith to all councillors and all supervisory persons; and
- (b) the agreement or transaction is approved or ratified by a unanimous resolution of councillors with the consent of all supervisory persons.

(3) Subject to any limitations in the charter or regulations, a councillor who has an interest in any particular business to be considered at a meeting of councillors may be counted for the purposes of determining whether the meeting is duly constituted under section 45(5).

Indemnification

41.(1) A councillor shall not be personally responsible for any debt, obligation or default of a Foundation unless —

- (a) it is proved that such debt, obligation or default was incurred by or resulted from the councillor's dishonesty, fraud, wilful default or other conduct carried out in bad faith; or
- (b) it is expressly provided for in this Act or in any other written law.

(2) Subject to subsection (3) and the charter or regulations, a Foundation may indemnify for all expenses, including legal fees, judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings against any person that —

- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a councillor, a supervisory person, a registered agent or a liquidator of the Foundation; or
- (b) is or was, at the request of the Foundation, serving as a councillor, a supervisory person, a registered agent or a liquidator of, or in any other capacity is or was acting for, another Foundation.

(3) Subsection (2) shall apply to a person referred to in that subsection, if the person acted honestly and in good faith with a view to the best interests of the Foundation and, in the case of criminal proceedings, the person had no reasonable cause to believe that the person's conduct was unlawful.

(4) The decision of the councillors, with the written agreement of the protector or protectors, as the case may be, as to whether a person acted honestly, in good faith and in the best interests of the Foundation, and as to whether the person had no reasonable cause to believe that the person's conduct was unlawful is, in the absence of fraud, sufficient for the purposes of this section, unless a question of law is involved.

(5) If the person referred to in subsection (2) has been successful in defence of any proceedings referred to in that subsection, that person is entitled to be indemnified for all expenses, including legal fees, judgments, fines and amounts paid in settlement and reasonably incurred by that person in connection with such proceedings.

(6) A Foundation may purchase and maintain insurance in relation to a person that —

- (a) is or was a councillor, a supervisory person, a registered agent or a liquidator of the Foundation; or
- (b) at the request of the Foundation is or was serving as a councillor, a supervisory person, a registered agent or a liquidator of, or in any other capacity is or was acting for, another Foundation,

against any liability asserted against the person and incurred by that person in that capacity, whether or not the Foundation has or would have had the power to indemnify that person against the liability under subsection (2).

Disclosure of information

42.(1) Subject to this Act and any other written law, and except as is necessary for the proper management of a Foundation, the councillors shall keep confidential all information regarding the way in which the council is carrying on its objects, the nature and amount of assets of the Foundation and the conduct of their administration.

(2) The councillors shall so far as is reasonable and within a reasonable time of receiving a request in writing in that behalf, provide full and accurate information as to the nature and amount of assets of the Foundation and the conduct of their administration —

- (a) subject to the terms of the charter or regulations, to —
 - (i) a founder;
 - (ii) a supervisory person; or
 - (iii) any beneficiary who is not a minor or mentally incapacitated;
- (b) in compliance with an order of the court; or
- (c) being any lawful disclosure required under any written law.

(3) The councillors shall, subject to the charter, regulations, any order of the court or any disclosure required to be made under any written law, not be required to produce and make available to any person, any document which —

- (a) discloses their deliberations as to the manner in which they have exercised or not exercised a power or discretion, or discharged a duty conferred or imposed on them; or
- (b) discloses the reason for, or relates to, a particular exercise or non-exercise of a power, a discharge or non-discharge of a duty, or the material on which such reason was or might have been based.

Alternate councillor

43.(1) Subject to any limitations in the charter or regulations, a councillor may by written instrument appoint an alternate who need not be a councillor.

(2) An alternate for a councillor appointed under subsection (1) is entitled to attend meetings in the absence of the councillor who made the appointment, and to vote or consent in the place of the councillor until the appointment lapses or is terminated.

Delegation of power by councillor

44.(1) Except where the charter provides otherwise, the councillors acting unanimously may delegate to any one of them by a document signed by each one of them any of their powers.

(2) A power so delegated under subsection (1), may be exercised as provided for in the document of delegation.

Meetings of councillors

45.(1) Subject to any limitations in the charter or regulations, the councillors may meet at such times and in such manner and places in or outside Seychelles as the councillors may determine to be necessary or desirable.

(2) A councillor shall be deemed to be present at a meeting of councillors, if the councillor participates by telephone or other electronic means, and all the councillors participating in the meeting are able to hear each other.

(3) Subject to a requirement in the charter or regulations to give longer notice, a councillor shall be given not less than 3 days' notice of a meeting of councillors.

(4) Notwithstanding subsection (3), a meeting of councillors held in contravention of subsection (3) shall be valid if all the councillors or such majority as may be specified in the charter or regulations entitled to vote at the meeting have waived notice of the meeting, and for this purpose the presence of a councillor at a meeting shall be deemed to constitute waiver by the councillor.

(5) A quorum for a meeting of councillors shall be that fixed by the charter or regulations, but where no quorum is so fixed, a meeting of councillors shall be properly constituted for all purposes, if at the commencement of the meeting a majority of the total number of councillors are present in person or by alternate.

Minutes and resolutions

46.(1) Each Foundation shall keep —

- (a) minutes of all meetings of councillors; and
- (b) copies of all written resolutions consented to by the councillors.

(2) Where minutes are kept pursuant to subsection (1) in relation to the proceedings at any meeting of the councillors, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings which took place at that meeting to have duly taken place.

(3) The minutes and other records referred to in subsection (1) shall be kept at the registered office of the Foundation or in such other place as the councillors consider fit and, the councillors shall inform the registered agent of the address of the other place.

(4) The minutes and other records referred to under subsection (3) shall not be open to public inspection but shall at all times be open to inspection by each of the councillors, founders or supervisory persons, or as may otherwise be required by a written law.

(5) The minutes and other records required to be kept under this section shall be preserved for a period of not less than 7 years after the end of the period to which they relate.

Liability for failure to keep records

47. A Foundation that —

- (a) fails to keep minutes or cause to be kept other records in contravention of section 46(1); or
- (b) fails to comply with section 46(5),

commits an offence and is liable on conviction to a fine not exceeding US\$25000.

Resolution by written consent

48. Subject to any limitation in the charter or regulations, an action which may be taken by councillors at a meeting may also be taken by a resolution of councillors consented to in writing, by telex, facsimile transmission, telegram, cable or other written electronic communication, without the need for any notice.

Removal of councillor

49.(1) A councillor may be removed in accordance with the charter, regulations or this Act.

(2) Where the charter or regulations do not provide, or do not adequately provide for the removal of a councillor —

- (a) a founder;
- (b) a councillor;
- (c) a beneficiary; or
- (d) a supervisory person,

may apply to the court for the removal of a councillor, for any of the following causes —

- (i) where the interests of the councillor are incompatible with the interests of a founder, a beneficiary or with the objects of the Foundation;
- (ii) where the councillor is disqualified from being a councillor under section 35; or

(iii) where the councillor has failed to carry out or failed to carry out properly, the duties or functions required of a councillor in fulfilment of the councillor's obligations under the charter, regulations or this Act.

(3) Upon an application under subsection (2), the court may order the removal of a councillor.

Effects of removal or resignation of councillor

50.(1) This Act shall apply to a councillor until –

- (a) the resignation or removal of that person as a councillor in accordance with the charter, regulations or pursuant to an order of the court;
- (b) the Foundation ceases to be a Foundation registered under this Act;
- (c) the winding up or dissolution, as the case may be, of the Foundation;
- (d) the death, incapacity or bankruptcy of the councillor being a natural person, or the winding up or dissolution of the councillor, being a legal person; or
- (e) the occurrence of any other event which disqualifies the councillor from acting as such.

(2) Where –

- (a) a person ceases to be a councillor under subsection (1), the Foundation shall within 14 days of that person ceasing to be a councillor give written notice thereof to its registered agent in Seychelles; and
- (b) the name and address of that person were specified in the charter or regulations, the Foundation may file notice of the full name and address of that person with the Registrar within 14 days in the approved form, accompanied by the fee set out in Part 2 of Schedule 1.

(3) Notwithstanding that a person has ceased to be a councillor, any liability to the Foundation which the person may have incurred as a councillor shall continue to be a liability enforceable against that person by the Foundation.

(4) A Foundation that contravenes subsection (2)(a) is liable to a penalty of US\$50 for each day or part thereof in respect of which the contravention continues.

Change of name or address of councillor

51.(1) In the event of a change of name or address of a councillor –

- (a) a Foundation shall within 14 days of such change give written notice thereof to its registered agent in Seychelles; and

- (b) a Foundation may, where the new name and address of the councillor are specified in the charter or regulations, file notice of the full name and address of the councillor with the Registrar, in the approved form, accompanied by the fee set out in Part 2 of Schedule 1.

(2) A Foundation that contravenes subsection (1)(a) is liable to a penalty of US\$50 for each day or part thereof in respect of which the contravention continues.

Sub-Part III – Protectors of Foundations

Appointment of protector under charter or regulations

52.(1) Where the charter or regulations provide for the appointment of a protector, such a protector may be a natural person or a legal person.

- (2) A founder, a beneficiary or a councillor may be appointed as a protector, but —
 - (a) a sole councillor; or
 - (b) a sole beneficiary,

shall not be appointed as such.

(3) Where more than one person is appointed to act as protector, such persons shall act unanimously, unless the charter or regulations provide otherwise.

- (4) A protector may be appointed —
 - (a) by the founder in the charter or regulations or by such other written instrument; or
 - (b) by such other person empowered to do so in the charter or regulations.

Judicial appointment of protector

53.(1) Subject to the terms of the charter or regulations, where no protector is appointed to a Foundation or the number so appointed is less than that required by the charter or regulations, a founder, a councillor or any remaining protector may apply to the court for the appointment of one or more persons to be the protector or protectors respectively.

(2) Where the court is satisfied that an application made under subsection (1) is justified, it may appoint one or more consenting person or persons, as the case may be, to act as the protector or protectors respectively.

(3) The charter, regulations and this Act shall apply to a person appointed as the protector under subsection (2), as they apply to a protector appointed pursuant to the charter or regulations.

Appointment personal to protector

54. The appointment of a person to act as the protector is personal to that person and shall not be assigned or delegated, except that where the protector is a legal person, it may act through its duly authorised officers or agents.

Powers of protector

- 55.**(1) Subject to subsection (2), the charter or regulations may —
- (a) specify the powers of a protector; and
 - (b) provide for powers in addition to or more limited than those provided in this Act.
- (2) A protector shall, subject to the terms of the charter or regulations —
- (a) take such action as the protector may deem necessary to ensure compliance by the Foundation and councillors with the charter, regulations and this Act; and
 - (b) generally monitor the management of the Foundation by the councillors, including the conduct of the councillors.
- (3) A protector shall have full right of access to the books, records and accounts of a Foundation.
- (4) A protector shall have the right —
- (a) to be informed of all meetings of councillors;
 - (b) to table business to be considered at such meetings;
 - (c) to attend and be heard but not to vote at such meetings;
 - (d) where any business of a Foundation is conducted by —
 - (i) the circulation of documents, to be included in the circulation of documents at the time that they are circulated to the councillors; or
 - (ii) the delegation of powers to a councillor or an agent, to be informed of the terms and any exercise of the delegation.
- (5) References in subsections (2), (3) and (4) to a protector apply to all protectors holding office at the relevant time acting jointly and severally.

Protector ceasing to act as such

56. A protector appointed under the charter, regulations or this Act, shall cease to act as the protector in the event of —

- (a) the resignation of the protector;
- (b) the removal of the protector in accordance with the charter, regulations or this Act;
- (c) the dissolution of the Foundation; or
- (d) the death, incapacity or bankruptcy of the protector, being a natural person, or the winding up or dissolution of the protector, being a legal person.

Removal of protector by court

57.(1) Subject to the terms of the charter or regulations, where a person ceases to be qualified to act as the protector or has failed to carry out or to properly carry out the duties required of a protector under the charter, regulations or this Act, on an application to the court by a founder, a councillor, a beneficiary or a supervisory person, the court may order the removal of the protector, and the appointment of a fit and proper consenting person to act as the protector.

(2) The charter or regulations and this Act shall apply to a protector appointed by the court under subsection (1), as they apply to a protector appointed pursuant to the charter or regulations.

Act done in good faith

58. A protector or person acting as an officer, employee or agent of a protector or performing any functions on behalf of a protector, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of the duties of the protector under the charter, regulations or this Act unless it is proved that the act or omission was done in bad faith.

PART V- BENEFICIARIES OF FOUNDATIONS

Beneficiaries of Foundations

59.(1) A beneficiary shall, by reference to the charter or regulations, be —

- (a) identifiable by name; or
- (b) ascertainable by reference to —
 - (i) a class; or
 - (ii) a relationship to another person, whether or not living at the time of the establishment of a Foundation or at the time by reference to which, under the terms of the charter or regulations, members of a class are to be determined.

(2) A founder may be a beneficiary but a founder shall not be the sole beneficiary.

(3) Subsection (2) is not contravened if a founder is the sole beneficiary of a Foundation during the founder's lifetime:

Provided that the charter or regulations designate or provide for the designation of one or more person or persons as the beneficiary or beneficiaries respectively, upon the founder's death or legal incapacity.

Appointment of beneficiaries by councillors

60.(1) Subject to a contrary term in the charter or regulations, where for the time being

- (a) a Foundation has no beneficiary and there is no term in the charter or regulations for the appointment of such beneficiary; or
- (b) a founder is the sole beneficiary and there is no term in the charter or regulations for the appointment of such beneficiary,

the council shall by a resolution of councillors select and appoint or designate one or more beneficiary or beneficiaries respectively.

(2) Subsection (1) shall not apply to a Foundation established to carry on a specified purpose only under this Act.

Rights of beneficiaries to information

61.(1) Subject to a contrary term in the charter or regulations, a beneficiary is entitled on request to inspect and obtain a copy of —

- (a) the charter and any amendment thereto;
- (b) the regulations and any amendment thereto;
- (c) any audit report or other report on the financial position of, and any annual financial statements of, the Foundation; and
- (d) minutes of any meetings and written consent resolutions of a council.

(2) A request to inspect documents under subsection (1) shall be made in writing to a council or registered agent.

(3) In the event that a Foundation does not make documents referred to under subsection (1) available for inspection within a reasonable time, the court may, upon an application by a beneficiary, order their delivery or inspection if appropriate by a person professionally qualified to assess the information therein contained and report to the beneficiary who made the application to the court.

Liability for failure to provide information

62. Where a councillor fails to take all reasonable steps to secure compliance by the Foundation with the requirements of section 61, or has wilfully caused any default by the Foundation under that section, the councillor commits an offence and is liable upon conviction to a fine not exceeding US\$25000.

Beneficiary not owed a fiduciary duty

63. A beneficiary under a Foundation is not owed —

- (a) by the Foundation;
- (b) by a person appointed under the charter, regulations or this Act; or
- (c) by a person appointed by such other written instrument,

a duty that is analogous to a fiduciary duty.

Forfeiture of benefits

64. The charter or regulations may provide that a beneficiary shall forfeit any benefit, right or interest thereunder in the event that the beneficiary challenges —

- (a) the establishment of a Foundation;
- (b) the transfer of any assets to or by a Foundation;
- (c) the charter or regulations or such other written instrument; or
- (d) any decision of a founder, a councillor or a supervisory person.

PART VI — CAPACITY OF FOUNDATIONS

Capacity of Foundations

65.(1) The validity of an act done by a Foundation shall not be challenged on the ground of lack of capacity by reason of any term of the charter or regulations.

(2) A councillor or supervisory person may bring proceedings to restrain the doing of an act, which, but for subsection (1) would be beyond the capacity of a Foundation, save that no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the Foundation.

(3) It remains the duty of a councillor to observe any limitations on the powers of the councillor flowing from the charter, regulations or this Act, and any action by a councillor, which, but for subsection (1) would be beyond the capacity of a Foundation may only be approved by a unanimous resolution of councillors.

(4) A resolution under subsection (3) approving an action by a councillor beyond the capacity of the Foundation shall not affect any liability incurred by the councillor or any other person, and relief from any such liability shall be agreed to separately by a resolution of councillors and with the consent of all supervisory persons, if any.

(5) No act of a Foundation and no disposition of real or personal property to or by a Foundation shall be invalid by reason only that the Foundation was without capacity or power to perform the act or to dispose of or receive the property, but the lack of capacity or power may be asserted –

- (a) in proceedings by a councillor or supervisory person against the Foundation to prohibit the performance of any act, or the disposition of any real or personal property by or to the Foundation; or
- (b) in proceedings by the Foundation, whether acting directly or through a liquidator or other legal representative of the Foundation in a representative capacity, against the incumbent or former councillors for loss or damage through their unauthorised act.

Power of councillors to bind Foundation

66.(1) A party to a transaction with a Foundation is not bound to enquire as to whether the transaction is a transaction permitted by the charter or regulations or as to any limitation on the powers of the councillors to bind the Foundation or to authorise others to do so.

(2) The power of a councillor to bind the Foundation, or authorise others to do so, may be presumed in favour of a person dealing with the Foundation in good faith.

Execution of contracts

67.(1) A contract on behalf of a Foundation may be made as follows –

- (a) a contract which, if made between natural persons, would by law be required to be in writing, and to be made by deed or under seal, may be made by instrument –
 - (i) sealed with any seal, if any, of the Foundation; or
 - (ii) expressed to be and is executed, on behalf of the Foundation;
- (b) any contract which, if made between private persons, would by law be required to be in writing and signed by the parties to be charged therewith may be made on behalf of the Foundation in writing, signed by any person acting under the express or implied authority of the Foundation; or
- (c) any contract which, if made between private persons, would by law be valid although made by parole only and not reduced into writing, may be made by parole on behalf of the Foundation by any person acting under the express or implied authority of the Foundation.

(2) Where a contract or any other transaction purports to be made by a Foundation or by a person on its behalf at a time when the Foundation has not been registered, then subject to any agreement to the contrary, the contract or other transaction has effect as one entered into by the person purporting to act on behalf of the Foundation and, subject to subsection (3), that person is personally liable on it.

(3) A contract or any other transaction purported to be entered into by a Foundation or a person on behalf of the Foundation prior to its registration may be ratified by the Foundation after its registration and thereupon the Foundation shall become bound by and entitled to the benefit thereof with effect from the date of registration.

(4) Where a Foundation ratifies a contract or other transaction made by a person on its behalf under subsection (2), that person ceases to be personally liable on the contract or other transaction.

(5) Any contract made under this section may be varied or discharged in the same manner as it is authorised by this section to be made.

(6) A contract made under this section shall be enforceable in law and binding upon the Foundation, its successors and other parties to it including their heirs, executors or administrators, as the case may be.

Appointment of Attorney etc

68.(1) A Foundation may by a resolution of councillors or as otherwise stated in the charter or regulations, authorise a person either generally or in respect of any specified matter, as its attorney or agent to act on its behalf and to execute contracts, agreements, deeds and other instruments on behalf of the Foundation.

(2) Contracts, agreements, deeds or other instruments executed by an attorney or agent under subsection (1) shall bind the Foundation and have effect as if they were executed by the Foundation.

Authority to sign documents etc on behalf of Foundation

69. A document or proceeding requiring authentication by a Foundation may be signed by a councillor, registered agent or other person having been authorised to do so by a resolution of councillors.

Foundation Seal

70. A Foundation may, but need not, maintain a common seal.

PART VII – PROPERTY AND PROTECTION OF FOUNDATIONS

Status of Foundation's assets upon transfer

71. Subject to sections 73 and 74, assets transferred to or otherwise vested in a Foundation shall —

- (a) be the assets of the Foundation, with full legal and beneficial title;
- (b) cease to be the assets of the founder or founders, once transferred to or otherwise vested in the Foundation by or on behalf of the founder or founders; and
- (c) in the case of a Foundation with one or more beneficiaries, not become the assets of a beneficiary unless distributed to such beneficiary in accordance with the charter or regulations and this Act.

Anti-forced heirship

72.(1) In this section, “foreign rule of forced heirship” —

- (a) means any rule of a jurisdiction other than Seychelles which, in order to protect or give effect to the rights of any person or class of persons to inherit, succeed to or share in —
 - (i) the founder's property on the founder's death, purports to remove or restrict the founder's right to transfer, dispose of, encumber or otherwise deal in property belonging to the founder during the founder's life-time; or
 - (ii) a beneficiary's property on the beneficiary's death, purports to remove or restrict the beneficiary's right to transfer, dispose of, encumber or otherwise deal in property belonging to the beneficiary during the beneficiary's life-time; and
- (b) includes any judicial or administrative order or directive of a jurisdiction other than Seychelles intended to enforce or implement any such rule.

(2) A Foundation registered under this Act and a transfer or other disposition of property to a Foundation, shall not be void, voidable, liable to be set aside or otherwise defective in any manner by reference to a foreign rule of forced heirship or any other written law of a foreign jurisdiction.

(3) The capacity of a founder or of any other person who transfers property to, or otherwise vests property in, a Foundation shall not be challenged, nor shall any beneficiary or other person be subjected to any liability or deprived of any right, by reason that —

- (a) a foreign written law prohibits or does not recognise the concept of a Foundation; or
- (b) the transfer of property to the Foundation, or any term of its charter or regulations —

- (i) avoids or defeats rights, claims or any interest conferred by a foreign written law on any person by reason of any personal relationship to the founder or subsequent transferor or by way of heirship rights; or
- (ii) contravenes any foreign rule of forced heirship or any other foreign written law or any foreign, judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interest.

(4) A judgment of a foreign court shall not be recognised or enforced or give rise to any estoppels insofar as it is inconsistent with subsection (2) or (3).

Protection of Foundation

73.(1) Notwithstanding any written law or foreign written law to the contrary, but subject to subsections (2) to (4), a Foundation or a transfer of property to it shall not be void, voidable, liable to be set aside or otherwise defective in any manner in the event of or by reason of —

- (a) the founder's bankruptcy or the liquidation of the founder's property; or
- (b) any action, proceedings or other claims against the founder by any creditor of the founder.

(2) Notwithstanding subsection (1), the court may, where it is proved that the founder was insolvent or intended to defraud any person that was a creditor of the founder at the time when the founder transferred property to the Foundation, declare that such transfer of property was void to the extent necessary to satisfy a proven claim of a creditor of the founder.

(3) The onus of proof of the intent to defraud under subsection (2) shall rest with the creditor.

(4) Notwithstanding a written law or foreign written law to the contrary, an action or other claim under subsection (2) with respect to any property of a Foundation, shall not be made against a Foundation, and shall be barred absolutely, on the expiry of 2 years from the date of the transfer of such property to the Foundation.

Restriction against alienation

74.(1) Notwithstanding a written law or foreign written law to the contrary, no beneficiary or object of a Foundation shall have any rights in specie against the assets of a Foundation irrespective of the nature of any right to enforce the due administration of the Foundation, and, subject to the terms of the charter or regulations, any assets of the Foundation available for distribution to a beneficiary shall not be —

- (a) capable of being alienated or pass by bankruptcy, insolvency or liquidation; or
- (b) liable to be seized, sold, attached, or otherwise taken in execution by process of law.

(2) Where any of the assets of a Foundation is subjected to the restriction contained in subsection (1), the right to derive income from that property and any income derived from that property shall not be alienable for as long as that restriction remains in force.

(3) A restriction imposed under subsection (1) may at any time be removed in accordance with any term for such removal in the charter or regulations.

PART VIII – ACCOUNTS AND REGISTER

Books of account and records

75.(1) A Foundation shall keep or cause to be kept proper accounting records that are —

- (a) sufficient to show and correctly explain the Foundation's transactions;
- (b) enable the financial position of the Foundation to be determined with reasonable accuracy at any time; and
- (c) enable for financial statements of the Foundation to be prepared.

(2) For the purpose of subsection (1), accounting records shall not be deemed to be kept with respect to a Foundation if they do not give a true and fair view of the Foundation's affairs and explain its transactions.

(3) A Foundation shall —

- (a) prepare an annual financial summary to be kept at its registered office in Seychelles within 6 months from the end of the Foundation's financial year; and
- (b) where its accounting records are kept outside Seychelles, lodge, not less than on a bi-annual basis, the accounting records at the company's registered office in Seychelles, provided that any accounting records, whether outside Seychelles or not, shall be presented to the Seychelles authorities on request.

(3A) It shall be sufficient compliance with subsection (3) if a copy of the accounting records and financial summary is kept in electronic form at the Foundation's registered office.

(3B) Where a Foundation —

- (a) keeps a copy of its accounting records at its registered office;
- (b) keeps its original accounting records in Seychelles at a place other than at its registered office,

the Foundation shall inform its registered agent in writing of the physical address of the place where the original accounting records are kept.¹

(3BA) Where there is a change in the place at which its original accounting records are kept, the Foundation shall, within 14 days of the change, notify in writing its registered agent of the physical address of the place at which its original accounting records are kept.²

(3C) The financial year of the Foundation shall be the calendar year, unless it is changed by a resolution of councillors and notified to the Foundation's registered agent within 14 days of the passing of the resolution.

(3D) The Registrar may issue written guidelines regarding the implementation of the obligations relating to accounting records.

(4) The accounting records shall not be open to public inspection, but shall at all times be open to inspection —

- (a) by a councillor;
- (b) by a founder;
- (c) by a supervisory person;
- (d) by an auditor of the Foundation, if any;
- (e) upon the production of a court order; or
- (f) in accordance with any written law.

(5) Where a Foundation fails to comply with the requirements of subsection (1), (3) or (3B), the Foundation shall be liable to a penalty not exceeding US\$10,000.

(6) Where a Foundation is liable to a penalty under subsection (5) for non-compliance with subsection (1), (3) or (3B), the councillor who is responsible for such non-compliance shall also be liable to a penalty not exceeding US\$10,000.

Preservation of records

76.(1) Every record required to be kept under section 75 shall be preserved for a period of not less than 7 years after the end of the period to which it relates.

(2) A Foundation that fails to comply with subsection (1) commits an offence and is liable upon conviction to a fine not exceeding US\$25000.

Foundation to keep register

¹ Amended by The International Business Companies Act and Other Related Laws (Amendment) Act, 2021.

² Amended by The International Business Companies Act and Other Related Laws (Amendment) Act, 2021.

77.(1) Each Foundation shall keep at its registered office, a register of —

- (a) councillors;
- (b) registered agents;
- (c) supervisory persons
- (d) any person authorised by it under section 68, either generally or in respect of any specified matter, as its agent or attorney to act on its behalf and to execute contracts, agreements, deeds and other instruments on behalf of the Foundation;
- (e) beneficiaries; and
- (f) founders.

(2) The register referred to in subsection (1) shall specify the following —

- (a) in the case of a natural person —
 - (i) his or her name;
 - (ii) his or her business or usual residential address;
 - (iii) his or her nationality; and
 - (iv) his or her date of birth;
- (b) in the case of a legal person —
 - (i) its name; and
 - (ii) its registered or principal address; and
- (c) the date on which a person is appointed or otherwise became a councillor, registered agent beneficiary, founder, supervisory person, agent or attorney;
- (d) the date on which the persons appointed under paragraph (c) are removed from his or her appointment; and
- (e) such other details the Registrar may require.

(3) The register referred to in subsection (1) shall, during business hours, be open to inspection by a founder, a councillor, a supervisory person and the registered agent, and shall be open for inspection for a period of not less than two hours on each business day.

(4) The register shall be kept in such form as the councillors thinks fit.

(5) A Foundation that fails to comply with subsection (1) commits an offence and is liable upon conviction to a fine not exceeding US\$25000.

Compliance inspection

77A.(1) Subject to section 109, the Registrar for the sole purpose of monitoring and assessing compliance with this Act, may during business hours and after giving reasonable notice to the Foundation —

- (a) access the registered office of the Foundation;
- (b) inspect the documents to be kept by the Foundation;
- (c) during or after a compliance inspection request for explanation from the directors of the Foundation's registered agent.

(1A) For the purposes of sub-section (1), where a document is not in the English or French language, the Registrar may request a translation of the records in the English or French language from the Foundation or from the registered agent.

(2) A person who impedes, prevents or obstructs the Registrar, the officers, employees or authorised agent of the office of the Registrar in the conduct of a compliance inspection, or fails to comply with subsection (1A), commits an offence and is liable on conviction to a fine not exceeding SR300,000.

PART IX — CONTINUATION OF FOUNDATIONS

Continuation in Seychelles

78.(1) An entity —

- (a) registered or otherwise organised in a jurisdiction other than Seychelles;
and
- (b) that has legal characteristics that would, if it was in Seychelles, enable it to be established as a Foundation under this Act,

in this Act called an “overseas foundation”, may continue as a Foundation registered under this Act, in accordance with this Part.

(2) Notwithstanding a provision to the contrary in the written laws of a jurisdiction under which an overseas foundation is registered or otherwise organised, it shall be entitled to continue as a Foundation registered under this Act.

Articles of continuation

79.(1) An overseas foundation that wishes to continue as a Foundation registered under this Act shall approve articles of continuation in accordance with subsection (2) —

- (a) by a majority of its councillors or other persons charged with exercising the powers of the overseas foundation; or
 - (b) in such other manner as may be established by it for exercising its powers, in accordance with its constitutional documents and the written laws where it is registered.
- (2) The articles of continuation shall —
- (a) state the name of the overseas foundation and the name under which it is being continued;
 - (b) state the jurisdiction in which the overseas foundation is registered;
 - (c) state the date on which the overseas foundation was established;
 - (d) state that the overseas foundation shall adopt a charter compliant with this Act, with effect from its continuation under this Act;
 - (e) state that the overseas foundation wishes to be continued in Seychelles as a foundation registered under this Act; and
 - (f) be signed by or on behalf of the overseas foundation.

Language of articles of continuation

80.(1) The articles of continuation shall be written in the English or French language, but where they are written in any other language, a translation of the articles of continuation in the English or French language shall be certified as true and accurate by its registered agent.

(2) A registered agent shall not give a certificate under subsection (1), unless such translation has been obtained from or confirmed by a qualified translator approved by the Registrar or such other person as may be approved by the Registrar.

Registration of articles of continuation

81.(1) An overseas foundation that wishes to continue as a Foundation registered under this Act shall lodge or cause to be lodged with the Registrar —

- (a) articles of continuation;
- (b) a certified true copy of its certificate of registration or equivalent document and its charter or equivalent constitutional document, written in the English or French language or, if they are written in any other language, accompanied by a certified translation in the English or French language;
- (c) documentary evidence, satisfactory to the Registrar, that the overseas Foundation is in good legal standing; and

(d) not less than 3 copies of its proposed charter under this Act.

(2) A registered agent shall not lodge or cause to be lodged a translation of any of the documents referred to under subsection (1)(b), unless such a translation has been obtained from or confirmed by a qualified translator or such other person as may be approved by the Registrar.

(3) The documents referred to in subsection (1) shall upon being lodged with the Registrar be accompanied by the fee set out in Part 1 of Schedule 1.

(4) Upon registration of the articles of continuation, the Registrar shall, if satisfied that the requirements of this Part have been complied with, issue a certificate of continuation.

Effects of registration of continuation

82. On the date shown in the certificate of continuation —

- (a) the overseas foundation becomes a Foundation to which this Act applies;
- (b) the certificate of continuation is deemed to be the certificate of registration of the Foundation;
- (c) the Foundation is no longer to be treated as an overseas foundation registered or otherwise organised under the written laws of a jurisdiction outside Seychelles;
- (d) properties of every description of the foundation, including, movable and immovable property, choses in action, and all businesses of the foundation, continue to be vested in the Foundation;
- (e) the Foundation continues to be liable for all of its debts, claims, liabilities and other obligations;
- (f) an existing cause of action, claim or liability against the Foundation is unaffected;
- (g) no proceedings, whether civil or criminal pending by or against the foundation or against any councillor thereof, are abated or discontinued by its continuation as a Foundation under this Act, and any such proceedings may be enforced, prosecuted, settled or compromised by or against the Foundation or councillor thereof, as the case may be; and
- (h) no conviction, judgment, ruling, order, claim, debt, liability or obligation due, against the foundation or against any councillor thereof, is released or impaired by its continuation as a Foundation under this Act.

Continuation outside Seychelles

83. Subject to any limitations in its charter or regulations, a Foundation registered under this Act may, by a resolution of councillors, continue as a foundation registered or otherwise organised under the written laws of a jurisdiction outside Seychelles in the manner provided under those written laws.

Continuation outside Seychelles subject to payment of fees etc

84. A Foundation registered under this Act that continues as a foundation registered or otherwise organised under the written laws of a jurisdiction outside Seychelles does not cease to be a Foundation registered under this Act unless —

- (a) it has paid all its fees and any penalty required to be paid under this Act; and
- (b) the written laws of the jurisdiction outside Seychelles permit such continuation and it has complied with those written laws.

Effects of continuation outside Seychelles

85. Where a Foundation registered under this Act continues under the written laws of a jurisdiction outside Seychelles —

- (a) the Registrar shall strike off the name of the Foundation from the Register and publish a notice of the striking off in the Gazette;
- (b) the foundation continues to be liable for all of its debts, liabilities and obligations that existed prior to its continuation as a foundation under the written laws of a jurisdiction outside Seychelles;
- (c) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due against the foundation or against any councillor thereof, is released or impaired by its continuation under the written laws of a jurisdiction outside Seychelles; and
- (d) no proceedings, whether civil or criminal, pending by or against the foundation, or against any councillor thereof, are abated or discontinued by its continuation under the written laws of a jurisdiction outside Seychelles, but the proceedings may be enforced, prosecuted, settled or compromised by or against the foundation or councillor thereof, as the case may be.

PART X — CONSOLIDATION OR MERGER OF FOUNDATIONS

Application of Part

86. This Part shall apply to —

- (a) any two or more existing Foundations wishing to consolidate into a new Foundation, and the words “consolidate” and “consolidation” shall be construed accordingly; and
- (b) an existing Foundation wishing to merge into another existing Foundation, and the words “merge” and “merger” shall be construed accordingly,

and the surviving entity following such consolidation or merger, as the case may be, is referred to in this Part as the “surviving entity”.

Plan of consolidation or merger

87. The councillors of each constituent Foundation that propose to participate in a consolidation or merger shall approve a written plan of consolidation or merger, as the case may be, containing —

- (a) the name and address of the registered office of each Foundation that is a party to the consolidation or merger;
- (b) the name and address of the registered office in Seychelles of the proposed surviving entity;
- (c) the name and address of the registered agent of the proposed surviving entity;
- (d) the name and address of each person who is to be a councillor of the proposed surviving entity;
- (e) the name and address of each person who is to be a supervisory person of the surviving entity;
- (f) a summary of —
 - (i) the rationale for the consolidation or merger;
 - (ii) the material terms and conditions of the consolidation or merger; and
 - (iii) the manner and basis of converting the interests of the beneficiaries, in each constituent Foundation into the interests of the beneficiaries of the proposed surviving entity or the cash and or other consideration or a combination thereof; and
 - (iv) the manner and basis of converting the purpose or purposes in each constituent Foundation into the purpose or purposes of the proposed surviving entity or the cash and or other consideration or a combination thereof; and

- (g) with reference to the charter or regulations of each constituent Foundation, the manner in which the consolidation or merger is to be approved.

Application for certificate of registration

88.(1) After the plan referred to in section 87 is approved by the councillors of each constituent Foundation, any Foundation which is a party to the plan of consolidation or merger may apply to the Registrar —

- (a) in such form as may be approved by the Registrar, to have the consolidated or merged foundation registered as a Foundation in accordance with this Act; and
- (b) for issuance by the Registrar of a certificate of registration upon consolidation or merger, as the case may be, by delivering to the Registrar the documents referred to in subsection (2) on payment of the fee set out in Part 2 of Schedule 1.

(2) In order to apply for a certificate of registration upon consolidation or merger, as the case may be, under section 89, there shall be filed with the Registrar —

- (a) a declaration of consolidation or merger, as the case may be, in such form as may be approved by the Registrar, by or on behalf of the proposed council of the surviving entity, with respect to the position upon the completion of the proposed consolidation or merger —
 - (i) containing or annexing a copy of the plan of consolidation or merger;
 - (ii) containing or annexing, in the case of a consolidation, the proposed charter of the surviving entity;
 - (iii) containing or annexing, where, in the case of a merger, it is proposed to replace or otherwise amend the charter of the surviving entity, the proposed charter of the surviving entity; and
 - (iv) stating the manner in which, in relation to each constituent Foundation, the merger or consolidation was authorised and approved in accordance with its charter or regulations; and
- (b) a statement by each constituent Foundation, other than the surviving entity —
 - (i) annexing a copy of the declaration of consolidation or merger, as the case may be; and
 - (ii) stating that it consents to the proposed consolidation or merger proceeding as set out in the declaration of consolidation or merger, as the case may be.

Registration of surviving entity

89.(1) If the Registrar is satisfied that all the requirements of this Act in respect of a consolidation or merger, as the case may be, have been complied with, it shall register the surviving entity as a Foundation under this Act, and in substitution for any prior registration, if applicable.

- (2) Upon registration of a surviving entity as a Foundation, the Registrar shall —
- (a) allocate a registration number to it; and
 - (b) issue a certificate of registration in respect of the surviving Foundation stating —
 - (i) its name;
 - (ii) its registration number; and
 - (iii) its date of registration.

(3) Each certificate of registration under this section shall be signed by the Registrar and be sealed with the Official Seal.

(4) The certificate of registration shall be conclusive evidence of the establishment upon consolidation or merger, as the case may be, of the surviving entity as a Foundation and that it is duly registered as a Foundation under this Act.

Effects of consolidation or merger

90. As from the issuance of a certificate of registration upon consolidation or merger, as the case may be —

- (a) the surviving entity, insofar as is consistent with its charter, has all the rights, privileges, immunities, powers and objects of each constituent Foundation which participated in the consolidation or merger;
- (b) the assets of each constituent Foundation, immediately vest in, and become the assets of, the surviving entity;
- (c) the surviving entity shall be liable for all claims, debts, liabilities and other obligations of each constituent Foundation;
- (d) no conviction, judgment, ruling or order against a constituent Foundation or against any councillor thereof, is released or impaired by the merger or consolidation, and is assumed by, and may be enforced against, the surviving entity or the councillor, as the case may be, and in each case without further act or deed;

- (e) an existing cause of action or any other proceeding, pending at the time of the consolidation or merger against a constituent Foundation or against any councillor thereof, is not released, abated or discontinued and is assumed by, and may be continued, enforced or otherwise pursued against, the surviving entity or the councillor, as the case may be;
- (f) a ruling, an order or a judgment in favour of a constituent Foundation may be enforced by the surviving Foundation, without further act or deed; and
- (g) an existing cause of action or any other proceeding, pending at the time of the consolidation or merger by a constituent Foundation, may be continued, enforced or otherwise pursued by the surviving entity.

Striking off by Registrar

- 91.** The Registrar shall strike off the Register —
- (a) a constituent Foundation that is not the surviving entity in a merger; or
 - (b) a constituent Foundation that participates in a consolidation.

PART XI — DISSOLUTION OF FOUNDATIONS

Dissolution and duties of liquidator

- 92.(1)** A Foundation shall be dissolved where —
- (a) it is established for a definite period of time and that period expires;
 - (b) its object is fulfilled or becomes incapable of fulfilment as determined by a resolution of councillors and, if so required under the charter or regulations, with the consent of the Foundation's supervisory person, if any;
 - (c) any term of its charter or regulations so requires;
 - (d) it is unable to pay its debts as they fall due;
 - (e) this Act provides that it shall be dissolved; or
 - (f) the court orders that it be dissolved.
- (2) Where a Foundation is dissolved under subsection (1), a liquidator shall be appointed by a resolution of councillors or otherwise in accordance with the charter or regulations to supervise the dissolution of the Foundation.
- (3) A liquidator appointed under subsection (2) shall, upon his appointment —

- (a) identify all the assets of the Foundation;
- (b) identify all the creditors of and claimants against the Foundation;
- (c) pay or provide for payment of, or to discharge, all claims, debts, liabilities and obligations of the Foundation;
- (d) prepare or cause to be prepared a statement of account in respect of the actions and transactions of the liquidator; and
- (e) distribute any surplus assets of the Foundation in the manner provided in section 97.

Powers of liquidator

93. In order to discharge the duties of a liquidator under section 92(3) and subject to any order of the court, the liquidator has all the powers of a Foundation under this Act or in the charter, including the power —

- (a) to do all things that are necessary or desirable for the orderly supervision of the dissolution of the Foundation and the winding up of its activities;
- (b) to take custody of the assets of the Foundation and, in connection therewith, to register any assets in the name of the liquidator or that of its nominee;
- (c) to sell any assets of the Foundation at public auction or by private sale without any notice;
- (d) to collect the debts and assets due or belonging to the Foundation;
- (e) to borrow money from any person for any purpose that will facilitate the winding-up and dissolution of the Foundation, and to pledge, mortgage or otherwise charge any of its assets as security for any such borrowing;
- (f) to negotiate, compromise and settle any claim, debt, liability or obligation of the Foundation;
- (g) to pursue and defend in the name of the Foundation or liquidator or otherwise, any action or other legal proceedings;
- (h) to retain counsel and attorneys, accountants and other advisers, and to appoint agents;
- (i) to execute any contract, agreement, deed or other instrument in the name of the Foundation or in the name of the liquidator; and
- (j) to make any distribution in money or in other property or partly in each, and if in other property, to allot the property, or an undivided interest therein, in equal or unequal proportions.

Notice of dissolution to Registrar

94. Where a Foundation is dissolved under section 92, the registered agent shall give to the Registrar written notice in the approved form, accompanied by the fee set out in Part 2 of Schedule 1, stating —

- (a) that the Foundation is in dissolution;
- (b) the date of commencement of the dissolution; and
- (c) the name and address of the liquidator.

Statement of liquidator upon completion of dissolution

95.(1) Upon the completion of a dissolution and winding up of the Foundation's affairs by a liquidator —

- (a) the liquidator shall give to the registered agent, a written statement in such form as may be approved by the Registrar, confirming that the winding up and dissolution of the Foundation has been completed; and
- (b) the registered agent shall file with the Registrar a certified true copy of the liquidator's statement referred to in paragraph (a), accompanied by the fee set out in Part 2 of Schedule 1.

(2) Upon receiving the certified copy of the liquidator's statement referred to in subsection (1)(a) and subject to all the requirements of this Act in respect of dissolution having been complied with, the Registrar shall —

- (a) strike the Foundation off the Register; and
- (b) issue a certificate of dissolution certifying that the Foundation has been dissolved.

(3) Where the Registrar issues a certificate under subsection (2)(b) —

- (a) it shall be prima facie evidence of compliance with all requirements of this Act in respect of dissolution; and
- (b) the dissolution of the Foundation is effective from the date of the issue of the certificate.

(4) Immediately following the issue by the Registrar of a certificate of dissolution under subsection (2)(b), the Registrar shall cause to be published in the *Gazette*, a notice that the Foundation has been dissolved and struck off the Register.

Dissolution by court

96.(1) A Foundation, a councillor, a founder, a supervisory person, a remaining beneficiary or a creditor of a Foundation may apply to the court for an order that a Foundation be dissolved.

(2) A Foundation may, upon application made under subsection (1), be dissolved by an order of the court, if the court considers that it is just and equitable that it be dissolved.

(3) Where the court orders that a Foundation be dissolved under this section, the court may appoint a person to supervise its dissolution and act as liquidator, and may direct the manner in which the dissolution is to be conducted by the liquidator.

(4) Without limiting the generality of subsection (1), in the event that a council fails to pass the resolution required to be passed for the winding up and dissolution of a Foundation under section 92(1)(b), or any supervisory person refuses to consent to the dissolution as provided under that section, a founder, a councillor or any remaining beneficiary may apply to the court for an order that the Foundation be dissolved.

(5) In the event that a council passes or purports to pass a resolution to dissolve the Foundation other than in accordance with section 92(1)(c), a founder, a councillor, a supervisory person or a remaining beneficiary may apply to the court for an order precluding the dissolution.

Surplus assets

97.(1) The surplus assets shall be —

- (a) the assets of any remaining beneficiary; or
- (b) in the case of a Foundation established to carry on a specified purpose, the purpose to which, according to the charter or regulations, any surplus assets shall be applied.

(2) In the event that —

- (a) there is more than one remaining beneficiary, the surplus assets shall be distributed as provided for in the charter or regulations; or
- (b) the charter or regulations do not specify the proportions or entitlements applicable to the remaining beneficiaries, the surplus assets shall be divided equally among the remaining beneficiaries.

(3) In the event that —

- (a) there is no remaining beneficiaries entitled to receive the surplus assets;
- (b) the remaining beneficiaries refuse to accept the transfer of the surplus assets;

- (c) there is no relevant term in the charter or regulations providing for the person who in such circumstances shall be entitled to receive the surplus assets; or
- (d) the charter or regulations do not specify the purpose to which the surplus assets shall be applied,

the surplus assets shall vest in the Republic of Seychelles and be dealt with accordingly.

Striking off for failure to satisfy requirements of Act, etc

98.(1) Where the Registrar has reasonable cause to believe that a Foundation registered under this Act —

- (a) no longer satisfies the requirements under this Act for a Foundation;
- (aa) failed to maintain the register of beneficial owners under the Beneficial Ownership Act, 2020;
- (b) conducts activities which are, or are likely to be, contrary to the written laws or detrimental to the reputation of Seychelles,

the Registrar shall serve on the Foundation a notice that its name will be struck off the Register.

(2) Where the Registrar does not receive a reply within 30 days immediately following the date of service of the notice referred to in subsection (1), it shall serve on the Foundation another notice that the name of the Foundation may be removed from the Register, if a reply to the notice is not received within 30 days immediately following the date thereof, and that a notice of the contemplated striking-off will be published in the *Gazette*.

(3) If the Registrar —

- (a) in reply to a notice served on the Foundation under subsection (1) or (2), receives from the Foundation a notice stating —
 - (i) that the Foundation no longer satisfies all of the requirements under this Act for a Foundation; or
 - (ii) that the Foundation conducts such activities which are, or are likely to be, contrary to the written laws or detrimental to the reputation of Seychelles; or
- (b) does not receive a reply to the notice served on the Foundation under subsection (2) as required by that subsection,

it shall publish a notice in the *Gazette* that the name of the Foundation will be struck off the Register, unless the Foundation or another person satisfies the Registrar that the name of the Foundation should not be struck off.

(4) At the expiration of a period of 90 days immediately following the date of publication of the notice under subsection (3), the Registrar shall strike the name of the Foundation off the Register, unless the Foundation or any other person satisfies the Registrar that the name of the Foundation should not be struck off, and the Registrar shall publish notice of the striking-off in the *Gazette*.

Striking off for failure to pay fees

99.(1) Where a Foundation has failed to pay any annual renewal fees due under section 24(1) within 180 days of such amount becoming due, the Registrar shall publish in the *Gazette* and serve on the Foundation a notice that its name will be struck off the Register, if it fails to pay such annual renewal fees and all penalty fees payable under section 24(2), within 90 days of the date of such notice.

(2) Where a Foundation fails to pay such annual renewal fees together with all penalty fees referred to in subsection (1), the Registrar shall immediately strike its name off the Register and publish notice of the striking-off in the *Gazette*.

Effects of dissolution

100.(1) Where the name of a Foundation has been struck off the Register –

- (a) the Foundation remains liable for all its claims, debts, liabilities and obligations, and the striking-off does not affect the liability of any of its councillors, other officers or agents.
- (b) the Foundation, the council and any supervisory person shall not –
 - (i) carry on any Foundation's activities or in any way deal with the assets of the Foundation;
 - (ii) commence legal proceedings, make any claim or claim any right for, or in the name of, the Foundation; or
 - (iii) act in any way with respect to the affairs of the Foundation.

(2) Notwithstanding subsection (1), where the name of a Foundation has been struck off the Register, the Foundation, the council or a councillor, a creditor or a liquidator thereof may –

- (a) make application for the restoration of the name of the Foundation to the Register;
- (b) continue to defend proceedings that were commenced against the Foundation prior to the date of striking-off; and
- (c) continue to carry on legal proceedings that were instituted on behalf of the Foundation prior to the date of striking-off.

— (3) The fact that the name of a Foundation is struck off the Register does not prevent

- (a) the Foundation from incurring liabilities;
- (b) any creditor from making a claim against it and pursuing the claim through to judgment or execution; or
- (c) the appointment by the court of a liquidator in respect of that Foundation.

Application to court for restoration of Foundation to Register

101.(1) This section shall apply in relation to the proposed restoration of the name of a Foundation which has been dissolved or whose name has been struck off the Register but is not yet dissolved.

(2) An application for restoration of the name of the Foundation to the Register may be made to the court by—

- (a) a creditor, councillor, founder, protector or liquidator of the Foundation; or
- (b) any person who can establish an interest in the Foundation to be restored to the Register.

(3) An application under sub-section (2) to restore the name of a struck-off or dissolved Foundation to the Register may be made to the Court—

- (a) within one year from the date of the striking off the Foundation; or
- (b) within five years of the date of dissolution of the Foundation.

(4) A notice of the application shall be served on the Registrar, which is entitled to appear and be heard on the hearing of the application.

(5) On an application under subsection (2) and subject to subsection (6), the court may—

- (a) restore the Foundation to the Register subject to such conditions as it considers appropriate; and
- (b) give such directions or make such orders as it considers necessary or desirable for the purpose of placing the Foundation and any other persons as nearly as possible in the same position as if the Foundation had not been dissolved or struck off the Register.

(6) The court shall not make an order restoring a Foundation to the Register, unless it is satisfied that—

- (a) a person with a foundation services licence under the International Corporate Service Providers Act (Cap 275) has agreed to act as registered agent of the Foundation; and
- (b) the Foundation is in compliance with its obligations—
 - (i) under this Act relating to—
 - (A) accounting records; and
 - (B) the registers specified under section 77(1); and
 - (ii) under the Beneficial Ownership Act, 2020 (Act 4 of 2020) relating to register of beneficial owners.

(7) Where the court makes an order restoring a Foundation to the Register, a sealed copy of the order shall be filed with the Registrar by the applicant.

(8) On receiving a sealed copy of the order under subsection (7), and subject to payment to the Registrar of all outstanding annual fees and any penalty or other fees payable under this Act in relation to the Foundation, the Registrar shall restore the Foundation to the Register with effect from the date and time that the copy of the sealed order was filed.

(9) A Foundation is restored to the Register with the name that it had immediately before it was dissolved or struck-off the Register.

(10) A Foundation that is restored to the Register is deemed to have continued in existence as if it had never been dissolved or struck off the Register.

Application to Registrar for restoration of name of Foundation to Register

102.(1) Subject to subsection (1A), where the name of a Foundation has been struck off the Register under section 99(2) or a Foundation has been deemed dissolved under section 103(1), the Foundation or a councillor, beneficiary, founder, supervisory person or liquidator thereof, may apply to the Registrar to have the name of the Foundation restored to the Register.

(1A) An application under subsection (1) may be made to the Registrar—

- (a) within one year from the date of the striking off the Foundation; or
- (b) within five years of the date of dissolution of the Foundation.

(2) Subject to subsection (2A), the Registrar may upon the application of a person under subsection (1) restore the name of the Foundation to the Register upon payment to the Registrar by the Foundation of all outstanding annual renewal fees and other fees and penalties due and payable under this Act.

(2A) The Registrar shall not restore the name of a Foundation to the Register unless the Registrar is satisfied that the Foundation is in compliance with its obligations—

- (a) under this Act relating to—
 - (i) accounting records; and
 - (ii) the registers specified in section 77(1); and
- (b) under the Beneficial Ownership Act, 2020 (*Act 4 of 2020*) relating to register of beneficial owners.

(3) Where the name of a Foundation is restored to the Register under subsection (2)

- (a) the name of the Foundation shall be deemed never to have been struck off the Register; and
- (b) all agreements and contracts entered into by the Foundation during the period in which its name remained off the Register, shall be deemed to be valid and enforceable.

(3) Where the name of a Foundation is restored to the Register under subsection (2)

- (c) the name of the Foundation shall be deemed never to have been struck off the Register; and
- (d) all agreements and contracts entered into by the Foundation during the period in which its name remained off the Register, shall be deemed to be valid and enforceable.

Dissolution of Foundation struck off

103.(1) Where the name of a Foundation has been struck off the Register under section 98(4) or 99(2) and remains struck off continuously for a period of one year, the Foundation shall be deemed to have been dissolved.

(2) Where the name of a Foundation has been struck off the Register, the Registrar may, if it determines that it is in the best interests of the Republic of Seychelles to do so, apply to the court to have a Foundation put into liquidation and a person appointed as its liquidator.

(3) The court may, on the application of the Registrar under subsection (2), appoint a person to be the liquidator of a Foundation.

(4) For the purposes of this section, the appointment of a liquidator under subsection (3) operates as an order to restore the name of a Foundation to the Register.

(5) The duties of a liquidator in respect of a Foundation in liquidation under subsection (4) are limited to —

- (a) identifying and taking possession of all assets of the Foundation;

- (b) calling for claims by advertisement in the *Gazette* and in such other manner as the liquidator deems appropriate and requiring all claims to be submitted to the liquidator within a period of not less than 90 days immediately following the date of the advertisement; and
- (c) applying those assets that it recovers, notwithstanding any other written law or a foreign written law to the contrary, in the following order of priority –
 - (i) in satisfaction of all annual renewal fees and any other fees and penalties due to the Registrar; and
 - (ii) in satisfaction *pari passu* of all other claims admitted by the liquidator.

(6) In order to perform the functions with which a liquidator is charged under subsection (5), the liquidator may exercise such powers as the court may consider reasonable to confer on it.

(7) A liquidator may require such proof as the liquidator considers necessary to substantiate claims submitted and admitted or reject or settle claims on the basis of evidence submitted to the liquidator.

(8) When a liquidator has completed its duties, the liquidator shall submit a written report of proceedings to the Registrar and, upon receipt of the report by the Registrar, all assets of the Foundation, wherever situated, that are not disposed of or vested, notwithstanding any written law or foreign written law to the contrary, shall be vested in the Republic of Seychelles, and the Foundation shall be dissolved.

(9) The liquidator is entitled to such remuneration out of the assets of a Foundation for the liquidator's services as the court approves, but if the Foundation is unable to discharge all of its claims, debts, liabilities and obligations, payment of the liquidator's remuneration shall be a charge on the Consolidated Fund.

(10) No liability attaches to a liquidator –

- (a) to account to creditors of a Foundation which have not submitted claims within the time allowed by the liquidator; or
- (b) for any failure to locate any assets of the Foundation, provided that the liquidator has acted in good faith.

PART XII – REGISTRAR OF FOUNDATIONS

Registrar's duties and powers

104.(1) The Registrar –

- (a) shall administer this Act and perform the functions of the Registrar specified under this Act;
- (b) has, for the performance of its functions under paragraph (a), the powers conferred upon it by this Act;
- (c) has the authority to approve such forms as it considers necessary for the purposes of this Act;
- (d) may, for the proper administration of this Act or any Regulations made under this Act, issue directions or guidelines; and
- (e) may appoint staff or engage other persons as may be necessary to assist the Registrar in the exercise of its powers under this Act.

(2) Any functions of the Registrar under this Act may, to the extent authorised by the Registrar, be performed by any of its staff or any other person as may be authorised by the Registrar.

Official Seal

105. The Registrar shall cause to be prepared a seal to be known as the Official Seal for use by the Registrar in the authentication or other issue of documents required for or in connection with the registration of Foundations under this Act.

Filing in the absence of approved form

106. Where this Act requires a document to be delivered to the Registrar, and the form of the document has not been approved by the Registrar, it shall be sufficient compliance with that requirement if the document is delivered in a form, acceptable to the Registrar.

Register

107.(1) The Registrar shall keep a Register established under this Act, which shall contain in respect of each Foundation —

- (a) its name and registration number;
- (b) the address of its registered office in Seychelles;
- (c) the name and address of its registered agent in Seychelles;
- (d) the name and address of each councillor if applicable;
- (e) the date of its establishment under this Act;
- (f) its status, with reference to whether or not all fees payable by it to the Registrar have been paid; and
- (g) particulars of any striking off or dissolution of the Foundation.

(2) The Register shall be in such form as the Registrar may determine and shall, together with the documents referred to in subsection (3)(a) and (b), be open to public inspection during office hours on payment of the fee set out in Part 2 of Schedule 1.

(3) Other than the Register kept by the Registrar, no other document filed with or otherwise kept by the Registrar in relation to a Foundation shall be open to public inspection, except for —

- (a) the Foundation's certificate of registration, certificate of registration on change of name, certificate of continuation or certificate of registration upon consolidation or merger, as the case may be;
- (b) the charter or amended charter; and
- (c) the Foundation's certificate of dissolution.

(4) Any person, on payment of the fee set out in Part 2 of Schedule 1, may request the Registrar for a certificate of official search under the Official Seal of the Registrar in respect of any Foundation, which shall contain the information set out in subsection (1)(a) to (g).

Certificate of good standing

108.(1) The Registrar shall, upon request by any person on payment of the fee set out in Part 2 of Schedule 1, issue a certificate of good standing under the Official Seal certifying that a Foundation is of good standing, if the Registrar is satisfied that —

- (a) the name of the Foundation is on the Register; and
- (b) the Foundation has paid all fees and penalties due and payable under this Act.

(2) The certificate of good standing issued under subsection (1) shall include a statement as to whether —

- (a) there is any pending application that has been submitted to the Registrar for a certificate of consolidation or merger;
- (b) the Foundation is in the process of being wound-up and dissolved; or
- (c) any proceeding to strike the name of the Foundation off the Register have been commenced.

(3) In the event that a Foundation is not in good standing as at the date of the request, the Registrar shall issue a certificate of official search under section 107(4) in lieu of a certificate of good standing, and no additional fees shall be paid in respect thereof.

Confidentiality

109.(1) Subject to subsection (2), the Registrar or a member of staff or agent of the Registrar shall not disclose to a third party any information or documents acquired in the performance of functions of the Registrar, member of staff or agent of the Registrar under this Act.

- (2) Subsection (1) shall not apply to any disclosure —
- (a) required by the court;
 - (b) in respect of the affairs of a Foundation, with the prior written consent of the Foundation;
 - (c) where the information disclosed is in statistical form or is otherwise disclosed in such a manner that does not enable the identity of any Foundation to which the information relates to be ascertained;
 - (d) in accordance with any disclosure under a written law; or
 - (e) otherwise permitted under this Act.

PART XIII — EXEMPTIONS AND CONCESSIONS

Exemptions and concessions

110.(1) The written laws specified in Column 1 of Schedule 2, to the extent specified in the corresponding Column of that Schedule shall not apply to a Foundation registered under this Act.

(2) Notwithstanding a written law to the contrary, no estate, inheritance, succession or gift tax shall be assessed on or be payable by a person with regard to any properties, shares, securities or other assets transferred to or held by or interests issued or created by or relating to a Foundation.

(3) The exemptions and concessions granted under subsection (1) shall remain in force for a period of 20 years from the date of registration of a Foundation under this Act, and shall continue in force thereafter unless a written law provides otherwise.

PART XIV — MISCELLANEOUS

Offences

111.(1) A person which contravenes any provision or requirement of this Act, for which no penalty is provided for in this Act, commits an offence and is liable on conviction to a fine not exceeding US\$25000.

- (2) Where an offence under this Act is committed by —

- (a) a Foundation, and any of its councillors, knowingly authorised, permitted or acquiesced in the commission of the offence, the councillor also commits the offence; or
- (b) a legal person other than a Foundation, and a director or other officer of that person, knowingly authorised, permitted or acquiesced in the commission of the offence, the director or other officer also commits the offence.

Direction from the court

111A. A councillor may apply to the court for directions in respect of the manner the council is to act in respect of a decision affecting the Foundation.

Inspection order by court

112. If, on an application to the court by the Attorney General or the Registrar, there is shown to be reasonable cause to believe that a person has, while being a councillor or supervisory person, committed an offence in connection with the Foundation's affairs, and any evidence of the commission of the offence may be found in any records of or under the control of, or relating to, the Foundation, the court may make an order –

- (a) authorising the person named in the order to inspect the records in question, or any of them, for the purpose of investigating and obtaining evidence of the offence; or
- (b) requiring any councillor or supervisory person named in the order to produce and make available the records, or any of them, to a person, at the place and time specified in the order.

Power of court to make orders³

113.(1) This section applies where the court, on an application by a person of standing or of its own motion, is satisfied, in respect of a foundation, that a person has failed to comply with —

- (a) a requirement of this Act or of the charter or regulations of the foundation; or
- (b) an obligation imposed on a person by this Act or by the charter or regulations of the foundation.

(2) For the purposes of subsection (1), “a person of standing”, in respect of a foundation means —

- (a) the foundation;
- (b) a founder of the foundation;

³ Amended by The International Business Companies Act and Other Related Laws (Amendment) Act, 2021.

- (c) a person, other than a founder of the foundation, who has endowed the foundation;
- (d) if any rights a founder of a foundation had in respect of the foundation and its assets have been assigned to some other person, that other person;
- (e) a person appointed under the regulations of the foundation;
- (f) a beneficiary of the foundation;
- (g) a councillor of the foundation;
- (h) a creditor of the foundation;
- (i) a supervisory person;
- (j) the foundation's registered agent;
- (k) the Registrar; or
- (l) the Attorney General.

(3) The court may make an order in respect of a foundation —

- (a) that a person shall comply with the requirement or obligation which that person has failed to comply with; or
- (b) otherwise facilitating compliance with the requirement or obligation which that person has failed to comply with.

(4) The court shall not make an order under subsection (3) unless it is satisfied that —

- (a) the same shall assist the foundation in the just and proper administration of its assets or the attainment of its objects; or
- (b) it is otherwise just and desirable that it should do so.

(5) Where the court makes an order under subsection (3)(b), its order shall have the same effect as if it were an action taken by the person required to comply with the requirement or obligation.

(6) An order made by the court under this section in respect of a foundation may, without limitation, provide for —

- (a) the action that the foundation or other person is required to take;
- (b) the appointment or removal of a person appointed under the charter or regulations of the foundation;

- (c) a person to make good a breach;
- (d) the foundation or other person to cease acting in such manner as may be specified by the court;
- (e) payment or distribution of an amount of money or other asset; or
- (f) directions by the court.

(7) If the court is satisfied that a foundation, acting through its council, has failed to carry out its objects or any of them, the court may, by order, require the foundation to do so.

(8) Any order made by the court under this section —

- (a) may be made on such terms; and
- (b) may impose such conditions,

as the court thinks fit.

Power of court to grant relief

114.(1) If, in a proceeding for negligence, default or breach of duty against a councillor or supervisory person, it appears to the court —

- (a) that the councillor or supervisory person is or may be liable in respect of negligence, default or breach of duty, but that the councillor or supervisory person acted in good faith; and
- (b) that having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach of duty,

the court may relieve that person, wholly or partly, from liability on such terms as it considers fit.

(2) If a councillor or supervisory person has reason to believe that a claim will or might be made against the councillor or supervisory person in respect of negligence, default, failure or breach of duty, that councillor or supervisory person may apply to the court for relief.

(3) The court upon an application under subsection (2) has the same power to relieve the councillor or supervisory person as it would have had, if proceedings for negligence, default or breach of duty had been brought against the councillor or supervisory person.

Liability for false statements

115.(1) A person which makes a statement in any document which is required to be submitted, lodged or delivered to the Registrar under this Act, which, at the time and in the light of circumstances under which it is made, is false or misleading with respect to any material

fact or omits to state any material fact, the omission of which makes the statement false or misleading, commits an offence and is liable on conviction to a fine not exceeding US\$25000.

(2) It shall be a defence for a person accused of committing an offence under subsection (1) to prove that the person did not know that the statement was false or misleading, or could not reasonably have known that the statement was false or misleading.

Immunity

116. No action, prosecution or other proceedings shall be brought against the Registrar or a member of staff or agent of the Registrar, in respect of an act done or omitted to be done in good faith by the Registrar or a member of staff or agent of the Registrar in the proper performance of functions under this Act.

Legal professional privilege

117. Where a proceeding is instituted under this Act against a person, nothing in this Act is to be taken to require that person to disclose any information which that person is entitled not to disclose on the grounds of legal professional privilege.

Regulations

118.(1) The Minister may make Regulations for the purpose of carrying out and giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), Regulations made under subsection (1) may —

- (a) provide for further procedure to be followed by a person making an application under section 102;
- (b) amend the Schedules;
- (c) provide for fees and levying of charges; or
- (d) provide for penalties.

(3) Regulations made under subsection (1) may provide that any person which contravenes them commits an offence and is liable on conviction to a fine not exceeding US\$25000.

SCHEDULE 1

PART 1

REGISTRATION AND ANNUAL FEES

| COLUMN 1 | COLUMN 2 |
|---|----------|
| (a) Foundation registration fee (establishment and year 1) <i>(section 21(1))</i> | US\$200 |
| (b) Foundation annual renewal fee <i>(section 24(1))</i> | US\$200 |
| (c) Foundation continuation fee <i>(section 81(3))</i> | US\$200 |

PART 2

MISCELLANEOUS FEES

| COLUMN 1 | COLUMN 2 |
|---|----------|
| (a) For the continued reservation of a name for future adoption by a Foundation <i>(section 18 (2))</i> | US\$25 |
| (b) For filing of a certified extract of amendment <i>(sections 6(6)(a), 29(2) or 31(4))</i> | US\$100 |
| (c) For filing of a notice of appointment or a notice of cessation of office of a councillor <i>(sections 36(1)(b) or 50(2)(b))</i> | US\$25 |
| (d) For filing of a notice of change of name or change of address of a councillor <i>(section 51 (1)(b))</i> | US\$25 |
| (e) Application to Registrar for issuance of a certificate of registration upon consolidation or merger <i>(section 81(3))</i> | US\$200 |
| (f) For filing of a written notice that a Foundation is in dissolution <i>(section 94)</i> | US\$100 |

| | | |
|---|---------------------------|--------------|
| (g) For filing of liquidator's statement on completion of dissolution | <i>(section 95(1)(b))</i> | US\$100 |
| (h) Inspection of the Register | <i>(section 107(2))</i> | US\$75 |
| (i) For a certificate of official search | <i>(section 107(4))</i> | US\$75 |
| (j) For a certificate of good standing | <i>(section 108(1))</i> | US\$75 |
| (k) Per page for obtaining a copy of any document available on inspection | | US\$5 |
| (l) Upon the filing with the Registrar of any document relating to a Foundation registered under this Act other than those set out in this Schedule | | US\$75 |
| (m) For filing with the Registrar of a sealed copy of an order of the court for the restoration of the name of a Foundation to the Register | | US\$500 |
| (n) For the restoration of the name of a Foundation to the Register by the Registrar- | | |
| (i) if the application for restoration is made 6 months or less after the date that the name of the Foundation was struck off the Register; or | | (i) US\$300 |
| (ii) if the application for restoration is made more than 6 months after the date that the name of the Foundation was struck off the Register. | | (ii) US\$500 |

SCHEDULE 2

(section 110)

EXEMPTIONS AND CONCESSIONS

| COLUMN 1 LAWS | COLUMN 2 Extent of exemptions and non-applicability |
|---|--|
| 1. Business Tax Act | The whole Act, except the provisions relating to exchange of information on tax matters. |
| 2. Income and Non - Monetary Benefits Tax Act | The whole Act |
| 3. Stamp duty Act | The whole Act, except in respect of direct or indirect transfers of or interest in immovable property within Seychelles other than a lease approved under section 11(2) of this Act. |
| 4. Goods and Services Act and Value added Tax Act | The whole Act with respect to the services provided by a foundation or by councillor, supervisory person, registered agent or founder |