

Foundations Guidelines



FINANCIAL SERVICES AUTHORITY

Bois De Rose Avenue
P.O. Box 991
Victoria
Mahé
Seychelles

Tel: +248 4380800
Fax: +248 4380888
Website: www.fsaseychelles.sc
Email: enquiries@fsaseychelles.sc

Version: 15th July, 2022

Table of Contents

1.	INTRODUCTION	4
2.	BACKGROUND ON FOUNDATIONS	4

PART A – GUIDANCE TO THE FOUNDATIONS ACT, 2009

3.	ESTABLISHMENT OF FOUNDATIONS	5
4.	CHARTER OF A FOUNDATION	5
5.	AMENDMENT OF CHARTER	5
6.	OBJECTS OF A FOUNDATION	6
7.	ASSETS OF FOUNDATIONS	6
8.	MANAGEMENT OF ASSETS OF FOUNDATION.....	6
9.	REGULATIONS OF A FOUNDATION	6
10.	REGISTRATION OF FOUNDATIONS.....	7
11.	ANNUAL RENEWAL FEES.....	7
12.	FOUNDER OF FOUNDATIONS.....	7
13.	REGISTERED AGENT OF FOUNDATIONS.....	7
14.	REGISTERED OFFICE OF FOUNDATIONS.....	8
15.	COUNCIL OF FOUNDATIONS	8
16.	PROTECTORS OF FOUNDATIONS	9
17.	BENEFICIARIES OF FOUNDATIONS.....	9
18.	PROPERTY AND PROTECTION FOUNDATIONS	9
19.	KEEPING OF ACCOUNTING RECORDS AND FINANCIAL SUMMARY	10
20.	REQUIREMENT TO KEEP REGISTERS	14
21.	CONTINUATION OF FOUNDATIONS.....	14
22.	CONSOLIDATION OR MERGER OF FOUNDATIONS.....	15
23.	DISSOLUTION OF FOUNDATIONS.....	15
24.	SURPLUS ASSETS	16
25.	COMPLIANCE INSPECTION	16
26.	STRIKING OFF	16
27.	DEEMED DISSOLUTION	17
28.	RESTORATION	17
29.	REGISTRAR OF FOUNDATIONS.....	19
30.	EXEMPTIONS AND CONCESSIONS	19

PART B – GUIDANCE ON PROCEDURES

31.	SERVING OF DOCUMENTS	20
32.	NAME RESERVATION	20
33.	CHANGE OF NAME	21
34.	REGISTRATION OF FOUNDATIONS.....	21
35.	CONTINUATION OF FOUNDATIONS.....	22
36.	RENEWAL OF FOUNDATIONS.....	22
37.	CHANGE OF REGISTERED AGENT	22
38.	CHANGE OF REGISTERED OFFICE	23
39.	CHANGE IN PARTICULARS OF COUNCILLORS.....	23
40.	REGISTRATION UPON CONSOLIDATION OR MERGER.....	24
41.	REQUEST FOR CERTIFICATE OF OFFICIAL SEARCH	25
42.	REQUEST FOR CERTIFICATE OF GOOD STANDING	25
43.	PUBLIC INSPECTION OF REGISTER OF FOUNDATIONS.....	26
44.	CERTIFICATION OF TRANSLATED DOCUMENTS	26
45.	APPLICATION OF PENALTY FEES.....	26
46.	OTHER SERVICES	27
	Annexure 1.....	28
	Annexure 2.....	30
	Annexure 3.....	31
	Annexure 4.....	33

1. INTRODUCTION

These guidelines have been issued by the Registrar of Foundations (the “Registrar”), the Financial Services Authority (“FSA”), to provide a summary of the Foundations Act, 2009 (the “Act”) and to assist in making licensed International Corporate Service Providers (“ICSPs”) aware of the processes and procedures involved in their dealings with the Registrar in relation to foundations registered under the Act.

These guidelines are not exhaustive, are intended as a general summary only and should be read with the relevant provisions in the Act. The Registrar does not provide legal advice. It is recommended that ICSPs and foundations, as the case may be, obtain independent expert legal advice.

2. BACKGROUND ON FOUNDATIONS

- 2.1 Like a company (but unlike a trust), a foundation is a separate legal entity. Once assets have been transferred to a foundation, they become the assets of that foundation with full legal and beneficial title. That is, the foundation assets do not belong to the founder (i.e. the person who establishes a foundation by transferring the initial assets to it) and, therefore, do not form part of the founder’s personal estate on death. As foundation assets are not the property of the founder, this makes a foundation a highly useful structure for tax planning, asset protection and “outside estate” succession planning.
- 2.2 The main constitutional document of a foundation is its charter. A foundation may also issue regulations, which are different from Regulations as may be made by the Minister under Section 118. While “optional”, regulations are normally issued – these usually contain particulars of the beneficiaries and beneficiary entitlements. Foundations are managed by one or more councillors, which comprise the foundation council.
- 2.3 A foundation has “beneficiaries”. However, in contrast to shareholders of a company or beneficiaries of a trust, foundation beneficiaries have no legal or beneficial interest in foundation assets. That is, foundation assets do not become the assets of a beneficiary unless distributed in accordance with the foundation’s charter or regulations.
- 2.4 It is permissible for a foundation to appoint a protector. A protector’s role is to oversee the administration of a foundation by the foundation council. A protector’s prior approval may be required before the foundation council do certain things (for example, adding or excluding a beneficiary).

PART A – GUIDANCE TO THE FOUNDATIONS ACT, 2009

3. ESTABLISHMENT OF FOUNDATIONS

According to the Act, a Foundation is established in Seychelles by a charter made in writing, signed by one or more founders and upon the issuance of the certificate of registration by the Registrar pursuant to section 22(1)(b) of the Act.

4. CHARTER OF A FOUNDATION

Section 4 of the Act specifies the requirements for a foundation's charter (constitutional document). The charter may be written in English or French language. If it is written in another language, it should be accompanied by an English or French translation. The charter of a foundation must contain, at a minimum:

- (a) the name of the foundation
- (b) the name and address of the founder(s)
- (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
- (j) the manner in which a beneficiary of a Foundation is appointed

5. AMENDMENT OF CHARTER

Section 6 of the Act provides for amendments of the charter. Upon the amendment, the Foundation shall submit for registration a certified extract of the amendment to the Registrar within 14 days accompanied by the applicable fee (i.e. US\$100). The Foundation may also, within 14 days of filing the extract, file an amended replacement charter.

6. OBJECTS OF A FOUNDATION

- 6.1 Section 7 of the Act states that the objects of a foundation may be charitable, non-charitable or both, and shall include the management and distribution of its assets and income, to the beneficiaries or, in the case of a Foundation established to carry on a specified purpose, in the fulfilment of that purpose.
- 6.2 However, the objects of a Foundation shall not include the activities specified in section 7(2) of the Act, which includes, the carrying on of business in Seychelles (except as provided under section 7(2)(c)), unauthorised licensed activity, the carrying on of any activity which is unlawful, immoral or contrary to any public policy of Seychelles, etc.

7. ASSETS OF FOUNDATIONS

The initial assets of a foundation shall be of a value of not less than one United States dollar (US\$1) or the equivalent thereof in any freely convertible currency. The assets of a Foundation may originate from any lawful source and consist of present or future assets of any nature. However, there are restrictions in terms of Seychelles' properties that may constitute the assets of a Foundation (e.g. while the assets of a foundation may include shares of International Business Companies, Companies (Special Licences) or Protected Cell Companies, the assets of a foundation cannot include Seychelles' immovable properties).

8. MANAGEMENT OF ASSETS OF FOUNDATION

The assets of a Foundation must be exclusively managed in accordance with the charter, regulations and the Act and the Foundation may exercise such powers and perform such functions as are necessary for the proper management and administration of its assets.

9. REGULATIONS OF A FOUNDATION

- 9.1 Section 13 of the Act provides that regulations, if any, issued by a Foundation must comply with the Act. The issuance of regulations is subject to the charter of the Foundation. 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.

9.2 The regulations must be in writing and must be signed and executed by each founder or each councillor, if there is no surviving founder.

9.3 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.

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

10. REGISTRATION OF FOUNDATIONS

10.1 The registered agent must submit the charter and the registration fee of US\$200 to the Registrar who shall retain and register it, if it is satisfied that all the requirements of the Act have been complied with and its objects are lawful. The Registrar shall allocate a registration number to the foundation and issue a certificate of registration.

10.2 On and from the date of registration stated in the certificate of registration, the Foundation is a separate legal entity, by the name contained in the charter and specified in the certificate of registration, and is immediately capable of exercising all the powers and functions of a Foundation.

11. ANNUAL RENEWAL FEES

Section 24 on the Act provides that an annual registration fee of US\$200 shall be due and payable on the annual anniversary date of the foundation's registration. Penalty fees will be incurred by the foundation if the annual registration fee is not paid on or before the due date in each year.

12. FOUNDER OF FOUNDATIONS

The powers and obligations of the founder are provided by section 25 of the Act. Section 26 and 27 provides for the assignment of rights by founder and reservation of rights to founder or other person respectively.

13. REGISTERED AGENT OF FOUNDATIONS

13.1 Section 28 of the Act requires a foundation to have a registered agent in Seychelles at all times. The registered agent must be a company licensed under the International Corporate Service Providers Act, 2003 to conduct Foundation Services.

- 13.2 Unless provided otherwise in the Act, all applications made and all documents required to be delivered to the Registrar by a foundation must be signed and submitted to the Registrar, by its registered agent.
- 13.3 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.
 - (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.
- 13.4 The notice referred to above 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.
- 13.5 In the event that a Foundation appoints a new registered agent within the 30 days mentioned above, the resignation of the outgoing registered agent shall take effect as from the date of appointment of the new registered agent.

14. REGISTERED OFFICE OF FOUNDATIONS

A Foundation shall have a registered office situated in Seychelles and the address of its registered office shall be the same as that of its registered agent. Documents may be served on a Foundation by service of such documents on its registered agent at the registered office of the Foundation.

15. COUNCIL OF FOUNDATIONS

- 15.1 A foundation must have a council (board of councillors) to manage the business and affairs of the foundation (Section 32 of the Act). The council shall consist of one or more persons (either legal or natural persons) known as a councillor(s). The appointment of a person as a councillor is personal to that person and may not be assigned. A founder may be a councillor, provided that the founder is not the "sole" councillor. A protector may be a councillor, provided that the protector is not the "sole" councillor.
- 15.2 Notice of the appointment, cessation and change of name or address of a councillor must be filed by the foundation to its registered agent in Seychelles within 14 days of the appointment, cessation or change. In cases where the names and addresses of councillors are specified in the charter upon registration, the Foundation must file with the Registrar the relevant notice containing the full name and address of that councillor.
- 15.3 A Foundation must keep minutes of all meetings of councillors and copies of all written resolutions consented to by the councillors. The minutes and other records must be kept at the registered office of the Foundation or in such other place as the councillors consider fit

and, the councillors must inform the registered agent of the address of that other place. The minutes and other records must be preserved for a period of not less than 7 years after the end of the period to which they relate.

16. PROTECTORS OF FOUNDATIONS

A natural or legal person may be appointed as a protector if so provided for by the charter or regulations. Appointments may be made by the founder in the charter or regulations, or any other person empowered to do so in the charter or regulations. More than one person may be appointed as protector. A founder, beneficiary or councillor of a foundation may be appointed as a protector, but a sole councillor or a sole beneficiary shall not act as protector. The appointment of a person as a 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. Section 55 provides for the powers of protectors.

17. BENEFICIARIES OF FOUNDATIONS

17.1 Part V of the Act deals with beneficiaries of Foundations. A beneficiary shall be identifiable by name, or ascertainable by reference to a class or 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).

17.2 A founder may be a beneficiary, but not the sole beneficiary.

18. PROPERTY AND PROTECTION FOUNDATIONS

18.1 The assets transferred to or otherwise vested in a foundation shall become the assets of the Foundation with full legal and beneficial title and cease to be the assets of the founder. The assets will become only become the assets of the beneficiaries when they are distributed to the beneficiaries.

18.2 Section 72 makes provision Anti-forced heirship. No foundation registered under the Act, and no transfer or other disposition of property to a Foundation, shall 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.

18.3 Section 73 provides that no foundation or transfer of property to a foundation shall be void among other things by reason of the founder's bankruptcy, except where it is proved that the founder was insolvent or intended to defraud a creditor, at the time when the founder transferred the property to the foundation.

18.4 An action or claim against a foundation may be made within two years from the date of the transfer as the foundation shall be barred absolutely after two years

19. KEEPING OF ACCOUNTING RECORDS AND FINANCIAL SUMMARY

Accounting Records

- 19.1 Section 75(1) of the Act requires every Foundation to keep reliable accounting records that are sufficient to show and explain the Foundation's transactions, enable the financial position of the Foundation to be determined with reasonable accuracy at any time and allow for financial statements of the Foundation to be prepared. For such purposes, accounting records shall be deemed not to be kept if they do not give a true and fair view of the Foundation's financial position and explain its transactions.
- 19.2 A Foundation shall preserve its accounting records for at least 7 years from the date of completion of the transactions or operations to which they each relate.
- 19.3 Under section 2 of the Act, "**accounting records**", in relation to a Foundation, means documents in respect of the Foundation's assets and liabilities, the receipts and expenditure of the Foundation and the sales, purchases and other transactions to which the Foundation is a party. Following this definition, it implies that accounting records (including the underlying documents) can take on many forms and includes:
- (a) Bank statements
 - (b) Receipts and Invoices
 - (c) Vouchers
 - (d) Title documents
 - (e) Contracts and agreements
 - (f) Ledgers
 - (g) Any other documentation underpinning a transaction
- 19.4 Where a Foundation keeps its accounting records outside Seychelles, section 75(3) of the Act requires the Foundation to lodge these accounting records at its registered office in Seychelles. A Foundation may either keep the original accounting records or a copy of the accounting records in electronic form at its registered office. However, where a Foundation keeps a copy of its accounting records at its registered office or where the Foundation's original accounting records are kept in Seychelles at a place other than its registered office, the Foundation must notify its Registered Agent in writing of the physical address of that place (section 75(3B) of the Act). Note that the Seychelles' authorities maintain the right to request for the original records. It is sufficient if the Foundation provides the Registered Agent with an emailed scanned copy of the completed, signed and dated Notice.
- 19.5 Increasingly, accounting records are likely to exist purely in electronic form. This includes situations where contracts are signed electronically. It also includes banking statements and invoices which are also now regularly issued in paperless form. In such case where there are no physical originals, the electronic versions can be taken to constitute the original accounting records.

- 19.6 It is expected that some of the accounting records of a Foundation will not be in the English or French language. While the Act does not require a translated version of the accounting record to be kept, the Act provides that the Registrar or other authorities may request from the Foundation or the registered agent a translation of the record (section 77A(1A) of the Act). However, the Registrar recommends that a translated version of the accounting records in the English or French language is being kept at all times.
- 19.7 The Act provides that the accounting records of a Foundation should be kept at the registered office in Seychelles on a bi-annual basis, that is, at an interval of 2 times per year. In enforcing compliance with the accounting records keeping requirement, the Registrar will allow a delay for the records to be kept at the registered office in Seychelles as follows:
- (a) Accounting records relating to transactions or operations in the first half (January to June) of a calendar year must be kept in Seychelles by July of that year
 - (b) Accounting records relating to transactions or operations in the second half (July to December) of a calendar year must be kept in Seychelles by January of the following year
- 19.8 For clarity purposes, the following will apply in respect of existing accounting records (i.e. accounting records relating to the years prior to year 2022) and accounting records relating to year 2022 for companies on the Register:
- (a) Accounting records relating to transactions or operations in the past 7 years to 31st December, 2021 (i.e. records from 1st January, 2015) must be kept in Seychelles by 5th February, 2022
 - (b) Accounting records relating to transactions or operations in the first half (January to June) of 2022 must be kept in Seychelles by July 2022
 - (c) Accounting records relating to transactions or operations in the second half (July to December) of 2022 must be kept in Seychelles by January 2023
- 19.9 For clarity purposes, a Foundation that is struck-off (including where a Foundation is continued outside Seychelles) or dissolved on or after 6th August, 2021 must ensure that any outstanding accounting records are lodged at its registered office in Seychelles by January or July, following the date that it is struck-off or dissolved, in line with the above guidance.
- 19.10 For clarity purposes, where a Foundation continues in Seychelles from a foreign jurisdiction, the accounting records of the Foundation relating to transactions prior to its continuation in Seychelles is not expected to be kept in Seychelles. Where a Foundation continues outside of Seychelles under the laws of another jurisdiction (i.e. the Foundation ceases to be a Seychelles' entity), all accounting records relating to the period that the Foundation was Seychelles' entity must be preserved by the registered agent in Seychelles. However, all accounting records relating to period that the Foundation is no longer a Seychelles' entity, is not expected to be kept in Seychelles.
- 19.11 In the case where a Foundation has had no activities, is dormant or otherwise has no assets or liabilities, the Foundation must keep a declaration of such fact, which shall be regarded as sufficient compliance for the purpose of section 75(1) of the Act. This would help satisfy

the Registrar that there are no records available, either in Seychelles or abroad, for that particular period. See **Annexure 2** for sample of the declaration. It is sufficient if the Foundation provides the Registered Agent with an emailed scanned copy of the completed, signed and dated declaration.

19.12 Although the Act requires a Foundation to lodge its accounting records in Seychelles at least 2 times per year, it is important to note that a Foundation should keep its accounting records on a continuous basis (i.e. at all times) and therefore, any accounting record, either being kept in Seychelles or yet to be lodged in Seychelles, should be provided to the Seychelles' authorities upon request.

19.13 The Act provides a grace period for every Foundation to keep its accounting records in Seychelles by 5th February, 2022. It is important to note that this grace period applies only in relation to the location of where the accounting records are to be kept (i.e. section 75(3) of the Act) and **not** in relation to the obligation to **keep** accounting records (i.e. section 75(1) of the Act). Therefore, during the grace period, the Registrar may still request for the accounting records for compliance inspection purposes and if the accounting records are not provided, the Registrar will take enforcement action against the Foundation. Similarly, a competent authority may request for the accounting records to be provided by the Foundation during the grace period and if the Foundation fails to comply, the relevant enforcement action may be taken by the competent authority against the Foundation.

Financial Summary

19.14 The Act also requires all Foundations to annually prepare a **Financial Summary** to be kept at their registered office in Seychelles (together with the other accounting records and underlying documents) within 6 months from the financial year end of the Foundation.

19.15 The financial year of a 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. For clarity purposes, where a Foundation is incorporated at any time during a year and its financial year is the calendar year, its first Financial Summary is due by June of the following year.

19.16 The financial year of a Foundation generally covers a period of 12 months. However, in the event that a Foundation changes its financial year, the period covered by any Financial Summary cannot be a period greater than 15 months. If the period between the previous financial year end and the new financial year end is not greater than 15 months, the Foundation must prepare and keep a Financial Summary within 6 months of the new financial year end. However, if the period between the previous financial year end and the new financial year end is greater than 15 months, the Foundation must prepare and keep a Financial Summary within 6 months from the start of the new financial year (which will cover the period from the last financial year end to the start of the new financial year), whereas the next Financial Summary shall be due within 6 months of the new financial year end.

Example 1: The financial year of Foundation A is the calendar year (i.e. 31st December) (previous financial year) and Foundation A prepares and keeps its Financial Summary for the financial year 2021 by June 2022. In 2022, the Foundation decides to change its financial year to 31st March (new financial year). The period between the previous financial year end and the new financial year end is 15 months. Therefore, the next

Financial Summary is due by September 2023 (i.e. 6 months from the new financial year end).

Example 2: The financial year of Foundation B is 30th June (previous financial year) and Foundation B prepares and keeps its Financial Summary, covering the period 1st July 2021 to 30th June 2022, by December 2022. Then the Foundation decides to change its financial year to the calendar year (i.e. 31st December) (new financial year). The period between the previous financial year end and the new financial year end is more than 15 months (i.e. 18 months). Therefore, the next Financial Summary is due by June 2023 (i.e. 6 months from the start of the new financial year), covering the financial period 1st July, 2022 to 31st December, 2022. The following Financial Summary is due by June 2024, covering the period 1st January 2023 to 31st December 2023.

19.17 A sample of the form and content of the Financial Summary is provided in **Annexure 3** of these guidelines which must be adopted by all Foundation. However, the sub-categories (as provided in the footnote of the Annexure) must be listed accordingly depending on the type of activity that the Foundation is undertaking. In view that the obligation for Financial Summary came into effect as of 6th August 2021, the first Financial Summary of a Foundation should cover, at a minimum, the period from 6th August 2021 onwards.

19.18 However, where a Foundation prepares and keeps its annual financial statements (audited or unaudited) at its registered office in Seychelles, the Registrar will not expect the Foundation to also keep a Financial Summary, provided that the financial statements are kept for the relevant financial year and include the main category items detailed in **Annexure 3** and any relevant sub-category items. Such Foundation will not be considered to be in contravention of Section 75(3)(a) and hence, not be liable for penalties.

Preservation of accounting records by registered agent

19.19 As from 6th August, 2021, section 30A(1)(b) of the Act requires every registered agent to preserve the accounting records of Foundations that are in the possession of the registered agent. Each accounting record must be kept for at least 7 years from the date of completion of the transactions or operations to which they each relate. This obligation applies in relation to all Foundations to which the registered agent was or is acting as registered agent, which includes active Foundations, struck-off Foundations, dissolved Foundations and Foundations that have continued in a jurisdiction outside Seychelles.

19.20 For clarity purposes, a Foundation that has been dissolved prior to 6th August, 2021 is no longer a Foundation under the Act and is therefore not required to preserve accounting records under section 76(1). During that same period, there was no requirement on the registered agent to preserve the accounting records that may have been in the possession of the registered agent. However, any accounting record of such dissolved Foundations that is **in the possession of the registered agent on or after 6th August, 2021** must be preserved accordingly by the registered agent.

19.21 Similarly, where a Foundation has been struck-off prior to 6th August, 2021, any accounting records of such companies **in the possession of the registered agent on or after 6th August, 2021** must be preserved accordingly by the registered agent.

Ensuring compliance

19.22 As of February 2022, the Registrar will initiate its on-site compliance inspections of random samples of Foundations to ensure that reliable accounting records are being kept by the Foundation at its registered office in Seychelles. Where non-compliance is identified, relevant sanctions will be applied on the Foundation. It is also to be noted that under the Code for ICSPs, registered agents are required to monitor compliance by Foundations under their administration with the accounting record requirements. In cases where the Authority identifies a registered agent which has failed to comply with its obligation under the Code for ICSPs, the relevant sanction will be applied against the registered agent.

20. REQUIREMENT TO KEEP REGISTERS

20.1 Section 77 of the Act requires every foundation to keep, at its registered office, a register of its councillors, registered agents, any supervisory persons, any person having the power of attorney granted by the Foundation, as well as any beneficiaries and founders. The register must contain specified information on these aforementioned persons, and includes, inter alia, the names, address, nationality and date of birth of natural persons, the registered or principal address of legal persons as well as the relevant dates on which these persons assumed their respective positions in respect to the Foundation.

20.2 The register shall, during business hours be open to inspection by a founder, councillor, any supervisory person and the registered agent, and shall be open for inspection for a period of not less than two hours in each business day. The register shall be kept in such a form as the councillors thinks fit.

21. CONTINUATION OF FOUNDATIONS

21.1 Section 78 provides for an overseas Foundation which wishes to continue in Seychelles as a Foundation to lodge the following documents with the Registrar:

- (a) the 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
- (d) not less than 3 copies of its proposed charter under the Act, and
- (e) the registration fee of US\$200

21.2 Upon registration of the articles of continuation, the Registrar will issue a certificate of continuation if he is satisfied that all requirements of Part IX of the Act have been complied with.

21.3 Subject to any limitations in its charter, a Seychelles' foundation may, by a resolution of councillors, continue as a foundation outside Seychelles in the manner provided under those written laws. A foundation wishing to continue 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 the continuation and the foundation has complied with those written laws.

22. CONSOLIDATION OR MERGER OF FOUNDATIONS

Sections 86 to 91 of the Act provide for two or more existing foundations wishing to consolidate into a new foundation and an existing foundation wishing to merge into another existing foundation. The Registrar will strike off the Register a constituent foundation that is not the surviving entity in a merger and a constituent foundation that participates in a consolidation.

23. DISSOLUTION OF FOUNDATIONS

23.1 Sections 92 to 98 of the Act provides for dissolution of foundations, including for appointment of liquidators. 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

23.2 A liquidator must be appointed where a foundation is dissolved. The registered agent shall give the Registrar written notice in the approved form 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.

23.3 Upon the completion of a dissolution and winding up of the foundation's affairs, the liquidator shall give the registered agent, a written statement confirming that the winding up and dissolution of the foundation has been completed and the registered agent shall file

with the Registrar a certified copy of the liquidator's statement accompanied by the applicable fee of US\$100.

- 23.4 The Registrar shall then strike the foundation off the Register and issue a certificate of dissolution. Following the issue of the certificate the Registrar shall cause to be published in the Gazette, a notice that the foundation has been dissolved and has been struck off the Register.

24. SURPLUS ASSETS

- 24.1 Section 97 deals with surplus assets of a foundation. The surplus assets shall be the assets of any remaining beneficiary or 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.

- 24.2 If there is more than one remaining beneficiary, the surplus assets shall be distributed as provided for in the charter or regulations. In the event that 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.

- 24.3 In the event that:

- (a) there are 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.

25. COMPLIANCE INSPECTION

Section 77A of the Foundations Act empowers the Registrar, for the sole purpose of monitoring and assessing compliance with the Act, to access the registered office of a Foundation, inspect documents kept by the Foundation and request for explanation from the directors of the Foundation's registered agent.

26. STRIKING OFF

- 26.1 Section 98 of the Act makes provision for the Registrar to strike off the name of the foundation from the register if it no longer satisfies all the requirements of the Act, fails to maintain the register of beneficial owners under the Beneficial Ownership Act or conducts activities which are likely to be contrary to the written laws of Seychelles or detrimental to the reputation of Seychelles.

- 26.2 Section 99 of the Act makes provision for striking off the name of a foundation if it fails to pay any annual renewal fee. If a foundation fails to pay the annual renewal fee within 180 days of such amount becoming due, the Registrar shall publish in the Gazette and serve on the foundation a notice that the name of the foundation will be struck off the Register, if the foundation fails to pay such annual renewal fee and all penalty fees due, within 90 days of the date of such notice.

27. DEEMED DISSOLUTION

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

28. RESTORATION

- 28.1 Restoration refers to where, following an application to restore the name of a Foundation that has been struck off the Register, the Foundation's name is restored to the Register.

Restoration of Foundation to the Register by Registrar (section 102 of the Act)

- 28.2 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.

- 28.3 An application (see Annexure 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.

- 28.4 The Registrar may upon the application restore the name of the Foundation to the Register upon payment of all outstanding annual renewal fees and other fees and penalties due and payable.

- 28.5 However, the Registrar will not restore the name of a Foundation unless the Registrar is satisfied that the Foundation is in compliance with its obligations relating to accounting records, the registers specified in section 77(1) of the Act and its obligations the Beneficial Ownership Act relating to register of beneficial owners. For that purpose, the Foundation must produce its accounting records and registers for inspection by the Registrar and, in respect of accounting records, the Foundation must produce its accounting records relating to the past 7 years.

Court application to restore Foundation to the Register (section 101 of the Act)

- 28.6 An application to restore the name of the Foundation to the Register may be made to the court by a creditor, councillor, founder, protector or liquidator of the Foundation or any person who can establish an interest in the Foundation to be restored to the Register.

28.7 An application 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.

28.8 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.

28.9 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 has agreed to act as registered agent of the Foundation, and
- (b) the Foundation is in compliance with its obligations relating to accounting records, the registers specified under section 77(1) of the Act and its obligations under the Beneficial Ownership Act, 2020 relating to register of beneficial owners.

28.10 Notice of the application to the Court for a restoration order must be served on the Registrar, who is entitled to appear and be heard on the hearing of the application (section 101(4) of the Act). The applicant shall produce to the Registrar copies of the document and information (including copies of any affidavits) that it has or will file with the Court in support of its application. For the purpose of section 101(6)(b), the Foundation is recommended to produce its accounting records, the registers required to be kept under section 77(1) of the Act and its register of beneficial owners for inspection by the Registrar prior to the Court appearance but after the application has been made to Court. Where a Foundation has not produced its accounting records and registers for inspection, the Registrar will raise an objection to the restoration during the Court appearance.

28.11 Where the Registrar has not raised an objection to the restoration during the Court appearance, the Court may make an order to restore the Foundation to the Register, subject to such conditions or directions as it considers appropriate.

28.12 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 and upon receipt of the sealed copy of the order, the Registrar shall restore the Foundation to the Register, subject to payment all outstanding annual fees and any penalty or other fees payable to the Registrar.

29. REGISTRAR OF FOUNDATIONS

29.1 Part XII of the Act provides for the Registrar of Foundations (i.e. the FSA). It outlines the Registrar's duties and powers. The Registrar is required to keep a Register of all foundations which will be open to the public during ordinary office hours. The Register shall contain, in respect to 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

29.2 The Registrar is also responsible for issuing the Certificate of Official Search and Certificate of Good Standing, upon payment of the relevant fees.

30. EXEMPTIONS AND CONCESSIONS

Section 110 and Schedule 2 of the Act provide for fiscal exemptions and concessions for Foundations, including exemption from the Business Tax Act and Stamp Duty Act.

PART B – GUIDANCE ON PROCEDURES

31. SERVING OF DOCUMENTS

- 31.1 The Act requires the registered agent of a foundation to be a person licensed to provide Foundation Services under the International Corporate Service Providers Act, 2003. Documents may be served on a Foundation by service of such documents on its registered agent at the registered office of the Foundation.
- 31.2 Therefore, unless provided otherwise in the Act, all applications, requests or correspondences made and all documents required to be delivered to the Registrar by a foundation must be signed and submitted by its registered agent (on the letterhead of the registered agent or such other format as may be approved by the Registrar). All applications, requests or correspondences must TYPED in the English or French language and may be sent by either fax or email.

32. NAME RESERVATION

- 32.1 Before a foundation can be registered, the registered agent must make a formal request to the Registrar for the reservation of a proposed name in accordance with section 17 of the Act.
- 32.2 The Registrar will not charge a fee for reserving a name for the first 30 days. However, a fee of US\$75 will be charged thereafter for each subsequent 30 day period during which the name is reserved, as per Part 2 of Schedule 1. In the event that a reserved name exceeds its reservation period, that name will be available to any registered agent on a 'first come first served' basis.
- 32.3 The proposed name of a foundation must end with the word "Foundation" and must not –
- (a) include the words limited, company, partnership or any abbreviations or translations thereof
 - (b) be the same or similar to the name of an existing Seychelles' foundation
 - (c) be misleading, offensive or otherwise objectionable
 - (d) contain 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) include 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.
- 32.4 Where the name of a foundation is not in the English or French language the registered agent must submit either a certified direct translation of the name in English or French. If a direct translation of the name does not accurately reflect the meaning of the name, the

registered agent must submit a representation of the name in English or French, certified as true and accurate.

32.5 The Registrar will include the name and a translation or representation of it in the English or French language on the certificate of registration.

33. CHANGE OF NAME

33.1 A Foundation may change its name if permitted to do so by its charter or as otherwise provided for in section 6 of the Act. Where a foundation changes its name, the Registrar will enter the new name in the Register in the place of the former name, and issue a Certificate of Registration on Change of Name. Section 17 of the Act will apply to the proposed new name of the foundation.

33.2 The Registrar may in writing, direct a Foundation to change its name (Section 19 of the Act) in the event that it 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,

33.3 Also, the Registrar may direct a Foundation to change its name if it appears to it 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.

34. REGISTRATION OF FOUNDATIONS

34.1 Once the proposed name of the foundation has been approved by the Registrar, the registered agent may submit a formal request for registration under the Foundations Act, 2009 by submitting the following documents:

(a) At least 3 identical copies of the charter

(b) The registration fee (i.e. US\$200)

34.2 If the Registrar is satisfied that the charter has fulfilled the requirements of the Act and its objects are lawful, it will register the charter and issue a Certificate of Registration. The Registrar will retain an original copy of the registered charter and the remaining registered charters will be forwarded to the registered agent, together with the Certificate of Registration and a confirmation of payment of the registration fee.

34.3 Should the Registrar be not satisfied that a charter has fulfilled the requirements of the Act and/or its objects are unlawful, it will inform the registered agent in writing, within one month after receipt of the charter, and stating its reasons.

Note: A registered agent may submit a charter that is to be adopted as the standard charter for its foundations. This charter will initially be vetted and approved by the Registrar. If the standard charter is to be varied or new ones adopted for a particular foundation, the registered agent must notify the Registrar prior to registration. Given that the revised charter will have to be vetted and approved before registration, more time will be required for these foundations to be registered.

35. CONTINUATION OF FOUNDATIONS

If the Foundation is being continued in Seychelles, the registered agent will have to submit the following documents:

- (a) Not less than 3 copies of its proposed charter
- (b) The articles of continuation
- (c) A certified copy of the overseas foundation's Certificate of Registration (or equivalent document) and its charter (or equivalent constitutional document)
- (d) Documentary evidence, satisfactory to the Registrar, that the overseas foundation is in good legal standing
- (e) The continuation fee (i.e. US\$200)

36. RENEWAL OF FOUNDATIONS

36.1 A foundation must pay an annual registration fee of US\$200 on the annual anniversary date of the foundation's registration.

36.2 If the annual renewal fee is not paid in the manner set out above, the Foundation will incur 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 section 24 remains unpaid.

Note: The term "month", as referred to above, means each successive period of 30 days commencing from the date of the annual renewal fee falling due.

37. CHANGE OF REGISTERED AGENT

37.1 The councillors may change the registered agent by a resolution of councillors, notwithstanding any provision contrary in the charter or regulations. The foundation must submit a certified extract of the resolution for registration to the Registrar within 14 days after the resolution is passed. The foundation may choose from either of the following two methods.

37.2 Method 1: Filing done by the outgoing registered agent

The outgoing registered agent notifies the Registrar of the change by submitting the following documents:

- (a) A consent letter from the outgoing registered agent
- (b) A certified extract of the resolution effecting the amendment
- (c) A declaration of acceptance from the incoming registered agent
- (d) The applicable fee (i.e. US\$100)

37.3 Method 2: Filing done by the incoming registered agent

The incoming registered agent notifies the Registrar of the change by submitting the following documents:

- (a) Covering letter from the incoming registered agent
- (b) A consent letter from the outgoing registered agent (also clarifying the settlement of fees)
- (c) A certified extract of the resolution effecting the amendment
- (d) The applicable fee (i.e. US\$100)

37.4 The Registrar will register these extracts and retain a copy. Late submissions will attract a penalty fee of US\$50 for each day for each day or part thereof in respect of which the contravention continues.

38. CHANGE OF REGISTERED OFFICE

38.1 The councillors may change the situation of the registered office of a Foundation by a resolution of councillors, notwithstanding any provision contrary in the charter or regulations. Upon amending its charter to effect such change, the foundation must submit a certified extract of the resolution for registration to the Registrar within 14 days after the resolution is passed. The foundation may choose from either of the two methods mention in above section.

38.2 The Registrar will register these extracts and retain a copy. Late submissions will attract a penalty fee of US\$50 for each day for each day or part thereof in respect of which the contravention continues.

39. CHANGE IN PARTICULARS OF COUNCILLORS

39.1 Notice of the appointment, cessation and change of name or address of a councillor must be filed by the foundation to its registered agent in Seychelles within 14 days of the appointment, cessation or change. Late notification to its registered agent will attract a penalty fee of US\$50 for each day or part thereof in respect of which the contravention continues.

39.2 In cases where the names and addresses of councillors are specified in the charter upon registration of the foundation, the Foundation may file with the Registrar any notice of:

- (a) appointment of office of a councillor
- (b) cessation of office of a councillor
- (c) change of name or change of address of a councillor

within 14 days of the event happening, accompanied by the relevant fee (i.e. US\$25). The notice must contain the full name and address of that councillor.

40. REGISTRATION UPON CONSOLIDATION OR MERGER

40.1 In order to apply for a certificate of registration upon consolidation or merger, the registered agent will have to file the following documents with the Registrar:

- (a) Covering letter
- (b) A declaration of consolidation or merger by or on behalf of the proposed council of the surviving entity, with respect of the position upon the completion of the proposed consolidation or merger:
 - (i) containing or annexing a copy of the plan of consolidation or merger referred to in section 40(1) of the Act
 - (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
 - (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
- (c) A statement by each constituent foundation, other than the surviving entity:
 - (i) annexing a copy of the declaration of consolidation or merger referred to under paragraph (a), 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.
- (d) The applicable fee (i.e. US\$200)

- 40.2 If the Registrar is satisfied that all the requirements of the Act have been complied with, it will register the surviving entity and in substitution for any prior registration, if applicable.
- 40.3 Upon registration of a surviving entity as a foundation, the Registrar will allocate a registration number to the foundation and issue a certificate of registration upon consolidation or merger.
- 40.4 The Registrar will strike off the Register a constituent foundation that is not the surviving entity in a merger and a constituent foundation that participates in a consolidation.

41. REQUEST FOR CERTIFICATE OF OFFICIAL SEARCH

Any person, upon payment of the relevant fee (i.e. US\$75), may request the Registrar for a Certificate of Official Search in respect of any foundation containing:

- (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

42. REQUEST FOR CERTIFICATE OF GOOD STANDING

42.1 Any person, upon payment of the applicable fee (i.e. US\$75) may request the Registrar to issue a Certificate of Good Standing, certifying that a foundation registered under the Act is in Good Standing. The Registrar will issue the certificate if he is satisfied that the name of the foundation is on the Register and the foundation has paid all fees and penalties due and payable under the Act.

42.2 The certificate of good standing will 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.

- 42.3 In the event that the foundation is not in good standing as at the date of the request, the Registrar will issue a Certificate of Official Search.

43. PUBLIC INSPECTION OF REGISTER OF FOUNDATIONS

43.1 Any person may contact the Registrar, at least 2 hours in advance, to schedule an appointment with the Registrar in order to inspect any foundation on the Register. The Register is open to the public during office hours. An inspection fee of US\$75 is payable for each foundation inspected and the fee payable per page for obtaining a copy of any document available on inspection is US\$5.

43.2 Only the following documents pertaining to a foundation will be available for inspection at the Registrar:

- (a) the certificate of registration
- (b) certificate of registration on change of name
- (c) certificate of continuation
- (d) certificate of registration upon consolidation or merger, as the case may be
- (e) the charter or amended charter
- (f) the certificate of dissolution

44. CERTIFICATION OF TRANSLATED DOCUMENTS

44.1 All documents submitted to the Registrar which are not in the English or French language must be accompanied by a certified translation in the English or French language.

44.2 The registered agent must not give a certification under sections 5(2), 14(b), 17(3), 17(4), 80(1) or 81(1)(b) unless it has obtained or confirmed such translation from a qualified translator or such other person as may be acceptable to the Registrar.

45. APPLICATION OF PENALTY FEES

45.1 Before imposing any penalty fee, the Registrar will give the person concerned an opportunity of being heard.

45.2 Where a Foundation is found to be in non-compliance with its record keeping obligation (e.g. keeping of registers), the Foundation will be granted 5 working days to make a written representation as to why the penalty fees should not be imposed.

45.3 Where the applicable penalty fee under the Act is set to a maximum level (e.g. under section 10(4)), different levels of penalty fees will be imposed by the Registrar in cases of non-compliance depending on the nature and seriousness of the non-compliance by the limited partnership in accordance with the Table of Penalties in **Annexure 4**.

46. OTHER SERVICES

Contact the Registrar directly for any other services for which no procedures have been detailed herewith.

Annexure 1

APPLICATION FOR RESTORATION TO THE REGISTER OF FOUNDATIONS

Section 102 of the Foundations Act, 2009 (the “Act”)

TO: The Registrar of Foundations
Financial Services Authority
Seychelles

[insert date]

Dear Sir

Relating to: [insert foundation’s name] (the “Foundation”) , which is registered under the Act with foundation registration no. [xxxxx]

I, the undersigned, hereby apply for the name of the Foundation to be restored to the Register of Foundations under Section 102(1) of the Act. The reason for the Foundation being struck off the Register is indicated below.

a) Failure to pay to the Registrar the annual renewal fee or any late payment penalty.	<input type="checkbox"/>
b) Failure to pay any penalty fees imposed by the Registrar under the Foundations Act.	<input type="checkbox"/>
c) Failure to file any notice or document required to be filed under the Foundations Act.	<input type="checkbox"/>
d) Failure to comply with the requirement for the Foundation to have a registered agent in Seychelles at all times.	<input type="checkbox"/>
e) Failure to keep a register of councillors.	<input type="checkbox"/>
f) Failure to keep a register of registered agents.	<input type="checkbox"/>
g) Failure to keep a register of supervisory persons.	<input type="checkbox"/>
h) Failure to keep a register of any person authorised by the foundation under section 68 of the Act, 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.	<input type="checkbox"/>
i) Failure to keep a register of beneficiaries.	<input type="checkbox"/>
j) Failure to keep a register of founders.	<input type="checkbox"/>

k) Failure to keep a register of beneficial owners under the Beneficial Ownership Act, 2020.	<input type="checkbox"/>
l) Failure to keep accounting records as required to be kept under the Foundations Act.	<input type="checkbox"/>
m) Failure to keep any other records required to be kept by it under the Foundations Act.	<input type="checkbox"/>
n) Any other reason (please specify).	<input type="checkbox"/>

.....
The Registered Agent/Proposed New Registered Agent of the Foundation
[insert name of Registered Agent/Proposed New Registered Agent of the Foundation]
Acting by its Director
[insert name of director]
On behalf of
[insert name of Foundation, councillor, beneficiary, founder, supervisory person or liquidator]
[Foundation, councillor, beneficiary, founder, supervisory person or liquidator] of the Foundation

Note:

- (a) The application must be made by the Foundation, a councillor, a beneficiary, a founder, a supervisory person or a liquidator of the Foundation.
- (b) The application is being made within 1 year of the Foundation being struck off for failure to pay annual fee (section 99(2)) or within 5 years from the date of Foundation's deemed dissolution under section 103(1).
- (c) The application is accompanied by the administrative restoration fee of US\$300 for an application made in less than 6 months or a fee of US\$600 for an application made more than 6 months after the date of the Foundation being struck off the Register of Foundations.
- (d) Any penalty fees incurred by the Foundation has been remedied in full.
- (e) The application is accompanied by the written consent to the change of registered agent given by the former agent if the proposed registered agent is not the Foundation's Registered Agent.
- (f) Should the restoration relates to a Foundation struck off for a reason under e) to m) mentioned above, the Registrar must have verified the compliance of the Foundation with the default.

Annexure 2

ACCOUNTING RECORD DECLARATION

Section 75 of the Foundations Act 2009

TO: The Foundation's Registered Agent in Seychelles
[insert name & address of Registered Agent]

[insert date]

Dear Sir

[Insert Foundation name] Foundation No: [xxxx] (the "Foundation")

We, the Councillor(s) of the Foundation, hereby declare and confirm that (tick as appropriate):

- Since its incorporation/registration in Seychelles, the Foundation has no activities and has no assets or liabilities.
- For the relevant period the Foundation has not traded and has not carried out any transactions.

Therefore, the Foundation has no transaction for which it needs to lodge the relevant accounting records in Seychelles, for the period from [insert relevant period, i.e. either from January to June or from July to December, as applicable], [insert year].

Yours faithfully

Signature: _____

Name of Councillor / Authorised Signatory: _____
For and on behalf of the Foundation

Note:

The Act requires a Foundation to keep reliable accounting records:

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

The accounting records should be kept at the registered office in Seychelles on a bi-annual basis, as follows:

- (a) Accounting records relating to transactions or operations in the first half (January to June) of a calendar year must be kept in Seychelles by July of that year
- (b) Accounting records relating to transactions or operations in the second half (July to December) of a calendar year must be kept in Seychelles by January of the following year

Annexure 3

SAMPLE OF FINANCIAL SUMMARY

Section 75(3)(a) of the Foundations Act, 2009

FINANCIAL SUMMARY FOR FINANCIAL YEAR ENDING _____

SUMMARY OF ASSETS AND LIABILITIES AS AT _____

	USD	USD
Non-Current Assets ¹	XX,XXX	
	XX,XXX	
Current Assets ²	XX,XXX	
	XX,XXX	
TOTAL ASSETS	XXX,XXX	XXX,XXX
Non-Current Liabilities ³	XX,XXX	
	XX,XXX	
Current Liabilities ⁴	XX,XXX	
	XX,XXX	
TOTAL LIABILITIES	XXX,XXX	
Net Assets ⁵	XX,XXX	
	XX,XXX	
TOTAL NET ASSETS	XXX,XXX	
TOTAL LIABILITIES AND NET ASSETS		XXX,XXX

¹ List the sub-categories of Non-Current Assets (e.g. investments, properties, equipment, fixtures, etc.)

² List the sub-categories of Current Assets (e.g. inventory, debtors, bank/cash balances, etc.)

³ List the sub-categories of Non-Current Liabilities (e.g. debentures, long-term loans, bonds payable, etc.)

⁴ List the sub-categories of Current Liabilities (e.g. accounts payable, short-term debts, dividends, etc.)

⁵ List the sub-categories of Net Assets (e.g. without donor restrictions, with donor purpose restrictions.)

STATEMENT OF ACTIVITIES FOR THE PERIOD FROM _____ TO _____

	USD
Revenues ⁶	XX,XXX
Less: Expenses ⁷	<div style="border-top: 1px solid black;">(XX,XXX)</div>
CHANGE IN NET ASSETS	XX,XXX
Net assets beginning of year	XX,XXX
Net assets end of year	XX,XXX

⁶ List the sub-categories of Revenues (e.g. Donations, Grants, Investment Income, etc.)

⁷ List the sub-categories of Expenses (e.g. Programme Services, General and Administrative, Fund Raising, etc.)

Annexure 4

TABLE OF PENALTIES

This Table of Penalties provides guidance on the manner that the Registrar will impose the penalties provided for under relevant provisions of the Foundations Act, 2009 and may be amended from time to time by the Registrar.

In determining the level of non-compliance and the applicable penalty to be imposed on a Foundation as specified in the table of penalties, the Registrar has taken into consideration the nature and seriousness of the non-compliance by the Foundation. Where applicable, the penalties shall be on a Foundation and/or on councillors of the Foundation.

For purposes of this Annexure, the term “per day for continued non-compliance” means the penalty applicable per day, starting from the day following which the non-compliance was identified.

Section 30A [Preservation of records by registered agent]

Legal Provision	Non-compliance	Level of non-compliance	Applicable penalty
Section 30A(1)	Failure by registered agent to preserve records for at least 7 years	(a) Records not preserved by registered agent for at least 7 years ⁸	(a) US\$ 2,000 to US\$ 10,000
Section 30A(2)	Failure by registered agent to hand over records to Registrar or any other person authorised by the Registrar	(a) Records not handed over to Registrar or any other person authorised by the Registrar	(a) US\$ 2,000 to US\$ 10,000

Section 75 [Location and preservation of accounting records]

Legal Provision	Non-compliance	Level of non-compliance	Applicable penalty
Section 75(1)	Failure to keep reliable accounting records	(a) Accounting records not being kept (b) Partly kept accounting records ⁹	(a) US\$ 10,000 (b) US\$ 2,000 to US\$10,000
Section 75(3)	Failure by a foundation to keep, on a bi-annual basis, its accounting records at	(a) No accounting records being kept at the	(a) US\$ 5,000 + US\$ 100 per day for continued non-compliance

⁸ The level of penalty applicable will be calculated on a case by case basis depending on whether the circumstances leading to the non-compliance are justifiable and to the satisfaction of the Authority.

⁹ The level of penalty applicable will be on a case by case basis depending on the severity of non-compliance identified. For example, should most of the accounting records be available, then the penalty level would be in the lower range.

	registered office in Seychelles	registered office on bi-annual basis	
Section 75(3B)	Failure to notify the registered agent in writing of the physical address of where the original accounting records are being kept	(a) Notification not made to registered agent	(a) US\$ 500 + US\$ 50 per day for continued non-compliance
Section 76	Failure to preserve the foundation's accounting records for at least 7 years	(a) Accounting records not preserved for at least 7 years ¹⁰	(a) US\$ 2,000 to US\$ 10,000

¹⁰ The level of penalty applicable will be calculated on a case by case basis depending on whether the circumstances leading to the non-compliance are justifiable and to the satisfaction of the Authority.