

FOUNDATIONS ACT, 2013-2

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BARBADOS

I assent
ELLIOTT F. BELGRAVE
Governor-General
17th January, 2013.

2013-2

An Act to provide for the establishment and operation of foundations in Barbados and related matters.

[Commencement: by Proclamation]

ENACTED by the Parliament of Barbados as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the *Foundations Act, 2013*.

Interpretation

2. In this Act,

“articles of continuance” means the articles, charter or other constituent or organisational documents of an international foundation;

“beneficiary” means a person designated as such under the terms of the charter or the by-laws of a foundation;

“by-laws” means the by-laws of a foundation adopted in accordance with section 10;

“Commission” means the Financial Services Commission established under section 3 of the *Financial Services Commission Act (Act 2010-21)*;

“charter” means

(a) in relation to a foundation established in Barbados, a charter made in accordance with section 9;

(b) in relation to an international foundation that is continuing in Barbados, the articles of continuance of that foundation specified under section 25 and section 26;

“councillor” means a person who is a member of the foundation council;

“Court” means the High Court;

“financial services” has the meaning assigned to it by the *Financial Services Commission Act*;

“foundation” means an entity described in section 3 that is established in accordance with section 5 or continued under Part VI;

“foundation council” means the person or body of persons having responsibility for the carrying out of the operations, objectives and purposes of the foundation in accordance with the charter of the foundation;

“founder” means

(a) any person who signs the charter that establishes a foundation, and endows the foundation with its initial assets; or

(b) in the case of an international foundation that is continued in Barbados, the person who signs the charter or any document equivalent to the charter in the jurisdiction in which the international foundation has been established and is acting either for himself or on behalf of another;

“guardian” means any person appointed as guardian of the foundation, in accordance with section 19;

“inspector” means an inspector appointed in accordance with section 51;

“international foundation” means a foundation continued in the manner specified in section 25;

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

“official seal” means an official seal of the foundation prepared in accordance with section 42;

“Register” means the Register of Foundations kept by the Registrar in accordance with section 44;

“registered address” means the address of the foundation as appears in the register;

“registered agent” means the registered agent of an international foundation appointed in accordance with section 29;

“Registrar” means the Registrar, Corporate Affairs; and

“secretary” means the person appointed as a secretary to a foundation in accordance with section 17.

Establishment of a foundation

3.(1) For the purposes of this Act, a “foundation” is a legal entity that shall have a separate and independent legal personality from its founder and beneficiaries

- (a) established in the manner specified in section 5; and
- (b) registered in accordance with section 6.

(2) A foundation shall hold assets of a value not less than \$10 000 which have been effectively transferred to that foundation for the purposes or objects specified in the charter of the foundation in accordance with the provisions of this Act.

Purposes of a foundation

4.(1) A foundation shall be established for the purposes specified in the charter of the foundation that may lawfully be conducted in Barbados and is subject to the Laws of Barbados.

(2) A foundation shall manage, administer, invest and disburse its assets in accordance with its charter, its by-laws and this Act for the benefit of its beneficiaries and for the attainment of its purposes.

(3) A foundation may, in the course of the management of its assets, do such things as are necessary for the proper administration of its assets, including but not limited to buying and selling such assets and engaging in any other acts or activities which are not prohibited under the Laws of Barbados or activities that are ancillary or incidental to its main purpose or purposes of the foundation.

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- (4) A foundation may not be formed for the purpose of
- (a) carrying out any activity prohibited from being carried on, in or from within Barbados; and
 - (b) engaging in any financial services, unless and until such licence or other permission as may be required to conduct such financial services has been granted.

PART II

ESTABLISHMENT OF A FOUNDATION

Establishment of a foundation

- 5.(1) A founder or a person who acts on behalf of the founder may, on delivering the charter of the foundation to the Registrar and on payment of the prescribed registration fees, apply to have a foundation registered in accordance with section 6.
- (2) A person who is applying for registration of a foundation must deliver the charter of the foundation to the Registrar and pay the prescribed registration fee.
- (3) The establishment of a foundation shall not be completed until
- (a) the charter of the foundation is registered in accordance with section 6; and
 - (b) a certificate of establishment is issued in accordance with section 6(5) (b).
- (4) The following persons are qualified to act on behalf of a founder, in accordance with subsection (1):
- (a) a person licensed to carry on the business of a trust company;
 - (b) a finance company;

- (c) a person licensed under the *International Corporate and Service Providers Act* (Act 2011-5); and
- (d) a merchant bank or similar financial institution in accordance with Part III of the *Financial Institutions Act*, Cap. 324A.

Registration of a foundation

6.(1) For the purpose of registering a foundation under this Act, there shall be delivered to the Registrar

- (a) a certified copy of the charter of the foundation, written in English;
 - (b) a statement signed by, or on behalf of, the founder setting out
 - (i) the name and address of the registered office of the foundation;
 - (ii) the particulars of any initial assets to be transferred to the foundation and an undertaking that the founder will transfer the said assets to the foundation immediately upon registration;
 - (iii) the particulars with respect to any person who is to be the secretary to the foundation;
 - (iv) the particulars in relation to councillors; and
 - (v) any other particulars provided under or in accordance with this Act.
- (2) Where the statement required by subsection (1)(b) is not written in English, accurate translations, in the English Language, of the information must be presented to the Registrar for the purposes of effecting the registration.
- (3) The foundation shall be a separate and independent legal entity in its own right, and shall be capable of suing and being sued in its own name.
- (4) Where the Registrar is satisfied that there has been compliance with all the requirements of this Act, in respect of the registration of a foundation, he shall register the foundation.

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- (5) Upon the registration of the foundation, the Registrar shall
- (a) allocate an official registration number to the foundation in accordance with section 43; and
 - (b) issue a certificate of establishment, in respect of the foundation, stating
 - (i) the name of the foundation;
 - (ii) its official registration number; and
 - (iii) the date of registration of the foundation.
- (6) The certificate of establishment shall be signed by the Registrar and be sealed with the official seal.
- (7) The certificate of establishment shall be conclusive evidence of the establishment of the foundation.

Powers and obligations of a founder

- 7.(1) Where there is more than one founder of a foundation, the powers of a founder under the foundation charter and this Act, may only be exercised by all the founders acting jointly or in common, unless the charter otherwise provides.
- (2) The founder shall, in the foundation charter or by instrument in writing specify that the foundation is revocable or irrevocable.
- (3) The founder may, in the foundation charter or by instrument in writing, assign or transfer any or all of his rights, powers and obligations under this Act, or in the foundation charter to such person or persons as the founder shall determine.
- (4) Where the rights, powers and obligations are assigned or transferred in accordance with subsection (3) any reference to the founder in this Act or in the foundation charter shall be deemed to refer to the assignee or transferee thereof.

- (5) An assignment or transfer under this section shall not be effective until written notice thereof is provided to the secretary and the secretary has notified the Registrar, in writing, of that assignment or transfer.
- (6) A person who endows assets to a foundation after its registration shall not thereby acquire the powers of a founder.
- (7) Where a founder has given an undertaking, recorded in the foundation charter, to endow a foundation, the foundation
- (a) may enforce that undertaking against the founder; and
 - (b) shall enforce the undertaking in respect of the initial assets of the foundation, where at the end of a period of 12 months from the date of registration, the property representing the same has not become the assets of the foundation.
- (8) Where a charter contains a covenant by the founder to endow assets to a foundation on a specified date,
- (a) subsection (7)(b) shall have effect as if the reference to the date of registration were a reference to the specified date; and
 - (b) the period of 12 months therein referred to shall be the period of 12 months from that date.
- (9) For the purposes of this section,
- “covenant” mean a promise made by deed; and
- “undertaking” means a promise made in legal proceedings that creates an obligation.

Charter of a foundation

- 8.(1) The charter of a foundation shall provide for the following particulars:
- (a) the name of the foundation;

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- (b) the details of the founder, including
 - (i) the name and address of the founder;
 - (ii) where the founder is a company, the number and place of registration of that company; and
 - (iii) the address in Barbados for the purposes of service of documents on the founder;
 - (c) the purposes and objects of the foundation;
 - (d) the initial assets of the foundation and a statement of those assets;
 - (e) the manner of designation of the beneficiary or the identification of a person, body or class of persons by reference to which the beneficiary is to be ascertained;
 - (f) whether the foundation is established for a definite or indefinite period and, where it is established for a definite period, the specified period;
 - (g) the name and address of the secretary to the foundation and the registered address of the foundation.
- (2) Subject to the provisions of this Act, the charter of a foundation may include provisions
- (a) for the reservation of rights or powers to the founder;
 - (b) for the appointment, period of office, removal, and representative authority of the councillors of the foundation, including the number and description of those persons;
 - (c) for the appointment, removal and period of office of the auditor, to the foundation and may provide that the appointment of an auditor is at the discretion of the guardian;
 - (d) for the appointment, removal, duties, functions, powers and remuneration of a guardian;

- (e) for the appointment of persons to act by way of a power of attorney or otherwise to carry out particular duties on behalf of the foundation;
 - (f) permitting amendment to the charter of the foundation and specifying circumstances in which the charter may be amended;
 - (g) requiring or permitting the making of by-laws;
 - (h) providing for the transfer to the foundation of supplementary assets in addition to the initial assets; and
 - (i) for the addition or removal of beneficiaries.
- (3) The charter of a foundation shall be in a form of a deed and shall,
- (a) where a founder is an individual, be executed by the founder; or
 - (b) where a founder is a company, be executed on behalf of the founder by the person authorised for that purpose.
- (4) Any amendment to the charter of a foundation, when permitted, shall be made in accordance with the provisions of the charter and a notice, signed by the secretary, containing details of the amendment shall, within 14 days of the amendment coming into effect, be delivered to the Registrar, who shall retain and record the notice in the Register.

Reservation of rights to the founder

- 9.(1) A founder may, in the charter or by-laws, reserve for the founder or any other person, the right to direct or approve the following:
- (a) the investment activities of the foundation;
 - (b) the amendment of the charter or by-laws;
 - (c) the appointment or removal of a councillor;
 - (d) the appointment or removal of any supervisory person;
 - (e) the rights, entitlements and restrictions of a beneficiary;
 - (f) the addition or exclusion of a beneficiary;

- (g) the proposed continuation of the foundation as a foundation registered or otherwise established under the laws of a jurisdiction other than Barbados; or
- (h) the dissolution of the foundation.

(2) The assets of a foundation may only be disposed of in accordance with the terms of the charter, and by-laws.

By-laws of a foundation

10.(1) Where the charter of a foundation provides that by-laws may be adopted, the by-laws may include provisions

- (a) concerning distribution of assets made, or to be made, by the councillors of the foundation;
- (b) more specifically identifying any beneficiary, or additional beneficiaries, of the foundation;
- (c) providing for the identification of the remaining beneficiary on the dissolution of the foundation; and
- (d) providing for the proceedings of the councillors of the foundation.

(2) The by-laws shall be in writing and shall be signed by the councillors or by the guardian of the foundation.

(3) The by-laws may, unless otherwise provided in the charter, be amended or replaced by the councillors or the guardian of the foundation.

Assets of a foundation

11. Assets transferred to a foundation shall cease to be the assets of the founder and

- (a) shall become the assets of that foundation; and

- (b) will be the assets of a beneficiary only upon distribution to the beneficiary, in accordance with the terms of the foundation charter, the by-laws of the foundation and the provisions of this Act.

Name of a foundation

12.(1) The name of a foundation shall end with the word “Foundation” or its abbreviation “Fdn.”.

(2) The Registrar may refuse to register

(a) a foundation; or

(b) a resolution changing the name of a foundation,

where the name to be registered is, in the Registrar’s opinion, in any way misleading, inappropriate or undesirable.

(3) Subject to subsection (6), a foundation may, by special resolution of the councillors, change its name.

(4) Where the name of a foundation has been changed, a notice respecting the change signed by the secretary and containing details of the amendment and a copy of the resolution made under subsection (3) shall, within 28 days of the making of that resolution, be delivered to the Registrar who shall record the notice in the Register.

(5) Where the Registrar approves of the change in the name of a foundation, the Registrar shall enter the new name on the Register and shall issue a certificate of continuation of the foundation under the new name of the foundation.

(6) A change of name by a foundation under this Act

(a) shall have effect from the date on which that certificate is issued;

(b) shall not affect any rights or obligations of the foundation;

(c) shall not render defective any legal proceedings by or against it, and any legal proceedings which have been continued or commenced by

or against it in its former name may be continued by or against it in its new name.

(7) If, in the opinion of the Registrar, the name by which a foundation is registered is misleading or otherwise undesirable, the Registrar may direct the foundation to change its name.

(8) A person aggrieved by the decision made by the Registrar under subsections (2) or (7) may appeal to a Judge in chambers.

PART III

COUNCIL OF FOUNDATION

Foundation council and councillors

13.(1) A foundation shall, at all times, have a council that shall be responsible for the management and operation of the foundation, in accordance with the charter and by-laws of that foundation.

(2) The appointment and removal of councillors shall be effected in accordance with the terms of the charter and by-laws of the foundation.

(3) The remuneration of councillors shall be determined in accordance with the terms of the charter and by-laws of the foundation.

(4) A person shall not qualify as a councillor of a foundation,

(a) in the case of an individual, if that person is a minor;

(b) in the case of a company, if that company is involved in any legal proceedings which may result in the company being wound up or otherwise dissolved; or

(c) where the person is a guardian of a foundation of which that person is the sole councillor.

(5) In the case of an international foundation, at least one councillor of the foundation shall be resident in Barbados.

Duties of the foundation council

14.(1) A foundation council shall have the responsibility for carrying out the objectives and purposes of the foundation.

(2) Subject to the charter and the by-laws of the foundation and without prejudice to the generality of subsection (1), a foundation council shall have the following duties:

- (a) to direct the administration of the assets of the foundation;
- (b) to exercise the powers of the foundation, directly or indirectly, through the employees and agents of the foundation;
- (c) to enter into any transactions, contracts or lawful business that may be suitable or necessary to fulfil the purposes of the foundation;
- (d) to provide the beneficiaries of the foundation and the guardian with information relating to the property endowment;
- (e) to make distributions or applications of all or any part of the property endowment or the income of the foundation; and
- (f) to do all such other acts as may be provided for in this Act.

Capacity of Councillors to bind a foundation

15.(1) Any person dealing with a foundation in good faith may presume that the foundation council has the power to bind the foundation or to authorise others to do so.

(2) Subject to subsection (3), subsection (1) shall not affect the right of the foundation or its guardian, if any, or any councillor of the foundation to bring proceedings to restrain the doing of an act which is beyond the powers of the foundation council.

(3) Subsection (1) shall not affect any liability of a councillor or any other person who has acted beyond his powers.

Duty of confidentiality

16.(1) Subject to subsection (2), the councillors of the foundation shall keep confidential all information regarding the nature and amount of the 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 to that effect, provide full and accurate information as to the nature and amount of the assets of the foundation and the conduct of their administration

- (a) to the Registrar;
- (b) to the inspectors appointed under section 50;
- (c) subject to the terms of the charter and by-laws, to
 - (i) the founder;
 - (ii) the guardian; and
 - (iii) any beneficiary of the foundation who is not a minor or interdict;
- (d) pursuant to an order of the Court.

(3) Subject to the provisions of this Act, the terms of the charter and by-laws, and to any order of the Court, the councillors shall 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 performed a duty conferred or imposed on them; or
- (b) discloses the reason for, or relates to, any particular exercise of the power, discretion or performance of any duty or the material on which such reason was or might have been based.

Secretary

17. A foundation shall have a secretary appointed by the councillors for such term, and at such remuneration, and upon such conditions as they may think fit, and a secretary so appointed may be removed by the councillors.

Duty of care

18.(1) A councillor, guardian, secretary or any other officer of a foundation in exercising his powers and discharging his duties shall

- (a) act honestly, in good faith and in the best interests of the foundation, its beneficiaries or its purposes;
- (b) exercise the care, diligence and skill which a reasonably prudent person would be expected to exercise in comparable circumstances.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to a term of imprisonment of 12 months or to both.

PART IV
GUARDIANS

Appointment and qualifications of guardians

19.(1) Where a charter provides for the appointment of a guardian, the guardian may be an individual or a company.

(2) A founder may be appointed as a guardian but a sole councillor may not act as a guardian.

(3) Where more than one person is appointed to act as guardian such persons shall act unanimously unless the charter or by-laws of the foundation provide otherwise.

(4) The first guardian of a foundation may be appointed by the founder in the charter of the foundation, and upon registration of the foundation that person shall be deemed appointed as guardian, and where the guardian is appointed subsequent to the registration of the foundation that person may be appointed by the founder or such other person as may be empowered by the founder in the charter or by-laws of the foundation.

(5) The appointment of a person as a guardian of a foundation cannot be assigned or delegated by the guardian, except that where the guardian is a legal person it may act through its duly authorized officers or agents.

(6) A guardian duly appointed under the terms of the charter or the by-laws and this section shall cease to act as guardian in the event of

- (a) the resignation as guardian;
- (b) the removal of the guardian in accordance with the charter or the by-laws of the foundation;
- (c) the dissolution of the foundation;
- (d) the death, incapacity or bankruptcy of the guardian, or the winding up or dissolution of the guardian, being a company; or
- (e) the occurrence of any other event which disqualifies the person from being a guardian.

(7) Where,

- (a) for the time being, no guardian is appointed to a foundation;
- (b) the number of persons so appointed is less than that required by the charter or the by-laws of the foundation; and
- (c) there is no term in the charter or the by-laws for the appointment of a new or additional guardian, an application may be made to the Court by
 - (i) the founder,

- (ii) a councillor, or
- (iii) a remaining guardian,

for the appointment by the Court of one or more persons to be a guardian.

(8) Where the Court is satisfied that an application made under subsection (7) is justified, the Court may appoint one or more persons, who satisfy the requirements of this section, as a guardian of the foundation.

(9) A person who is a guardian or a person acting as an officer, servant or agent of the guardian or performing any duty on behalf of the guardian, shall not be liable in damages for anything done or omitted in the discharge or purported discharge of the functions of the guardian under this Act or any regulations made under this Act, unless it is shown that the act or omission was in bad faith.

Duties and powers of guardians

20.(1) A guardian of a foundation shall

- (a) take such action as the guardian may deem necessary to ensure compliance by the foundation and the councillors with the provisions of the charter, the by-laws of the foundation, and this Act; and
 - (b) generally supervise the management and conduct of the foundation by the councillors.
- (2) Subject to subsection (1), the charter or the by-laws of a foundation may
- (a) specify the powers of the guardian; and
 - (b) provide powers in addition to those provided in this Act.
- (3) The guardian of a foundation shall have full right of access to the books, records and accounts of the foundation.
- (4) The guardian of a foundation shall, in addition to the rights conferred on the guardian by the charter, the by-laws, or this Act, have the right
- (a) to be informed of all meetings of the councillors;

- (b) to table matters to be considered at meetings;
 - (c) to attend and be heard but not to vote at such meetings;
 - (d) where the circulation of documents is required for the conduct of the business of a foundation
 - (i) to be included in the circulation of those documents at the time that they are circulated to the councillor; or
 - (ii) where the conduct of the business of the foundation relies upon 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 (3) and (4) to the guardian of a foundation apply to all guardians holding office at the relevant time whether acting jointly or severally.

PART V

INDEMNIFICATION, INSURANCE, ACCOUNTS AND RECORDS

Indemnification

21.(1) Subject to subsection (2) and to the charter or by-laws, a foundation may indemnify itself against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings against any person who

- (a) is or was a party or is threatened to be made a party to any likely, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a councillor, guardian, secretary or a liquidator of the foundation; or

(b) is or was, at the request of the foundation, serving as a councillor, guardian, secretary or liquidator of, or in any other capacity is or was acting for, another foundation.

(2) Subsection (1) only applies to a person referred to in that subsection if the person acted honestly and in good faith and in the best interests of the foundation and, in the case of criminal proceedings, the person had no reasonable cause to believe that his or her conduct was unlawful.

(3) The decision of the councillors as to whether the person acted honestly and in good faith and in the interests of the foundation and as to whether the person had no reasonable cause to believe that his conduct was unlawful is, in the absence of fraud, sufficient for the purposes of this section.

(4) Where a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

Insurance

22. A foundation may purchase and maintain indemnity insurance in relation to any person who was appointed or who, at the request of the foundation, is or was serving as

(a) a councillor;

(b) a guardian;

(c) a secretary;

(d) a liquidator of the foundation; or

(e) [a person who at the request of a foundation is or was serving in any of the positions set out in paragraphs (a) to (d)]

against any liability asserted against and incurred by any person identified in paragraphs (a) to (e), whether or not the foundation has or would have had the

power to indemnify the person identified in paragraphs (a) to (e) against the liability under section 21(1).

Accounts and records

23.(1) A foundation shall keep or cause to be kept

- (a) such accounts and records as would be necessary to reflect, accurately, the financial position of the foundation;
- (b) a copy of its charter and by-laws and any amendment or change to its charter or by-laws;
- (c) minutes of all meetings of its foundation council and copies of all resolutions passed by its council.

(2) The secretary of the foundation or in the case of an international foundation, its registered agent, shall keep or cause to be kept a register in which is recorded the particulars respecting the identification of the councillors, guardian, beneficiaries and auditors, where applicable, and any persons having power-of-attorney granted by the foundation.

(3) The accounts, records, minutes, resolutions and register required by this section shall

- (a) be kept at the registered address of the foundation or, subject to subsection (4), at such other place as the foundation council may designate; and
- (b) at all reasonable times, be open to inspection by the registered agent and the councillors of the foundation and, where applicable, its secretary, guardian or auditor.

(4) Where the books are kept at a place other than the registered address, whether within or outside Barbados, the registered agent of the foundation shall

- (a) be notified of the location of the place where the books are kept, within 14 days after the designation of such location; and

- (b) upon request, be furnished with the books or, as the case may be, copies of such books certified by a notary public, within a reasonable time for the purpose of inspection by the registered agent and the councillors of the foundation and, where applicable, its secretary, guardian or auditor.
- (5) Where the accounting records of a foundation are kept outside Barbados, the foundation must ensure that it keeps, at its registered address,
- (a) accounts and returns adequate to enable the councillors to ascertain, on a quarterly basis, the financial position of the foundation with reasonable accuracy; and
- (b) without prejudice to subsection (4), a written record of the place or places outside Barbados where its accounting records are kept.
- (6) Every record required to be kept under this section shall be preserved for a period of not less than 6 years after the end of the period to which it relates.
- (7) A person who contravenes subsection (6) is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to a term of imprisonment of 12 months or to both.

PART VI

CONTINUATION OF A FOUNDATION

Definition of an international foundation

24. For the purposes of this Act, an “international foundation” is a foundation that

- (a) is organised in a jurisdiction other than Barbados; and
- (b) has legal characteristics that would, if it were in Barbados, enable it to be established as a foundation under this Act.

Continuation of a foundation

25.(1) An international foundation may, if it is not prohibited under the laws of that other jurisdiction, apply to the Registrar for a certificate of continuance under this Act:

(2) An application made under subsection (1) shall be in such form as is prescribed by the Minister.

(3) Articles of continuance may, without so stating in the articles, effect any amendment to the organisational instruments of the international foundation that applies for continuance under this section if the amendment

(a) is authorised in accordance with the law applicable to the international foundation before continuance under this Act; and

(b) is an amendment that a foundation under this Act is entitled to make.

Articles of continuance

26.(1) Subject to paragraph (2) articles of continuance shall be written in the English language.

(2) Notwithstanding subsection (1), where articles of continuance are written in a language other than English, articles of continuance shall be accompanied by a certified translation in the English language.

(3) Articles of continuance shall state

(a) the name of the international foundation and the name under which it is being continued;

(b) the jurisdiction under which it is established;

(c) the date on which it was established;

(d) such other terms as are required under this Act or regulations to be included in the articles of a foundation; and

- (e) be signed by all of the councillors or officers of the foundation with equivalent status.

Certificate of continuance

27.(1) Upon receipt of articles of continuance, the Registrar shall, if he is satisfied that there has been full compliance with section 25 and section 26, issue a certificate of continuance.

- (2) On the date shown in the certificate of continuance,
 - (a) the international foundation shall become a foundation to which this Act applies as if the foundation had been established under this Act;
 - (b) the articles of continuance will be regarded as the articles of the continued foundation; and
 - (c) the certificate of continuance will be regarded as the certificate of establishment of the continued foundation.

Preservation of a foundation

28. When an international foundation is continued as a foundation under this Act,

- (a) the property of the international foundation shall become the property of the foundation;
- (b) the foundation shall continue to be liable for the obligations of the international foundation;
- (c) an existing cause of action, claim or liability to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the international foundation may be continued by or against the foundation; and

- (e) a conviction against, or ruling, order or judgment against or in favour of, the international foundation may be enforced against the foundation.

Registered Agent

29.(1) Every international foundation shall, at all times, have a registered agent that is resident in Barbados.

(2) The registered agent shall be a person licensed in accordance with the *International Corporate and Trust Service Providers Act* (Act 2011-5).

(3) A foundation may give notice of the change of its registered agent by filing a notice to that effect in the prescribed form with the Registrar.

(4) The change of the registered agent takes effect upon the notice being registered by the Registrar.

(5) Where the registered agent of a foundation intends to cease to act as its registered agent, he must give not less than 30 days written notice of his intention to do so to the foundation council and to the Registrar.

(6) A notice given under subsection (5) must be sent to a councillor, at the address of the councillor last known to the registered agent.

(7) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to a term of imprisonment of 12 months or to both.

Foundations leaving Barbados

30. Subject to section 32, a foundation may establish in another jurisdiction where,

- (a) it is established to the satisfaction of the Registrar that the foundation's proposed continuance in another jurisdiction will not adversely affect the foundation's creditors,
- (b) it is authorised by unanimous resolution of its councillors; and

may establish in any other jurisdiction and continued as an entity in the other jurisdiction as if it had been established under the laws of the other jurisdiction.

Conditions applicable to a foundation leaving Barbados

31. A foundation may not apply for continuance in another jurisdiction, nor may it be continued under the laws of another jurisdiction, as an entity established in that other jurisdiction pursuant to section 30 unless that entity submits to the Registrar a declaration that states that the laws of the other jurisdiction provide that

- (a) the property of the foundation continues to be the property of the entity;
- (b) the entity continues to be liable for the obligations of the foundation;
- (c) any existing cause of action, claim or liability to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the foundation may be continued by or against the entity; and
- (e) a conviction, ruling, order or judgment against or in favour of the foundation may be enforced by or against the entity.

Discontinuance

32.(1) Upon receipt of a notice satisfactory to the Registrar that a foundation that has made an application under section 30 has been continued as an entity under the laws of another jurisdiction, the Registrar shall file the notice and issue a certificate of discontinuance in accordance with this Act.

(2) After a certificate of discontinuance is issued in accordance with subsection (1) in respect of a foundation that is continued as an entity under the laws of another jurisdiction, the foundation's name shall be removed from the Register, but such removal does not affect the operation of section 31.

PART VII
DISSOLUTION OF FOUNDATIONS

Dissolution

- 33.(1)** A foundation shall be dissolved where
- (a) the foundation is established for a definite period and that period expires;
 - (b) the purpose of the foundation is fulfilled or becomes incapable of fulfilment, and the councillors, by unanimous decision, so resolve;
 - (c) any term of the charter so requires; or
 - (d) the Court orders that the foundation be dissolved.
- (2) Where a foundation is dissolved pursuant to subsection (1), the councillors, or such other person as may be authorized by the charter to supervise the dissolution of the foundation, shall do all things that are necessary for the orderly supervision of the foundation,
- (a) shall collect the assets of the foundation,
 - (b) shall discharge or make adequate provision for the discharge of the obligations of the foundation; and
 - (c) shall distribute the remaining assets in the manner provided in section 35.

Court dissolution

- 34.(1)** A foundation may, upon application by an order of the Court, be dissolved where the Court is of the opinion that it is just and equitable that the foundation be dissolved.
- (2) An application for the dissolution of a foundation may be made to the Court by the foundation, the councillor of the foundation, the guardian of the foundation or by a creditor of the foundation or any other interested person.

(3) Where the Court orders that a foundation be dissolved under this section, the Court may appoint a person to supervise the dissolution of the foundation and may, from time to time, direct the manner in which the dissolution is to be conducted.

Distribution of assets

35.(1) Subject to subsection (2), where a foundation is dissolved and there are assets remaining after its dissolution those assets shall be the property of the person who, according to the charter or by-laws, is entitled to receive any assets remaining after the dissolution of the foundation.

(2) In the event that

- (a) there is no person entitled to receive the remaining assets of the foundation as provided in subsection (1); or
- (b) the person entitled to receive the remaining assets refuses to accept the transfer of the assets; and
- (c) the charter or by-laws of the foundation are silent as to how the assets ought to be distributed,

the remaining assets shall vest in the Crown.

Dissolution by Registrar

36.(1) Subject to subsection (2), the Registrar may dissolve a foundation where the foundation fails to pay the fees prescribed by this Act, or fails to comply with any other provision of this Act.

(2) A foundation shall not be dissolved under subsection (1) unless

- (a) the Registrar gives the foundation not less than 90 days' notice of the proposed dissolution, stating the reasons for the proposed dissolution; and
- (b) the foundation has failed prior to the dissolution to correct the failure
 - (i) to pay the fees prescribed by this Act; or

(ii) to comply with any other provision of this Act.

Revival of foundation

37.(1) A foundation that has been dissolved may be revived upon application to the Registrar.

(2) Upon receipt of the application referred to in subsection (1) the Registrar may, if the circumstances justify, approve the application for the revival of the foundation, in which case the applicant shall deliver to the Registrar a copy of the articles of revival, in the prescribed form, and thereafter the Registrar shall issue a certificate of revival, in the prescribed form, to the applicant.

PART VIII

FORCED HEIRSHIP, RESTRICTION AGAINST ALIENATION AND FORFEITURE OF BENEFITS

Forced heirship

38.(1) No foundation governed by the Laws of Barbados, and no transfer of property to a foundation which is valid under the Laws of Barbados shall be void, voidable, liable to be set aside or defective in any manner by reference to the law of a foreign jurisdiction.

(2) The capacity of a founder of a foundation or of any other person who transfers property to a foundation shall not be questioned nor shall any beneficiary or other person be subject to any liability or deprived of any right by reason that

- (a) the laws of any foreign jurisdiction prohibit or do not recognize the concept of a foundation; or
- (b) the transfer of property to the foundation, or any term of its charter or its by-laws avoids or defeats rights, claims or interest conferred by foreign law on any person, by reason of a personal relationship to the founder or subsequent transferor, or by way of heirship rights, or contravenes any rule of foreign 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.

Restriction against alienation.

39.(1) Notwithstanding any rule of law to the contrary, a term of the charter or by-laws of a foundation or a disposition by the councillors or guardian of the foundation may provide that any assets of the foundation available for distribution to a beneficiary shall not be alienated or pass by bankruptcy, insolvency or liquidation or be liable to be seized, sold, attached, or taken in execution by process of law, and, where so provided, the provision shall take effect accordingly.

(2) Where any of the assets of the foundation are subject to any of the restrictions contained in subsection (1), the right to derive income from such assets by a beneficiary and any income derived from that property shall not pass by bankruptcy, insolvency or liquidation or be liable to be seized, attached or taken in execution by process of law.

(3) Where any of the assets of the foundation are subject to a restriction against alienation then the right to derive income from that property shall not be alienable for as long as that restriction remains in force.

(4) A restriction imposed pursuant to this section may at any time be removed in accordance with any terms for such removal.

(5) Neither the founder nor any other person transferring property to a foundation may benefit from the provisions of this section.

Forfeiture of benefits

40. The charter or by-laws of a foundation may provide that a beneficiary of the foundation shall forfeit a benefit or right under that charter where he challenges

- (a) the establishment of the foundation; or
- (b) the transfer of any assets to the foundation.

PART IX
REGISTRAR

Registrar and other officers

- 41.(1) The Registrar of Companies shall be the Registrar of Foundations.
- (2) Any functions of the Registrar under this Act may, to the extent authorised by him, be exercised by any officer on his staff.

Official seal

42. The Registrar shall affix or use an official seal in the authentication or issue of documents required under this Act.

Official registration number

- 43.(1) The Registrar shall allocate to every foundation an official registration number, which shall be the registration number of that foundation.
- (2) The official registration number of a foundation shall be in such form as the Registrar may, from time to time, determine.

Register

44. The Registrar shall keep a Register which shall be known as the "Register of Foundations" and shall cause to be recorded in the Register the following particulars:

- (a) the name of the foundation;
- (b) the official registration number of a foundation;
- (c) the registered address of a foundation;
- (d) in the case of an international foundation, the name of the registered agent of that foundation;
- (e) the particulars of the councillors;

- (f) the name of the secretary of the foundation;
- (g) the name of the guardian of the foundation;
- (h) any other particulars which the Registrar from time to time determines should be recorded in the register.

Registrar's Certificate

45. The Registrar shall on receipt of payment of the prescribed fee, certify that the registered foundation is properly registered and of good standing, where the Registrar is satisfied that

- (a) the name of the foundation is on the Register;
- (b) the foundation has filed with the Registrar all documents required by this Act to be filed; and
- (c) the foundation has paid all fees required by this Act to be paid.

Inspection and reproduction of documents kept by the Registrar

46.(1) Subject to the provisions of this Act, no inspection or reproduction of documents kept by the Registrar under this Act shall be permitted other than by the registered agent; any of the councillors of a foundation may, by notice in writing to the Registrar, authorise the person named in the notice

- (a) to inspect, or obtain a copy of, a document of the foundation delivered to the Registrar under this Act ; or
- (b) to require a certificate of establishment,

and a certificate given under paragraph (b) shall be signed by the Registrar and sealed with the official seal.

(2) Notwithstanding subsection (1) a copy of or an extract from a record kept by the Registrar, certified in writing by the Registrar to be an accurate copy or extract, shall, in all legal proceedings, be admissible in evidence as of equal validity with the original record and as evidence of any fact stated in the copy or extract of which direct evidence would be admissible.

Collection and Disclosure of information by the Registrar

47.(1) Without prejudice to any other provision of this Act, a foundation shall submit to the Registrar at such times as the Registrar may require, any of the books, records and documents that the foundation is required to keep under this Act.

(2) The Registrar may disclose any information obtained under subsection (1) where

- (a) in compliance with an order of the Court;
- (b) the Registrar is carrying out or facilitating the carrying out of a duty imposed by him by the *Income Tax Act*, Cap. 73;
- (c) where the Registrar is acting in pursuance of the discharge of an obligation or duty imposed by an international agreement to which Barbados is a party; or
- (d) where a person has demonstrated to the Registrar that he is legally entitled to the information.

Enforcement of duty to deliver document or notice to the Registrar

48.(1) Where a foundation

- (a) fails to comply with a requirement to deliver to the Registrar any document or to give notice to the Registrar of any matter; and
- (b) does not make good such failure within 14 days after the service of a notice by the Registrar on the foundation requiring it so to do

the Court may, on an application made to it by the Registrar, make an order directing the foundation to make good the failure within a time specified in the order.

(2) The Court may order that all or any part of the costs associated with the application shall be borne by the foundation.

PART X
INVESTIGATION

Investigation order

49.(1) A founder, beneficiary or guardian of a foundation, or the Registrar may, without notice or upon such notice as the Court may require, apply to the Court for an order directing that an investigation be made of the foundation or any foundation or company affiliated with it.

(2) Where, upon an application under subsection (1), it appears to the Court that

- (a) the affairs of the foundation or any of its affiliates are being or have been carried on with intent to defraud any person;
- (b) the foundation or any of its affiliates was established for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose;
- (c) persons concerned with the establishment, business or affairs of the foundation or any of its affiliates have in connection therewith acted fraudulently or dishonestly; or
- (d) it is in the public interest that an investigation of the foundation or any of its affiliates be made,

the Court may make any order it thinks fit with respect to an investigation, by an inspector, of the foundation or any of its affiliates.

(3) Where a founder, beneficiary or guardian makes an application under subsection (1), he shall give the Registrar reasonable notice of it, and the Registrar is entitled to appear and be heard at the hearing of the application.

- (4) For the purposes of this section,
- (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and
 - (b) where two bodies corporate are affiliated with the same body corporate at the same time, they are affiliated with each other.

Contents of order and copies of reports

50.(1) An order made under section 49(2) shall make provision for the carrying out of investigations and may include provisions for the appointment and remuneration of an inspector.

- (2) An order under subsection (1) may make provision for the following:
- (a) replacing the inspector;
 - (b) determining the notice to be given to any interested person, or dispensing with notice to any person;
 - (c) authorising an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;
 - (d) requiring any person to produce documents or records to the inspector;
 - (e) authorising an investigator to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribing rules for the conduct of the hearing;
 - (f) requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath or affirmation;
 - (g) giving directions to an investigator or any interested person on any matter arising in the investigation;
 - (h) requiring an investigator to make an interim or final report to the Court;

- (i) determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates; and
 - (j) requiring an inspector to discontinue an investigation.
- (3) An inspector shall file with the Registrar a copy of every report made by the inspector under this section.
- (4) A report received by the Registrar under subsection (3) must not be disclosed to any person other than in accordance with an order of the Court made under (2)(i).

Investigators

- 51.** An investigator
- (a) has the powers set out in the order appointing him; and
 - (b) shall upon request produce to an interested person a copy of the order.

Hearings

- 52.(1)** An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, must be heard *in camera* unless the Court orders otherwise.
- (2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an investigator under this Part may appear or be heard at the hearing.
- (3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

Incriminating evidence

- 53.** No person is excused from attending and giving evidence and producing documents and records to an investigator appointed by the Court under this Part, by reason only that the evidence tends to incriminate that person or

subject him to any proceeding or penalty; but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence.

Absolute privilege

54. An oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

PART XI

MISCELLANEOUS

Compliance inspections

- 55.(1) The Commission may, for the purpose specified in subsection (2)
- (a) inspect the accounts and records of a relevant person, whether in or outside Barbados, including the systems and controls of the relevant person;
 - (b) inspect the assets of a relevant person, including cash, belonging to or in the possession or control of the relevant person; and
 - (c) examine and make copies of documents belonging to or in the possession or control of a relevant person;

that, in the opinion of the Commission, relate to a foundation established under this Act.

(2) An inspection under subsection (1) may be undertaken, in the case of a person specified in paragraphs (1)(a), (b) and (c), for the purpose of monitoring and assessing such person's compliance with his obligations under the *Money Laundering and Finance of Terrorism (Prevention and Control) Act* (Act 2011-23) and regulations made under that Act.

(3) The powers and duties conferred or imposed on the Commission by this section are in addition to, and not in derogation of, any other powers and duties conferred or imposed on the Commission by any other enactment.

Legal professional privilege

56. Where any proceedings are instituted under this Act, nothing in this Act is to be taken to require a person to disclose any information which the person is entitled to refuse to disclose on grounds of legal professional privilege.

Application of special Tax Rate

57.(1) Subject to this section, in lieu of tax at the rate specified under the *Income Tax Act*, Cap. 73 there shall be levied, in respect of every income year of a foundation, a tax on the profits and gains of the foundation as the Minister responsible for Finance shall prescribe.

(2) A beneficiary who is not resident in Barbados shall not be subject to income tax in Barbados on amounts distributed to him by the foundation.

(3) Notwithstanding the provisions of the *Income Tax Act*, an international foundation need not withhold any portion of the distributions or other income paid or deemed to be paid by an international foundation to a person who is not resident in Barbados for the purposes of the *Income Tax Act*.

(4) The *Exchange Control Act*, Cap. 71 and the *Succession Act*, Cap. 249 shall not apply to international foundations.

(5) A foundation is exempt from ad valorem stamp duty except in respect of real estate situate in Barbados and shall pay a fixed duty as specified in the schedule to the *Stamp Duty Act*, Cap. 91.

Offences

58. A person who

(a) falsely represents the financial position of the foundation to any person;

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- (b) withholds information relating to the financial position of the foundation or any other matter regulated by this Act from any person entitled to receive that information; or
 - (c) falsifies any document
 - (i) to be delivered under this Act to the Registrar;
 - (ii) required by this Act to be prepared in respect of the foundation,

is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to a term of imprisonment of 12 months or to both.

Regulations

59. The Minister may make regulations generally for the carrying out of the purposes of this Act and in particular for

- (a) the prescribing of fees to be paid under this Act; and
- (b) the prescribing of forms which shall be used in relation to any procedure specified in this Act.

Commencement

60. This Act shall come into operation on a date to be fixed by Proclamation.