CHAPTER 369D

FOUNDATIONS

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CHAPTER 369D

FOUNDATIONS

An Act to permit the establishment of foundations in The Bahamas, to determine the legal status of such foundations, to establish the purposes for which such foundations may be used, and the creation, operation and management thereof, and to provide for the winding-up of any foundation so created and for matters incidental thereto, including but not limited to, the establishment and conduct of a register of foundations.

23 of 2004
13 of 2005
4 of 2007
31 of 2007
48 of 2011

[Assent 13th October, 2004]
[Commencement 22nd October, 2004] *S.I. 89/2004.*

PART I
PRELIMINARY

1. This Act may be cited as the Foundations Act. Short title.

2. (1) In this Act, unless the context otherwise requires — Interpretation.

"articles" mean the regulations provided for in section 7;

"assets" mean property in whatever form;

"auditor" means a professionally qualified auditor, or an accountant licensed to practise as such under the Public Accountants Act[2]; Ch. 364.

"authorized signatories" mean —

(a) the persons authorised by a foundation in accordance with its charter or articles (if any) to sign, as resolved by the officers or other governing body from time to time, (including whether singly or jointly) on behalf of, and thereby to bind, the foundation, to the extent so authorized; or *31 of 2007, s. 2.*

(b) all the officers or other governing body for the time being of a foundation signing jointly; *31 of 2007, s. 2.*

"beneficiary" means a person —

[2] This Act, (formerly Ch. 364) was repealed and replaced by The Bahamas Institute of Chartered Accountants Act, 2015 (No. 13 of 2005)

(a) designated as such in the charter or articles (if any) of a foundation; or

(b) where no beneficiary is so designated, and the foundation has not been formed to benefit the public at large, a person identified as such —

(i) by the person or body appointed for this purpose in the charter; or

(ii) in the absence of such a person or body or following the refusal by such a person or body to make any designation, by the foundation council of the foundation (if any),

and includes any remaining beneficiaries and may include the founder if so designated;

(c) designated as such by the court where the body or council in paragraph (a) or (b) is in disagreement as to the designation of a beneficiary;

"court" means the Supreme Court or a Judge thereof;

"to endow" means to pass, or covenant to pass, the title in property absolutely, with or without consideration, to a foundation so that the property is the asset of that foundation; and to pass, for the purposes of this definition includes whatever act may be necessary in relation to that property to transfer title effectively;

"foundation" means the legal entity defined in section 3;

31 of 2007, s. 2.

"foundation agent" means the foundation agent of a foundation provided for in section 12;

"foundation charter" and "charter" mean the duly executed will or other document, as the case may be, provided for in section 6;

"foundation council" and "council" mean the council of a foundation, if any, as the case may be provided for in section 14;

"founder" means —

(a) the person who, by transfer of title subscribes his name to the charter establishing a foundation acting either for himself or on behalf of another and who

endows that foundation with its initial assets; or

(b) in the case of establishment of a foundation by the duly executed will of a deceased person, the testator, whose estate by transfer of title endows that foundation with its initial assets;

"governing bodies", in relation to a foundation, means —

(a) the officers;

(b) the foundation council, if any; and

(c) any other supervisory person or persons (including but not limited to a protector, or committee or protectors), if any, specified or identified by the charter or the articles (if any),

acting jointly or singly, as may be required by this Act, the charter or the articles (if any);

"initial assets" means assets endowed by the founder or founders, as the case may be, at the time of establishment of a foundation and vested in and being the property of that foundation;

"legal guardian" means a person who is resident and domiciled in The Bahamas and having the right and duty of protecting the person, property or rights of one who is without full legal capacity or otherwise incapable of managing his own affairs; *31 of 2007, s. 2.*

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

"Minister" means the Minister charged with responsibility for this Act;

"Model Foundation charter" means the charter provided for in section 6(3) and set forth in the Schedule; Schedule.

"natural person" means an individual;

"officer" means the officer of the foundation provided for in section 10;

"person" means a legal or natural person;

"protector" or "committee of protectors" mean the person or persons (if any) appointed in accordance with the relevant provisions of a foundation's charter provided however that in such capacity they shall not be deemed to be officers of the foundation;

"Register" means the register of foundations to be kept by the Registrar in compliance with section 59;

"registered" in relation to a foundation means registered as a foundation under this Act;

"Registrar" means the Registrar of Foundations;

"Registrar of Foundations" means the Registrar General;

"remaining beneficiary" means that person or those persons who, according to the charter or the articles (if any) of a foundation, or the application of either, shall be entitled to receive any assets remaining after the dissolution or winding up of the foundation;

"secretary" means the secretary of the foundation provided for in section 12;

"supervisory person" means any person having supervisory powers such as an officer, member of a financial council or protector; and

"The Bahamas" means the Commonwealth of The Bahamas.

(2) For the purposes of sections 10 and 14, "direct line of relationship" means a relationship of parent, child, grandparent, grandchild and further levels of such relationships in direct line; and "collateral line of relationship" means brother or sister, uncle or aunt, niece or nephew or cousin, and shall include the spouse of such person and "parent" and "child", etc. shall include a parent or child by adoption as well as by birth, whether legitimate or illegitimate, and shall include the spouse of a parent or child and the parent or child of the spouse.

Definition of foundation.

3. (1) An entity —

(a) established by a foundation charter and in accordance with this Act; and

(b) which is registered,

shall be a foundation within the meaning of this Act.

(2) A foundation satisfying subsection (1) shall be —

(a) a legal entity;

(b) resident and domiciled in The Bahamas; and

(c) able to sue and be sued in its own name.

(3) A foundation shall hold assets which have been effectively transferred to that foundation for the purposes or objects described in subsection (6). Such assets shall be of a value not less than B$10,000.00 or US$10,000.00 or the equivalent in any other currency.

(4) In the absence of fraud, assets effectively transferred to a foundation shall be the property of that foundation (with full legal and beneficial title), shall cease to be the property of the founder and shall not become the property of a beneficiary unless distributed in accordance with the provisions of the foundation charter or the articles (if any), and this Act.

(5) The assets of a foundation may originate from any lawful business and may consist of present or future assets of any nature.

(6) The assets of a foundation shall be exclusively managed, including being realized, applied, administered, invested and disbursed in accordance with the foundation charter or the articles (if any), and this Act for the attainment of the purpose or objects —

(a) specified in the foundation charter, and

(b) permissible under this Act.

Purpose and objects of a foundation.

4. (1) A foundation's main purposes or objects shall include the management of its assets.

(2) A foundation may in the course of the management of its assets do such things and exercise such powers as are necessary for their proper administration, including but not limited to buying and selling of such assets and engaging in any other acts or activities that are not prohibited under any law for the time being in force in The Bahamas, but such acts and activities shall be ancillary or incidental to its main purposes or objects.

(3) A purpose or object of a foundation need not be, but may be, charitable.

(4) A foundation's main purpose or purposes may also include any purpose or object which is not unlawful, immoral or contrary to any public policy in The Bahamas.

(5) Subject to subsection (2), the permitted purposes or objects of a foundation shall not include —

(a) carrying on of an activity prohibited in or from within The Bahamas; or

(b) carrying on in or from within The Bahamas of any activity in respect of which a licence or authorisation under any statute or regulation is required and no such licence or authorisation has been granted to the foundation.

(6) A foundation which carries on an activity in breach of subsection (5) shall be in default and the provisions of sections 52(4), 54 and 70 shall apply.

PART II
ESTABLISHMENT

Mode of establishment of foundation.

5. (1) A person or persons may by subscribing his name or their names, as the case may be, to a charter of a foundation and otherwise complying with the requirements of this Act, establish a foundation as a legal entity having separate personality.

(2) A foundation may be established by means of a duly executed will and in that case —

(a) subject to subsection (13), there shall be one founder only, who shall be the testator;

(b) in this Act, where the context so requires, reference to the will shall be substituted for reference to the charter; and

(c) the procedure set out in subsections (4) to (11) shall apply.

(3) The formation and establishment in The Bahamas of a foundation shall not be completed until —

(a) the foundation has been registered under the provisions of section 21; and

(b) the certificate of the Registrar has been issued in accordance with section 22.

(4) Where the charter is the will of the founder, the executor of the estate of the founder shall —

(a) act as if he were the founder for the purpose of appointing officers and registering the proposed foundation; and

(b) as soon as may be appoint officers in accordance with the charter or the articles (if any) and this Act.

(5) The executor referred to in subsection (4) shall periodically, and in any case at intervals of no more than sixty days, keep the officers appointed according to that subsection informed of the progress of probate of the will constituting the charter.

(6) Where the provisions of section 21 in respect of registration cannot be satisfied at the end of a period of twelve months after the death of the founder, an application shall be made by the executor or if no application is made by the executor, by a person named or identified in the will as an officer of the proposed foundation, to the court for the appointment of a person to act as administrator for the purpose of ensuring —

(a) the proper appointment of officers;

(b) the endowment of property to be the assets of the proposed foundation in accordance with the provisions of the charter; and

(c) the registration of the proposed foundation under this Act,

and the court may appoint a fit and proper person as the administrator.

(7) An administrator appointed under subsection (6) shall be subject to the supervision of the court.

(8) Where provision is made in the charter for the appointment of a foundation council, the administrator appointed under subsection (6) shall appoint a foundation council in accordance with the charter and the provisions of this Act.

(9) Where an administrator is appointed under subsection (6) he shall —

(a) if no officers have been appointed in accordance with subsection (4), appoint —

(i) the persons specified in the charter as officers of the proposed foundation; or

(ii) where neither the charter nor the articles (if any) specify either by name or by some

other identifying description the persons to be appointed officers, as officers fit and proper persons qualified under the terms of this Act to be officers of the proposed foundation and who have consented in writing to act as officers of the proposed foundation;

(b) take steps, including, if, in his opinion, it is necessary, the institution of legal proceedings in The Bahamas or elsewhere, to ensure that the initial assets are or shall be duly acquired by the proposed foundation;

(c) administer, or cause to be administered, in a proper manner and to the best advantage to conserve and improve without undue risk the property to be the initial assets of the proposed foundation until such time as such assets are vested in the foundation; and

(d) take such steps as are, in his opinion, necessary to ensure that title in the assets is properly vested in the foundation.

(10) The court, as soon as it is satisfied that the documents specified in section 21(1) are available and the application for registration under such section has been made, shall cause the appointment of the administrator under this section to terminate.

(11) The costs of the administrator appointed under this section, including his remuneration, approved by the court, shall be met by the executor —

(a) out of the property specified in the charter as the assets of the foundation; or

(b) in the event that the foundation is not registered, out of the property of the estate of the founder.

(12) Where a founder dies after subscribing his name to a charter but before the registration of the foundation under this Act, notwithstanding that the founder was not the sole founder, the provisions of subsections (4) to (11) shall apply *mutatis mutandis* as if the charter was contained in his will.

(13) Where two or more testators have made mutual wills and those wills take effect simultaneously, the testators shall be deemed to be one founder for the purpose of complying with subsection (2)(a).

(14) Registration of a foundation on the grounds that the will purporting to establish same was not duly executed may only be contested within a period of three years from the date upon which probate of such will was granted.

Charter of a foundation.

6. (1) The charter of a foundation shall state —

(a) the name of the foundation with the word "Foundation" or, in the discretion of the Registrar, a foreign language version of the word "Foundation" as the last word of the name;

(b) details of the founder, that is to say —

(i) the name and address of the founder;

(ii) where the founder is a legal person, the number and place of registration of that legal person; and

(iii) the address in The Bahamas for service of documents on the founder;

(c) the purpose or purposes and objects of the foundation;

(d) the endowment of the assets to be the initial assets of the foundation upon registration and a statement of those assets;

(e) the designation of the beneficiary or the identification of a body by which the beneficiary is to be ascertained, or a statement that a foundation has been formed to benefit the public at large;

(f) a statement of whether the foundation is established for an indefinite period or a definite period and, where it is established for a definite period, that period;

31 of 2007, s. 3.

(g) the name and address in The Bahamas of the secretary (if appointed) or the foundation agent (if appointed) to the foundation and the address of the registered office in The Bahamas of the foundation, which shall be the same address as the address of the secretary or whichever person of the foundation is performing the statutory duties as specified in section 12 of this Act; and

(h) a statement that the foundation may not have assets with a total value of less than B$10,000.00 or US$10,000.00 or the equivalent thereof in any other currency.

(2) Subject to the provisions of this Act, the charter of a foundation may without limitation include provisions —

(a) for the reservation of rights or powers to the founder;

(b) for the appointment, removal, period of office and representative authority of officers of the foundation, including the number and descriptions of such persons;

(c) for the appointment, removal and period of office of the auditor, if any, to the foundation and may provide that the appointment of an auditor is at the discretion of the foundation council;

(d) for the appointment of a foundation council or other supervisory persons (including but not limited to a protector or committee of protectors) for the maintenance of the objects of the foundation, their relationship to the officers and amongst themselves and the appointment of persons by power of attorney or otherwise to carry out particular duties on behalf of the foundation;

(e) specifying the duties, functions, powers and rights to remuneration of a protector or committee of protectors (if appointed), their relationship to the officers and the foundation council and how they shall be appointed or removed and how they shall conduct themselves whilst in office;

(f) specifying the circumstances in which it may be necessary to appoint a foundation council, and, where it proves necessary to appoint a foundation council, for the appointment, removal, period of office and representative authority of the members of that council;

(g) permitting amendment to the charter and specifying circumstances in which it may be amended;

(h) requiring or permitting the making of articles;

(i) providing for the endowing of supplementary assets of the foundation in addition to the initial assets;

(j) for the addition or removal of beneficiaries;

(k) providing for the circumstances, if any, in which the foundation may be redomiciled and the conditions to be satisfied in respect of such redomiciliation;

(l) except where the charter is contained in a will, for the revocation of the foundation.

31 of 2007, s. 3.

(3) In the event that the foundation has not appointed any officers, the charter of such foundation shall include provision for the appointment of a foundation council, or other governing body or supervisory person.

31 of 2007, s. 3.

(4) The charter of a foundation may adopt all or any of the provisions contained in the Model Foundation charter and, in so far as the foundation charter does not exclude or modify the provisions contained in that Model, those provisions shall, so far as applicable, be the terms of the charter of the foundation in the same manner and to the same extent as if they were contained in the charter.

31 of 2007, s. 3.

(5) In the absence from the charter of a provision on any of the discretionary matters specified in subsection (2), the provisions of this Act in respect of that matter shall apply.

31 of 2007, s. 3.

(6) Except as is provided for in subsection (7), the charter of a foundation shall be in the form of a document and shall —

(a) where a founder is a natural person, be signed by each such founder in the presence of a notary public or the secretary named therein; or

(b) where a founder is a legal person, be signed on behalf of such founder by the person or persons authorised for that purpose in the presence of a notary public or the secretary named therein;

(c) be duly and properly executed by the founder.

31 of 2007, s. 3.

(7) The charter of a foundation established on the death of the founder shall be in the form of a duly executed will.

Articles of a foundation.

7. (1) Where the charter of a foundation provides that articles shall be made or may be made, such articles may without limitation include regulations —

(a) concerning distributions of assets made, or to be made, by the governing bodies of the foundation;

(b) more specifically providing for the identification of any initial beneficiaries or any beneficiaries to be designated at a later date, of the foundation;

(c) determining the minimum level of assets of the foundation in the absence of which no distribution to any beneficiary may be made;

(d) providing for the identification of the remaining beneficiary upon a winding up of the foundation;

(e) providing for the regulation of any governing bodies of the foundation.

(2) In —

(a) the absence of articles of a foundation; or

(b) the absence from such articles of a regulation on any matter,

the provisions of this Act in respect of that matter shall apply.

(3) Except as is provided for in subsection (4), the articles shall —

(a) where a founder is a natural person, be signed by each such founder in the presence of a notary public or the secretary; or

(b) where a founder is a legal person, be signed on behalf of each such founder by a person or persons authorised for that purpose in the presence of a notary public or the secretary.

(4) The articles established on the death of a founder shall be in the form of a duly executed will.

(5) The articles shall —

(a) be typed or printed;

(b) be divided into paragraphs numbered consecutively; and

(c) be duly and properly executed by the founder.

Assets.
31 of 2007, s. 4.

8. The Registrar shall not register a foundation unless the charter requires the foundation to have assets of a value of not less than B$10,000.00 or US$10,000.00 dollars or the equivalent thereof in any other currency.

Powers and obligations of founder.

9. (1) Where in respect of a foundation there is more than one founder, the powers of the founder under the foundation charter, the articles, if any, and this Act,

may only be exercised by all the founders acting jointly and in common, unless the charter otherwise provides, and then in accordance with that charter.

(2) The founder may, in the foundation charter or by instrument in writing, (revocable or irrevocable) assign or transfer any or all of his rights, powers and obligations under this Act, the foundation charter and the articles (if any) to such person or persons as the founder shall in his absolute discretion determine. *13 of 2005, s. 2.*

(3) Where the rights, powers and obligations are so assigned or transferred any reference to the founder in this Act, the foundation charter and articles (if any) shall be deemed to refer to the assignee or transferee thereof. *13 of 2005, s. 2.*

(4) Any assignment or transfer under this section shall not be effective until written notice thereof is provided to the secretary. *13 of 2005, s. 2.*

(5) A person who endows assets to a foundation after its registration shall not thereby acquire the powers of a founder.

(6) Where a founder has made an undertaking, recorded in the charter of the foundation, to endow assets to a foundation, the foundation —

(a) may enforce that undertaking against the founder; and

(b) shall do so in respect of the initial assets of the foundation, if at the end of a period of twelve months from the date of registration, the property representing same has not become the assets of the foundation.

(7) Where a charter contains a covenant by the founder to endow assets to a foundation on a specified date —

(a) subsection (6)(b) shall have effect as if the reference to the date of registration was a reference to the specified date; and

(b) the period of twelve months therein referred to shall be the period of twelve months from that date.

PART III
OFFICERS

Appointment and qualification of officers.
31 of 2007, s. 5.

10. (1) The founder or founders, or where the foundation charter is a will, an executor of that will or an administrator appointed under section 5(6), may before registration of a proposed foundation appoint at least one person (natural or legal person) who is not prohibited from being an officer by virtue of subsection (2) to be an officer of the foundation, and on appointment each such person shall be an officer of that foundation.

(2) A person shall not be appointed as or remain an officer of a foundation —

(a) in the case of a natural person, if he is an undischarged bankrupt;

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

(c) in the case of a natural person who is or becomes mentally incapacitated;

(d) in the case of a natural person who is convicted of a crime other than a minor traffic offence;

(e) if such person's interests are or have become incompatible with the interests of the founder (s) or any beneficiary;

(f) if he, his spouse, or persons in a direct line or in a collateral line of relationship with the person is a member of the council of that foundation;

(g) where an officer of a foundation is a legal person, if any shareholder, director, secretary, manager, partner or controller (which expression shall include any person in accordance with whose instructions any shareholder, director, secretary, manager, partner or controller is accustomed to act) of that legal person, his or her spouse as well as any person in a direct line or in a collateral line of relationship with such person, is a member of the council of that foundation; or

(h) unless before appointment —

(i) he complies with any requirement of this or any other Act to be satisfied by a person to be so appointed; and

(ii) he has by himself, or by his agent authorized in writing, signed and delivered to the founder, an executor or the administrator appointed under section 5 (6) or the foundation, as the case may be, a consent in writing to act as such an officer.

(3) Where, by virtue of this section the appointment of an officer in relation to a foundation is required, the founder, executor, or administrator or the officers shall —

(a) appoint a person satisfying the requirements to be an officer of the foundation;

(b) ensure that a sufficient number of persons to satisfy the requirements of this Act and the charter is so appointed;

(c) deliver to the Registrar the name and address of every person who has been appointed as, and who has consented in writing to be, an officer of the foundation.

(4) The appointment of a person as an officer is personal to that person and may not be assigned by him.

(5) A person appointed as an officer in relation to a foundation, shall, in the event that he ceases to comply with any of the requirements of this section, give notice in writing of that event to the foundation and the Registrar, within seven days after the occurrence thereof.

(6) An officer appointed in relation to a foundation who intends to cease acting as an officer in relation to that foundation shall give notice in writing of his intention to the foundation and lodge with the Registrar a declaration that he has given such notice, and such notice shall be given and such declaration lodged no later than seven days before the officer intends to cease to so act.

(7) Subject to subsection (13), where a person is appointed as an officer of a foundation, he shall so continue and the provisions of this Act shall apply to that person until —

(a) the discharge of that person as an officer in accordance with the foundation charter or the articles (if any);

(b) the expiration of a period of seven days after the date on which a declaration is lodged under subsection (6);

(c) the foundation ceases to be a foundation registered under this Act;

(d) the winding up or dissolution, as the case may be, of the foundation;

(e) the death or bankruptcy of the person;

(f) the winding up or dissolution, as the case may be, of the legal person being the officer; or

(g) the occurrence of any other event which disqualifies the person from acting as an officer,

whichever event occurs first, whereupon he shall cease to be an officer.

(8) Where the Registrar receives notice under subsection (3)(c), (5) or (6) he shall file and retain the notice in the Register.

(9) Where for the time being no officer is appointed to a foundation or the number of officers appointed is less than that required by the foundation charter or this Act, an application may be made to the court by a founder, an officer or a member of the foundation council or some other supervisory person, for the appointment by the court of one or more officers for the purpose of complying with the requirements of the charter or this Act.

(10) Where the court is satisfied that —

(a) an application made under subsection (9) or (11) is well founded; and

(b) without the order of the court the requirements of the charter or this Act in respect of the appointment of officers will not be met,

the court may appoint one or more fit and proper consenting persons who comply with this section as officers.

(11) Where an officer has failed to comply with subsection (2) or (5) or has failed to carry out, or failed to carry out properly, the duties required of him in fulfillment of his obligations under the charter, the articles (if any) or this Act, on an application to the court by a founder, an officer or a member of the foundation council or some other supervisory person or a beneficiary, the court may order the removal of such officer and the appointment in his place as an officer of a fit and proper consenting person who complies with this section.

(12) The provisions of the charter and this Act in respect of officers shall apply to a person appointed as an officer in accordance with subsection (10) or (11) as they apply to an officer appointed in any other way provided for in this Act or the charter.

(13) Notwithstanding that a person has ceased to be an officer, any liability to the foundation which he may have incurred as an officer shall continue to be a liability enforceable against him by the foundation.

(14) The acts of an officer of a foundation are valid notwithstanding any defect that the foundation may afterwards discover in his appointment or qualification.

Duties, etc. of officers.
31 of 2007, s. 6.

11. (1) The duties and responsibilities of an officer shall be administrative, subject to subsections (5) and (6) of this section.

(2) An officer of a foundation shall take all such steps and do or cause to be done all such things as may be necessary to properly administer the foundation to achieve the purposes or objects of that foundation.

(3) An officer of a foundation shall exercise reasonable care and skill in the conduct of the affairs of the foundation, including exercising due skill and care in the management and investment of the foundation's assets.

(4) An officer of a foundation shall act in accordance with the charter and the articles, if any.

(5) Subject to subsection (6) and in the absence of the appointment of a foundation council or other supervisory person or persons, the officers of a foundation acting jointly shall be the governing body of the foundation and, as against a third party, the officers so acting shall represent the foundation.

(6) Where, in accordance with section 6(2), there is provision in the charter of a foundation for the appointment of a foundation council, and a foundation council has been appointed, the powers of the officers of the foundation shall not include those powers reserved to the foundation council.

(7) Except where the charter of a foundation otherwise provides, the officers of the foundation shall act unanimously and may so act by circulation of a written document duly signed by each officer, subject to —

(a) section 34 in respect of a meeting, section 35 in respect of an annual meeting and section 43 in respect of the account and balance sheet and officers' report;

(b) the right of a founder, the foundation council or other supervisory person pursuant to section 36 to call a meeting of the officers at which the business of the foundation, or a particular item of that business, is to be conducted; and

(c) the right of any officer to object on any occasion to the conduct of business in this way.

(8) Except where the charter of a foundation otherwise provides, no distribution to a beneficiary shall be validly made unless it is signed by all the officers then appointed.

(9) The officers of a foundation shall authorise a distribution to a beneficiary only in accordance with this Act, the charter and the articles (if any).

(10) No distribution to a beneficiary shall be made for the purpose of defeating, or where the effect of so doing would be to defeat, the claim of any creditor of the foundation.

(11) Except where the charter of a foundation otherwise provides —

(a) the officers acting unanimously may delegate to any one of themselves by a document signed by each of them any power of the officers;

(b) a power so delegated shall be exercised as provided for in the document of delegation;

(c) subsection (5) shall apply to the officer to whom the power is delegated in the exercise of that power as if the reference in that subsection to the officers acting jointly was a reference to the officer exercising the delegated power.

(12) Except where the charter of a foundation otherwise provides, the officers of the foundation shall be remunerated in accordance with the duties they are required to perform and taking account of the financial position of the foundation.

(13) A dispute in respect of the amount of the remuneration of the officers of a foundation may be referred by the officers, or an officer, or the foundation

council, or the auditor, to the court, which shall determine that remuneration.

Appointment and qualification of the foundation agent and secretary. *31 of 2007, s. 7.*

12. (1) Subject to subsections (2) and (3), there shall be appointed to a foundation either a foundation agent or secretary and the person so appointed shall be an officer of the foundation.

(2) The founder or founders of a foundation or, where the charter is a will, an executor of that will or an administrator appointed under section 5(6), shall before registration of a foundation appoint a person, satisfying the requirements set out in subsection (4), to be the foundation agent (or secretary) of that proposed foundation.

(3) The founder or founders, the executor, the administrator, as the case may be, or, after registration of a foundation, the officer or officers shall —

(a) ensure that, prior to registration and while a foundation is registered, a person satisfying the requirements set out in subsection (4) is at all times appointed as foundation agent; and

(b) deliver to the Registrar the name and address of every person who has been appointed as foundation agent and who has consented in writing to be the foundation agent of the foundation.

(4) The requirements referred to in subsection (3)(a) are that the foundation agent is duly licensed as a provider of financial and corporate services under the Financial and Corporate Service Providers Act, or as a trust company under the Banks and Trust Companies Regulation Act, and is not precluded from being appointed as an officer by section 10(2).

Ch. 369.

Ch. 316.

(5) The appointment of a person as foundation agent is personal to that person and may not be assigned by him.

(6) A foundation agent appointed to a foundation, shall, in the event that he ceases to comply with any of the requirements of subsection (4), give notice in writing of that event to the foundation and the Registrar within seven days after the occurrence thereof.

(7) A foundation agent appointed to a foundation who intends to cease acting as the foundation agent to that foundation shall —

(a) give notice in writing of his intention to the foundation; and

(b) lodge with the Registrar a declaration that he has given such notice,

and such notice shall be given and such declaration lodged no later than seven days before the foundation agent intends to cease to so act.

(8) The person appointed as foundation agent shall have the duties, powers and obligations provided for in this Act in respect of an officer and a foundation agent as provided in this Act, the foundation charter or articles (if any) and in particular, but without limiting the generality of the foregoing, shall, on behalf of the foundation accept service of all documents in respect of legal proceedings against the foundation which may be served on the foundation under the provisions of this Act or any other statute or law and, where in this or in any other statute or law there is reference to any notice being served on a foundation or any requirement being made of a foundation, the foundation shall be deemed to have notice of that service or knowledge of that requirement if the foundation agent appointed to that foundation shall have been served with the notice or shall have had notice of the requirement.

(9) The duties prescribed by subsection (8) shall be in addition to and shall not derogate from any other duties prescribed in relation to the foundation agent to a foundation by or under this Act or any other written law.

(10) Subject to subsection (12), where a foundation agent is appointed to a foundation, the provisions of this section shall apply to that foundation agent until —

(a) the appointment by the foundation of another foundation agent;

(b) the expiration of a period of seven days after the date on which a declaration is lodged under subsection (7);

(c) the foundation ceases to be a foundation registered under this Act;

(d) the winding up or dissolution, as the case may be, of the foundation;

(e) the mental incapacitation, death or bankruptcy of the natural person being the foundation agent;

(f) the winding up or dissolution, as the case may be, of the legal person being the foundation agent; or

(g) the occurrence of any other event which disqualifies the person from acting as an officer,

whichever event occurs first, whereupon he shall cease to be the foundation agent.

(11) Where the Registrar receives notice under subsection (3)(b), (6) or (7)(b) of this section he shall file and retain the notice in the Register.

(12) Notwithstanding that a person has ceased to be a foundation agent any liability to the foundation which he may have incurred as foundation agent shall continue to be a liability enforceable against him by the foundation.

(13) The acts of any foundation agent of a foundation are valid notwithstanding any defect that the foundation may discover afterwards in his appointment or qualifications.

(14) A foundation established under this Act shall at all times be subject to the regulatory oversight by the regulator that has licensed the foundation agent.

(15) In the event that a foundation does not appoint a foundation agent, the secretary of the foundation shall, subject to subsection (4), perform the duties of the foundation agent as prescribed under this Act.

(16) Where a foundation has a foundation agent and a secretary but the latter does not perform any of the foundation agent's statutory duties prescribed under this section, the secretary shall carry out the usual secretarial duties and shall not be required to possess the qualification specified in subsection (4) of this section.

(17) Every foundation agent, in performing his duties, shall act honestly and in good faith with a view to the best interest of the foundation and exercise the care, diligence and skill that a reasonable person would exercise in comparable circumstances.

(18) Where a foundation has a foundation agent any reference in this Act to the secretary in the context of statutory powers ascribed to the secretary by virtue of section 12 or any other section of this Act shall be deemed to be a reference to the powers or duties of the foundation agent.

Registered office.
31 of 2007, s. 8.

13. (1) A foundation shall have a registered office in The Bahamas which shall be the address of the secretary (if appointed) or the foundation agent (if appointed) to that foundation, to which all communications and notices may be addressed.

(2) Notice of any change in the situation of the registered office shall be given within twenty-eight days of the change to the Registrar, who shall file and retain the notice in the Register.

(3) Where by virtue of the application of this Act a person ceases to be the secretary to a foundation —

(a) the address of that person shall cease to be the registered office of that foundation; and

(b) until such time as the Registrar has received notice of the situation of a new registered office in accordance with subsection (2) —

(i) the foundation and any officer of that foundation shall be in default;

(ii) the address of the registered office shall be deemed to be the address in The Bahamas of any officer of the foundation and the requirements of this section and of section 12 in respect of the service of any document shall be satisfied by service at that address.

Appointment and qualifications of foundation council.
31 of 2007, s. 9.

14. (1) The charter of a foundation shall, if no officers are appointed, provide for the appointment of a —

(a) foundation council; or

(b) other governing body or supervisory person,

and such council or other governing body, as the case may be, may consist of —

(i) two or more natural persons; or

(ii) a legal person and one or more natural persons; or

(iii) one or more legal persons.

(2) A foundation council or a member of a foundation council shall be appointed in accordance with the requirements of the charter and this Act and —

(a) if appointed before registration, may be appointed by the founder, or, where the charter is a will, an executor of that will or an administrator appointed under section 5(6);

(b) if a person has been empowered by the founder in the charter or articles (if any), may be appointed by such person; or

(c) otherwise shall be appointed by the officers, subject to the requirements of the charter or the articles (if any) or this Act.

(3) Persons who are officers or the auditor, or a member of the firm of which the auditor is a member, of a foundation, the spouse of such a person, or persons in a direct line or in a collateral line of relationship with the officers shall not be appointed as a foundation council or member of same.

(4) Where an officer or an auditor of a foundation is a legal person, the provisions of subsection (3) shall apply to any natural person who is a shareholder, director, secretary, manager, partner or controller (which expression shall include any person in accordance with whose instructions any shareholder, director, secretary, manager, partner or controller is accustomed to act), of that officer, his or her spouse, as well as any person in a direct line or in a collateral line of relationship with such person, as if the reference to an officer or an auditor were a reference to such a natural person.

(5) A person shall not be appointed as or remain a member of a foundation council if he is an undischarged bankrupt or, being a legal person, is being wound up or dissolved, and unless, before appointment he complies with any relevant requirement of this Act, and he has signed and delivered to the founder, the executor or the administrator, or the officers, as the case may be, a consent in writing to act as such.

(6) The appointment of a person as a member of a foundation council is personal to that person and may not be assigned by him.

(7) A person appointed as a member of a foundation council shall, in the event that he ceases to comply with any of the requirements of this section, give notice in writing of that event to the foundation within 7 days after the occurrence thereof.

(8) A person appointed as a member of a foundation council who intends to cease acting in that capacity shall give notice in writing of his intention to the foundation no later than seven days before the person intends to cease to so act.

(9) Where a person is a member of a foundation council, this section and section 15 shall apply to that person until —

(a) the discharge of that person as a member of the foundation council in accordance with the charter or the articles (if any);

(b) the foundation ceases to be registered under this Act;

(c) the winding up or dissolution, as the case may be, of the foundation;

(d) the mental incapacitation, the death or bankruptcy of the member; or

(e) the occurrence of any other event which disqualifies the person from being a member,

whichever event occurs first, whereupon he shall cease to be a member of the council.

(10) Where for the time being no foundation council is appointed to a foundation or the number of members appointed is less than that required by the charter or this Act, application may be made to the court by a founder, an officer or a member of the foundation council or some other supervisory person, for the appointment by the court of one or more persons to be members of the foundation council for the purpose of complying with the requirements of the charter or this Act.

(11) Where the court is satisfied that —

(a) an application made under subsection (10) or (12) is well founded; and

(b) without the order of the court the requirements of the charter or this Act in respect of the appointment will not be met,

the court may appoint one or more fit and proper consenting persons who comply with this section as a member of the foundation council.

(12) Where a foundation council or member of a foundation council has failed to comply with subsection (5) or (7) or has failed to carry out, or failed to carry out properly, the duties required of him in fulfillment of his obligations under the charter or articles (if any) or this Act, on an application to the court by a founder, an officer or a member of the foundation council or some other supervisory person or a beneficiary, the court may order the removal of that person and the appointment of a fit and

proper consenting person who complies with this section as a member of the foundation council.

(13) The provisions of the charter and this Act in respect of members of a foundation council shall apply to a person appointed as such in accordance with subsection (11) or (12) as they apply to a member appointed in any other way provided for in this Act.

(14) Notwithstanding that a person has ceased to be a member of a foundation council, any liability to the foundation which he may have incurred in such capacity shall continue to be a liability enforceable against him by the foundation.

(15) Where provision is made in the charter or the articles (if any) for the appointment of some other supervisory person or persons or governing body, the provisions of this section, section 11(6) and section 15 shall apply *mutatis mutandis*, subject to the charter, to that appointment and that person or persons or governing body.

(16) When a foundation has a governing body or a supervisory person in lieu of a foundation council, all references in this Act to a foundation council shall be deemed to include such governing body or supervisory person. *31 of 2007, s. 9.*

Duties, etc. of foundation council.

15. (1) The council of a foundation shall —

(a) take such action as it may deem necessary to ensure compliance by the foundation and the officers with the provisions of —

(i) the charter and the articles (if any); and

(ii) this Act;

(b) supervise generally the management and conduct of the foundation by the officers.

(2) The foundation council shall, as against the officers, represent the foundation and, subject to subsection (3), for the purpose of ensuring compliance with the terms of the charter and the articles (if any) and the provisions of this Act, the officers of the foundation shall act in accordance with the instructions of the foundation council.

(3) Subject to subsections (1) and (2), the charter or the articles (if any) may specify the powers of the foundation council and provide for powers in addition to those provided for in this Act.

(4) The foundation council shall have the powers of an auditor contained in section 16(9) in respect of access to the books, records and accounts and vouchers of the foundation.

(5) In addition to the rights of the foundation council provided for in the charter or the articles (if any) or elsewhere in this Act, the foundation council shall have the right —

(a) to be informed of all meetings of the officers;

(b) to attend and be heard but not to vote at such meetings;

(c) where any business of a foundation is conducted by —

(i) the circulation of documents, to be included in the circulation of documents at the time that they are circulated to the officers;

(ii) the delegation of powers to an officer, to be informed of the terms and any exercise of the delegation.

(6) References in subsections (4) and (5) to the foundation council apply to the members of a foundation council acting jointly and severally.

(7) A member of a foundation council shall exercise reasonable care and skill in performing his duties and exercising his powers.

31 of 2007, s. 10.

(8) In the absence of any officers of the foundation other than the foundation agent, the foundation council shall perform the duties and may exercise the powers of the officers prescribed in the Act.

Appointment and qualification of auditor, etc.,

16. (1) Where —

(a) there is provision in the charter for the appointment of an auditor, the founder or the officers shall in accordance with that provision, and in any case within one month of the registration of the foundation; or

(b) there is provision in the charter for the appointment of an auditor and —

(i) no appointment has been made in accordance with paragraph (a); and

(ii) there is a foundation council appointed, the foundation council shall in accordance with that provision; or

(c) there is no provision in the charter for the appointment of an auditor and there is a foundation council or some other supervisory person appointed, the foundation council or the other supervisory person may,

appoint a person satisfying the requirements of this section in respect of auditors as an auditor, in accordance with that provision, and the person so appointed shall hold office as auditor unless he is removed or resigns in accordance with this section and the charter.

(2) Where, because of the removal of an auditor or his resignation or for some other reason, there is no auditor appointed in respect of a foundation —

(a) if there is a requirement in the charter that an auditor be appointed, the foundation council, or where there is no foundation council, the officers shall no later than one month from the date on which there ceased to be an auditor appointed; and

(b) if there is no requirement in the charter that an auditor be appointed, the foundation council may,

appoint as an auditor a person satisfying the requirements of this section.

(3) Where there is a requirement under the charter or by virtue of a decision of the foundation council that an auditor be appointed and —

(a) an appointment of an auditor is not made in accordance with subsection (1) or (2), as the case may be; or

(b) it appears to the foundation council or any officer that the auditor appointed —

(i) does not satisfy the requirements of this section; or

(ii) is not fulfilling his functions in accordance with this section,

then on the application of an officer or the foundation council to the court, the court may appoint an auditor to the foundation or order the removal of an auditor and the appointment of a new auditor.

(4) The remuneration of the auditor shall be determined by the foundation council except that —

(a) the remuneration of an auditor appointed before the registration of the foundation may be determined by the founder, or, where the foundation charter is a will, an executor of that will or an administrator appointed under section 5(6);

(b) where an auditor is appointed by virtue of a requirement in the charter the remuneration of that auditor shall be determined by the officers;

(c) where an auditor is appointed by the court the remuneration of that auditor shall be determined by the court.

(5) The appointment of a person as an auditor is personal to that person and may not be assigned by him.

(6) An auditor who intends to cease acting as auditor or cease to comply with any of the requirements of this section shall give notice in writing of either such event —

(a) to the foundation;

(b) where he is appointed by the foundation council, to the foundation council and the foundation; or

(c) where he is appointed by the court, to the foundation and the court,

and such notice shall be given no later than 7 days before the auditor intends to cease to so act or ceases to so comply.

(7) Where an auditor is appointed in relation to a foundation, the provisions of this section shall apply to that auditor until —

(a) the termination of his appointment in accordance with the charter and this Act;

(b) the expiration of a period of seven days after the date on which notice is served under subsection (6);

(c) the foundation ceases to be a foundation registered under this Act;

(d) the winding up or dissolution, as the case may be, of the foundation;

(e) the death or bankruptcy of the natural person being the auditor;

(f) the winding up or dissolution, as the case may be, of the firm being the auditor; or

(g) the occurrence of any event which disqualifies the person from acting as auditor,

whichever event occurs first, whereupon the auditor shall cease to be the auditor of the foundation.

(8) The auditor shall within four months of the end of the financial year of any foundation examine the accounts of the foundation and make a report to the foundation council, or, in the absence of a foundation council, to the officers, and the report shall state —

(a) whether or not he has obtained all the information and explanations he has required; and

(b) whether, in his opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the foundation affairs according to the best of his information and the explanations given to him, and as shown by the books of the foundation.

(9) The auditor shall have a right of access at all times to the books, records, accounts and vouchers of the foundation, and shall be entitled to require from the officers of the foundation such information and explanation as may be necessary for the performance of the duties of the auditor.

(10) The auditor shall be entitled to attend any meeting of the officers of the foundation at which any accounts which have been examined or reported on by him are to be laid before the meeting and to make any statement or explanation he desires with respect to the accounts.

(11) The auditor shall not be under a duty of confidentiality such as to preclude him from disclosing —

(a) to any member of the governing body information obtained from another member of the governing body of the foundation; and

(b) to persons assigned auditing functions in the charter information he has obtained in the course of his duties under this section.

(12) In the event of a dispute between an auditor of a foundation and a governing body of a foundation concerning the interpretation and application of statutory

requirements as well as of the charter and the articles (if any), or concerning his appointment or the termination thereof or his remuneration, the auditor or the governing body may refer the matter to the court, which shall determine the matter.

PART IV
NAME

Restriction on registration of foundations by certain names.

17. (1) No proposed foundation shall be registered by a name —

(a) which includes —

(i) "limited" or an abbreviation of "limited";

(ii) "company" or an abbreviation of "company";

(iii) "partnership" or an abbreviation of "partnership";

(iv) a translation of any words conveying a similar meaning to "limited", "company" or "partnership" in the language or practice of any other country; or

(v) an abbreviation of any such translation as is referred to in sub-paragraph (iv);

(b) which is the same as or similar to the name of an existing Bahamian company, partnership, foundation or other body, except where such company, partnership, foundation or other body is in the course of being dissolved and signifies its consent in such manner as the Registrar requires;

(c) which is the same as or similar to the name of an existing Bahamian company, partnership, foundation or other body, except where such company, partnership, foundation or other body signifies its consent in such manner as the Registrar requires;

25 of 1989.

(d) which is the same as or similar to a business name registered under the Registration of Business Names Act[3];

(e) the use of which by the foundation would in the opinion of the Registrar constitute a criminal offence;

[3]This Act was repealed by the Business Licence Act (No. 25 of 2010) – now Ch. 329.

(f) which in the opinion of the Registrar is offensive;

(g) which contains "Chamber of Commerce"; or

(h) which contains "Bank", "Co-operative", "Building Society", "Insurance", "Stock Exchange" or "Trust" or such other word or expression as in the opinion of the Registrar suggests or is calculated to suggest an activity to which section 4 (5) (a) refers.

(2) Except with the consent of the Registrar a proposed foundation shall not be registered by a name which contains the words "Royal" or "Imperial" or "Empire" or "Windsor" or "Crown", or which in the opinion of the Registrar suggests, or is calculated to suggest, the patronage of Her Majesty or of any member of the Royal Family.

(3) Except with the consent of the Registrar a proposed foundation shall not be registered by a name which —

(a) contains the word "Bahamas", or in the opinion of the Registrar is calculated to suggest a connection with the Government of The Bahamas or any department thereof;

(b) contains the words "Municipal" or "Chartered" or in the opinion of the Registrar suggests, or is calculated to suggest, connection with any municipality or other local authority or with any society or body incorporated by Royal Charter; or

(c) in the opinion of the Registrar is undesirable.

(4) In determining for the purposes of subsection (1) (b) or (c) whether one name is the same as another or so similar to as may in the opinion of the Registrar result in confusion between names, there are to be disregarded —

(a) the definite article, where it is the first word of the name;

(b) "Foundation" where that word appears at the end of a name; and

(c) type and case of letters, accents, spaces between letters and punctuation marks,

and "and" and "&" are to be taken as the same.

(5) The Registrar may reserve names for prospective foundations for such period or periods as he shall in his absolute discretion deem appropriate.

(6) The Registrar shall enter the names of all foundations in the Register.

Change of name.

18. (1) A foundation may, if permitted to do so by its charter and as provided for in section 50, change its name.

(2) Where a foundation changes its name, the Registrar shall enter the new name in the Register in place of the former name, and shall issue a certificate of registration altered to meet the circumstances of the case.

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

(4) The provisions of section 17 shall apply in respect of the name to which the foundation proposes to change as they apply to the name by which it was first registered.

Power to require foundation to change name.

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

(a) is the same as or, in the opinion of the Registrar, too similar to a name appearing at the time of registration in the Register;

(b) is the same as or, in the opinion of the Registrar too similar to the name which should have appeared in the Register at that time; or

(c) in the opinion of the Registrar is undesirable,

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

(2) Section 17 (4) applies in determining under subsection (1) whether the name is the same as or too similar to another.

(3) If it appears to the Registrar that —

(a) misleading information has been given for the purpose of the registration of a proposed foundation with a particular name; or

(b) undertakings or assurances have been given for that purpose and have not been fulfilled,

within two years of the date of the registration of the foundation with that name he may direct in writing the foundation to change its name within such period as he may specify.

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

(5) Section 17 applies to any name to which a foundation may change under this section.

Misleading name.

20. (1) If, in the Registrar's opinion, the name by which a foundation is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public he may direct the foundation to change its name.

(2) A direction made under subsection (1) shall, if not duly made the subject of an application to the court under the following subsection, be complied with within a period of six weeks from the date of the direction or such longer period as the Registrar may see fit to allow.

(3) A foundation may, within a period of three weeks from the date of a direction made under subsection (1), apply to the court to set aside the direction, and the court may set the direction aside or confirm it and, if it confirms it, the direction shall specify the period within which the foundation shall comply with the direction.

(4) Section 17 applies to any name to which a foundation may change under this section.

PART V
REGISTRATION

Registration of foundation.

21. (1) The following documents together with an application for registration shall be delivered to the Registrar, who shall retain and file in the Register —

(a) a statement signed by the foundation agent (if appointed) or the secretary (if appointed) to the foundation or the attorney at law engaged in the formation of the foundation, containing the following particulars extracted from the charter —

(i) the name of the foundation;

(ii) the date of the charter and the date of any amendment made prior to the submission of the statement to the Registrar;

31 of 2007, s. 11.

(iii) the foundation's purpose or purposes and objects;

(iv) the date of the foundation's articles (if any) and the date of any amendment made prior to the submission of the statement to the Registrar;

31 of 2007, s. 11.

(v) the name and address of the secretary (if appointed) and/or the foundation agent (if appointed) to the foundation;

(vi) the address of the foundation's registered office;

(vii) the period for which the foundation is established;

(viii) the value of the foundation's initial assets and the statement in the foundation's charter that the foundation may not have assets with a total value of less than B$10,000.00 or US$10,000.00 or the equivalent in any other currency;

(ix) such other particulars as the secretary or the attorney at law shall in his absolute discretion wish to include in the statement;

(b) a list containing the names and addresses of the foundation's first officers;

31 of 2007, s. 11.

(c) a statutory declaration by the secretary (if appointed) or the foundation agent (if appointed) to the foundation or attorney at law engaged in the formation of the foundation of compliance with all relevant requirements of this Act, upon which the Registrar shall be entitled to rely as sufficient evidence of that compliance.

(2) The documents mentioned in subsection (1) shall be accompanied by the prescribed fee.

(3) The foundation's charter and articles (if any) may, but need not be, delivered to the Registrar, who shall retain and file same in the Register upon payment of the prescribed fee.

31 of 2007, s. 11.

(4) The secretary or the foundation agent shall, within thirty days of their being effected, notify the

Registrar in writing of any changes in the information which may have been filed at the Registry pursuant to subsection (1)(a) or (b) hereof.

Effect of registration.

22. (1) On the registration of the documents and payment of the fee required to be delivered by section 21 in respect of a proposed foundation the Registrar shall certify that the foundation is registered as a foundation, specifying the number with which it is registered.

(2) From the date of registration mentioned in the certificate of registration the foundation shall be a legal person by the name contained in the charter, capable forthwith of exercising all the functions of a foundation.

Conclusiveness of certificate of registration.

23. A certificate of registration given by the Registrar in respect of any foundation shall be conclusive evidence that the foundation is a foundation capable of being registered and is duly registered under this Act.

Effect of charter and articles.

24. Subject to the provisions of this Act, the charter and the articles (if any) shall, when duly and properly executed, bind the foundation to the same extent as if they had been signed by any person who subsequently endows assets to the foundation, is appointed as an officer, or is appointed as a member of a foundation council or other similar governing body, and contained covenants on the part of each such person to observe all the provisions of the charter and of the articles (if any).

Pre-registration actions.

25. (1) Where —

(a) prior to the date of registration mentioned in the certificate of registration of a proposed foundation, any action has been carried out in the name of that foundation and purportedly by or on behalf of that foundation; and

(b) that foundation is not precluded from doing so by its charter or articles (if any),

the foundation may after that date by resolution of the officers ratify that action, and that action shall then be deemed to be the action of the foundation and the foundation shall be entitled to the benefit of that action, shall be liable in respect of that action, and any failure to take any steps necessary to give effect to that ratification shall be a failure by the foundation.

(2) Except where a foundation has not ratified that action as provided for in subsection (1) or there is an agreement to the contrary, an action carried out in the

name of a foundation and purportedly by or on behalf of that foundation prior to the date of registration mentioned in the certificate of registration of that foundation shall be the action of the person or persons by whom it was carried out and that person or those persons shall be jointly and severally liable in respect of that action and shall be entitled to the benefit of that action.

PART VI
CAPACITY

Limitation on the capacity of a foundation.

26. (1) The validity of an act done by a foundation shall not be called into question on the ground of lack of capacity by reason of anything in the charter.

(2) A member of a governing body of a foundation or a beneficiary may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the capacity of the foundation, save that no such proceedings shall lie in respect of an act to be done in fulfillment of a legal obligation arising from a previous act of the foundation.

(3) It remains the duty of the officers of a foundation to observe any limitations on their powers flowing from the charter and action by the officers which but for subsection (1) would be beyond the capacity of the foundation may only be ratified by the foundation —

(a) where there is a foundation council or other supervisory person or persons, by a unanimous resolution of the foundation council or those other person or persons; or

(b) in any case by a resolution signed by all the officers for the time being.

(4) A resolution ratifying an action by the officers beyond the capacity of the foundation shall not affect any liability incurred by the officers or any other person and relief from any such liability shall be agreed to separately by resolution of the foundation council or other supervisory person or persons.

Power of officers to bind the foundation.
31 of 2007, s. 12.

27. (1) In favour of a person dealing with a foundation in good faith, the power of the officers or the foundation council to bind the foundation, or authorise others to do so, may be assumed.

(2) Subject to subsection (3), subsection (1) shall not affect any right of any member of a governing body of

a foundation or of the foundation to bring proceedings to restrain the doing of an act which is beyond the powers of the officers.

(3) No such proceedings as are referred to in subsection (2) shall lie in respect of any act to be done in fulfillment of a legal obligation arising from a previous act of a foundation.

(4) Subsection (1) shall not affect any liability incurred by the officers of a foundation or any other person, by reason of the exceeding of their powers by the officers.

No duty to enquire as to capacity. *31 of 2007, s. 13.*

28. A party to a transaction with a foundation is not bound to enquire as to whether the transaction is a transaction permitted by the charter or the articles (if any) of the foundation or as to any limitation on the powers of the officers or the foundation council to bind the foundation or to authorise others to do so.

Execution of contracts, deeds, instruments and other documents. *31 of 2007, s. 14.*

29. (1) A foundation may, but need not, have a seal for use in The Bahamas and, unless otherwise permitted by the charter or the articles (if any), where it has such a seal, the seal shall be affixed in the presence of and witnessed to by an officer, the foundation council or other authorized signatory of the foundation.

(2) Contracts, deeds, instruments or other documents on behalf of a foundation may be made as follows —

(a) a contract which, if made between natural persons, would by law be required to be in writing and under seal may be made on behalf of the foundation in writing —

(i) if the foundation has a seal for use in The Bahamas, under that seal; or

(ii) signed by the authorised signatories of the foundation, each signing or under the seal of the signatory, as the case may be;

(b) a contract, instrument or other document which if made between natural persons would by law be required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the foundation in writing signed by the authorised signatories;

(c) a contract which if made between natural persons would by law be valid although made

by parol only, and not reduced into writing, may be made by parol on behalf of the foundation by any person acting under an express authority.

(3) A contract, deed, instrument or other document made according to this section shall be effectual in law, and shall bind a foundation and all other parties thereto.

(4) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

(5) Where a foundation executes a deed, instrument or other document, whether or not the foundation has a seal, it shall be sufficient and the foundation and any other party to that deed, instrument or document shall be bound if that deed, instrument or other document is signed by the authorised signatories of the foundation intending it to be executed by way of a deed.

(6) A foundation may, by writing —

(a) if the foundation has a seal for use in The Bahamas, under that seal; or

(b) signed by the authorised signatories of the foundation, each signing or under the seal of the signatory, as the case may be,

empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds, instruments or other documents on its behalf in any place outside The Bahamas.

(7) A deed, instrument or other document signed by an attorney appointed according to subsection (6) for and on behalf of a foundation —

(a) if he has a seal, under that seal; or

(b) signed by him or, where the attorney is a legal person, the authorised signatories of the attorney,

shall bind the foundation and have the same effect as if the deed, instrument or other document had been sealed or signed as provided for in subsection (2).

(8) A foundation may have for use in any territory, district or place outside The Bahamas, an official seal, which —

(a) if the foundation has a seal for use in The Bahamas, shall be a facsimile of that seal; or

(b) if the foundation does not have a seal for use in The Bahamas, shall bear the name of the foundation engraved in legible characters,

with the addition on its face of the name of every territory, district or place where it is to be used.

(9) Where a foundation executes a deed, instrument or other document outside The Bahamas, whether or not the foundation has an official seal for use in the territory, district or place outside The Bahamas, it shall be sufficient and the foundation shall be bound if that deed, instrument or document is signed by the authorised signatories of the foundation intending it to be executed by way of a deed.

(10) A foundation having an official seal for use in any territory, district or place outside The Bahamas may, by —

(a) resolution of the officers; or

(b) writing, sealed or signed as provided for in subsection (2),

authorise any person appointed for the purpose in that territory, district or place, to affix the official seal to any deed or other document to which the foundation is party in that territory, district or place.

(11) The authority of a person appointed in accordance with subsection (10) shall, as between a foundation and any person dealing with that person, continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the person's authority has been given to the person dealing with him.

(12) The person affixing any official seal outside of The Bahamas shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed, the date on which and the place at which it is affixed.

(13) The signature of an officer when acting on behalf of a foundation shall be prefixed by the statement that he is so acting.

(14) A document or proceeding requiring authentication by a foundation may be signed by the authorised signatories of the foundation.

30. (1) Every foundation — Publication of name by foundation.

(a) shall have its name engraved in legible characters on any seal; and

(b) shall have its name mentioned in legible characters in all notices, advertisements and other official publications of the foundation, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the foundation, and in all bills of parcels, invoices, receipts and letters of credit of the foundation.

(2) If a foundation fails to comply with paragraph (a) or paragraph (b) of subsection (1), the foundation is in default.

(3) An officer of a foundation or any person on its behalf who —

(a) uses or authorises the use of any seal purporting to be a seal of the foundation on which its name is not engraved as required by subsection (1) (a); or

(b) issues or authorises the issue of any notice, advertisement or other official publication of the foundation, or signs or authorises to be signed on behalf of the foundation any bill of exchange, promissory note, endorsement, cheque or order for money or goods, in which its name is not mentioned as required by subsection (1) (b); or

(c) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the foundation, in which its name is not mentioned as required by subsection (1) (b),

is in default and is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods, for the amount thereof, unless it is duly paid by the foundation.

Particulars to be shown on letter heads, etc.

31. (1) Every foundation shall have the following particulars mentioned in legible characters in all business letters, order forms and receipts for goods and services of the foundation, that is to say, its legal name, the place of registration of the foundation and the number with which it is registered, and the address of its registered office.

(2) If a foundation fails to comply with the requirements of this section, or the foundation or any

person on its behalf issues or authorises the issue of any business letter, order form or receipt for goods or services not complying with this section, such foundation and person is in default.

Disclosure by members of governing bodies, etc.

32. (1) Subject to the provisions of this section, it shall be the duty of an officer of a foundation who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the foundation —

(a) to declare the nature of his interest at a meeting of the officers of the foundation; and

(b) to advise the foundation council or other supervisory person or persons of his interest.

(2) In the case of a proposed contract the declaration required by this section to be made by an officer of a foundation shall be made at the meeting of the officers at which the question of entering into the contract is first taken into consideration, or if the officer was not at the date of that meeting interested in the proposed contract, at the next meeting of the officers held after he became so interested, and in a case where the officer becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the officers held after the officer becomes so interested.

(3) For the purpose of this section, a general notice given to the officers of a foundation by an officer to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) Where a foundation has no foundation council, any contract made between the foundation and an officer, other than a contract to serve the foundation, shall require the written approval of all the other officers.

(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting officers of a foundation from having any interest in contracts with the foundation.

(6) This section shall apply to a foundation council and any other supervisory person of a foundation as if references to such a person are substituted for the references to an officer.

Provisions as to liability of members of governing bodies, etc. *31 of 2007, s. 15.*

33. (1) No officer of a foundation shall be personally responsible for any liability of a foundation unless such liability shall have been incurred as a result of his own gross negligence, willful default or misconduct, fraud or dishonesty, except that in the case of a foundation agent he shall only be personally liable where he commits a fraudulent act.

(2) Subject to subsection (3), any provision, whether contained in the charter or the articles (if any) or in any contract with the foundation or otherwise, for exempting any officer of the foundation from or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, misconduct or breach of duty of which he may be guilty in relation to the foundation shall be void.

(3) Notwithstanding anything contained in this section, a foundation may, in pursuance of any such provision as is referred to in subsection (2), indemnify any such officer against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under subsections (4) to (6) in which relief is granted to him by the court.

(4) If, in any proceedings for negligence, default, misconduct or breach of duty against an officer of a foundation, it appears to the court that such person is or may be liable in respect of the negligence, default, misconduct or breach of duty, but that he has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, misconduct or breach of duty, the court may relieve him, either wholly or partly, from his liability on such terms as the court thinks fit.

(5) Where an officer of a foundation has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, misconduct or breach of duty, he may apply to the court for relief, and the court on any such application shall have power to grant him relief in respect of such negligence, default, misconduct or breach of duty.

(6) Where any case to which subsection (4) applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

(7) This section shall apply to a foundation council, council member, any other supervisory person and an auditor, of a foundation as if references to such a person are substituted for the references to an officer.

PART VII
MEETINGS

Meetings of officers.

34. (1) Every foundation may, whenever it sees fit, hold a meeting of the officers.

(2) The officers present at the meeting shall be at liberty to discuss any matter relating to the business of the foundation, whether previous notice has been given or not, but no resolution of which notice has not been given may be passed.

(3) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given, either before or subsequently to the former meeting may be passed, and the adjourned meeting shall have the same powers as an original meeting.

13 of 2005, s. 3.

(4) In lieu of passing resolutions at formal meetings, resolutions may be consented to in writing by a simple majority of those officers entitled to vote at a meeting or by such larger majority of such officers as may be specified in this Act or the charter or articles (if any) of the foundation.

13 of 2005, s. 3.

(5) Where a foundation has a sole officer, resolutions may be passed by such officer consenting to the same in writing.

Annual meeting of officers.
31 of 2007, s. 16.

35. (1) Every foundation shall in each year, hold at least one meeting of the officers as its annual meeting in addition to any other meeting that year, and shall specify the meeting as such in the notices calling it.

(2) The founder or founders and the members of the foundation council and any other supervisory person shall

be entitled to be notified of the meeting, table business to be considered at the meeting, and attend and be heard at the meeting, but shall not be entitled to vote at such a meeting.

Convening of meeting of officers on requisition.

36. (1) The officers of a foundation, notwithstanding anything in the articles (if any) of the foundations, shall, on the requisition of a founder or the foundation council or any other supervisory person, forthwith proceed duly to convene a meeting of the officers of the foundation.

(2) The requisition shall state the objects of the meeting, be signed by the requisitionist and be deposited at the registered office of the foundation.

(3) If the officers of a foundation do not within twenty-one days from the date of the deposit of the requisition proceed duly to convene a meeting, the requisitionist may himself convene a meeting, but any meeting so convened shall not be held after the expiration of sixty days from the said date.

(4) A meeting convened under this section by the requisitionist shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by officers.

(5) Any reasonable expenses incurred by the requisitionist by reason of the failure of the officers duly to convene a meeting shall be repaid to the requisitionist by the foundation, and any sum so repaid shall be retained by the foundation out of any sums due or to become due from the foundation by way of fees or other remuneration in respect of their services to such of the officers as were in default.

Provisions as to meetings and votes.

37. The following provisions shall have effect in so far as the charter or the articles (if any) of a foundation do not make other provision in that behalf —

(a) a meeting of a foundation may be called by seven days' notice in writing;

(b) notice of the meeting of a foundation shall be served on every officer, founder, member of the foundation council or other supervisory person in writing in person by post, by fax or electronically at the address last supplied to the foundation for the purpose of serving any notice;

(c) two or more officers of the foundation may call a meeting;

(d) a quorum shall be at least two officers where the foundation has two or more officers;

(e) the officers present shall elect from their number a chairman;

(f) the officers shall pass resolutions subject to the requirements of section 53 in respect of winding up, by a simple majority of the votes cast by the officers, each officer having one vote and the chairman having a casting vote in case of an equality of votes.

Minutes of proceedings of meetings.

38. (1) Every foundation shall cause minutes of all proceedings at meetings of officers to be entered in books kept for that purpose.

(2) Any such minute as is provided for in subsection (1), if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes have been made in accordance with the provisions of this section of the proceedings at any meeting of the officers of a foundation, then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had.

Inspection of minute books.

39. (1) The books containing the minutes or copies of the minutes of proceedings of any meeting of the officers of a foundation shall be kept at the registered office of the foundation, and shall during business hours be open to the inspection of any founder, officer, member of the foundation council, other supervisory person or the Attorney-General without charge.

(2) Any person entitled to inspect the books of minutes of proceedings shall be entitled to be furnished, within seven days after he has made a request in that behalf to the foundation, with a copy of any such minutes without charge.

(3) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the foundation and every officer is in default.

(4) In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of meetings or direct that the copies required shall be sent to the persons requiring them.

Meetings of members of foundation council.

40. (1) The following provisions shall have effect in so far as the charter or the articles (if any) of a foundation do not make other provision in that behalf —

(a) a meeting of the foundation council may be called by seven days' notice in writing;

(b) notice of the meeting of a foundation council shall be served on every founder and member of the foundation council in writing in person, by post, by fax or electronically at the address last supplied to the foundation for the purpose of serving any notice;

(c) one member of the foundation council may call a meeting;

(d) a quorum shall be at least two members where the foundation council consist of two or more members;

(e) the members present shall elect from their number a chairman;

(f) the members shall pass resolutions subject to the requirements of section 53 in respect of winding up, by a simple majority of the votes cast by the members, each member having one vote and the chairman having a casting vote in case of an equality of votes.

(2) Minutes of all proceedings at meetings of the foundation council shall be entered in books kept for that purpose.

(3) Any such minute as is provided for in subsection (2), if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

(4) Where minutes have been made in accordance with the provisions of this section of the proceedings at any meeting of the foundation council then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had.

(5) The books containing the minutes of proceedings of any meeting of the foundation council shall be kept at the registered office of the foundation, and shall during business hours be open to the inspection of any founder, officer, member of the foundation council, other supervisory person or the Attorney-General without charge.

(6) Any person entitled to inspect the books of minutes of proceedings shall be entitled to be furnished, within seven days after he has made a request in that behalf to the foundation, with a copy of any such minutes without charge.

(7) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, a foundation, every member of the foundation council and every officer are in default.

(8) The foregoing provisions shall also apply *mutatis mutandis* to meetings of other governing bodies.

(9) In lieu of passing resolutions at formal meetings, resolutions may be consented to in writing by a simple majority of those persons entitled to vote at a meeting or by such larger majority of such persons as may be specified in this Act or the charter or articles (if any) of the foundation. *13 of 2005, s 4.*

(10) Where a foundation has a sole protector, foundation council or other governing body, resolutions may be passed by such party consenting to same in writing. *13 of 2005, s. 4.*

Rights of a beneficiary. *31 of 2007, s. 17.*

41. (1) A beneficiary of a foundation who has a vested interest in the assets of the foundation shall have the right to request from the officers or the foundation council of the foundation information or documents pertaining to his interest and shall in particular be entitled —

(a) to receive on request information from the foundation in respect of the fulfillment of the objects of the foundation;

(b) on request to inspect and copy in respect of the foundation —

(i) the charter and any amendment thereto;

(ii) any articles of the foundation and any amendment thereto;

(iii) any audit report, including any special audit report, books of account, any report on the

financial position of the foundation and the annual accounts.

(2) The information or documents referred to in subsection (1) shall also include —

(a) all documents relating to his vested interest in which the terms of the foundation or any exercise of power or discretion are to be found; and

(b) all financial statements of the foundation as they relate to his interest.

(3) When disclosing any documents or information to any beneficiary or other person the officers or the foundation council shall —

(a) if other beneficiaries have requested confidentiality; or

(b) if the officers in their absolute discretion determine confidentiality to be in the best interests of such other beneficiaries,

take all reasonable steps to secure the right to confidentiality of the other beneficiaries by providing such beneficiary or other person only with such documents or information as shall enable that beneficiary's own true entitlement and actual interest or benefits under the foundation to be determined; such documents and information may include copies or certified extracts of the foundation instrument or other documents and copies of advices or statements from which the names and interests of other beneficiaries have been edited or deleted in order to preserve the confidentiality to which such other beneficiaries are entitled.

(4) A request to receive information or inspect documents referred to in subsection (1) shall be made in writing.

(5) In the event that a foundation does not comply with a request for information falling within paragraph (a) of subsection (1) or does not make documents available for inspection in accordance with paragraph (b) of that subsection within a reasonable time, the court may, upon application by the beneficiary, order —

(a) provision of the information requested; and

(b) inspection of the document, if appropriate, by a person professionally qualified to assess the information therein contained and report to the

beneficiary by whom the application to the court was made.

(6) A person who, being an officer of a foundation or a member of a foundation council, fails to take all reasonable steps to secure compliance by the foundation with the requirements of this section, or by his own wilful act been the cause of any default by the foundation hereunder, is himself in default.

PART VIII
FINANCIAL

Keeping of books of account. *48 of 2011, s. 2*

42. (1) A foundation shall cause reliable accounting records to be kept in relation to —

(a) all sums of money received and expended by the foundation and the matter in respect of which such receipt and expenditure takes place, inclusive of all sales, purchases and other transactions;

(b) the assets and liabilities of the foundation.

(2) For the purposes of subsection (1), accounting records shall —

(a) correctly explain all transactions;

(b) enable the financial position of the foundation to be determined with reasonable accuracy at any time;

(c) allow financial statements to be prepared; and

(d) include the underlying documentation, including invoices, contracts and receipts, necessary to facilitate (a), (b) and (c).

48 of 2011, s. 2.

(3) Accounting records maintained pursuant to this section shall be kept for a minimum period of five years from the date of the transaction to which such records relate.

(4) Such financial statements, accounts and records of a foundation shall be kept at the registered office of the foundation or at such other place as the officers think fit, and shall at all times be open to inspection by the officers, the foundation council or any other supervisory person and the auditor (if any).

48 of 2011, s.2.

(5) A person who, being an officer of a foundation, fails to take all reasonable steps to secure compliance by the foundation with the requirements of this section, or has

by his own wilful act been the cause of any default by the foundation thereunder, is himself in default.

Income and expenditure account and balance sheet. *31 of 2007, s. 19.*

43. The officers of a foundation shall (unless waived in writing by the foundation council or other supervisory person) at some date not later than eighteen months after the registration of the foundation and subsequently once at least in every calendar year lay before the foundation at a meeting an income and expenditure account for the period, in the case of the first account, since the registration of the foundation, and, in any other case, since the preceding account made up to a date not earlier than the date of the meeting by more than three months.

31 of 2007.

44. *Repealed.*

31 of 2007.

45. *Repealed.*

31 of 2007.

46. *Repealed.*

31 of 2007.

47. *Repealed.*

Right to receive copies of balance sheets and auditor's report. *31 of 2007, s. 21.*

48. Any founder, officer or member of the foundation council or other supervisory person shall be entitled to be furnished, within seven days after he has made a request to the foundation, with a copy of the financial statements, accounts, record and auditor's reports, if any, at no charge and, if default is made in furnishing such a copy, the foundation is in default.

Special audit.

49. (1) Where, on an application by a founder, an officer, the foundation council, any other supervisory person, a beneficiary, the Registrar or the Attorney-General to the court, the court is satisfied that there is *prima facie* evidence of a failure to comply with the charter or the articles (if any) or the requirements of this Act in the conduct of a foundation, the court may order the appointment of a special auditor and the carrying out of a special audit of the foundation.

(2) The appointment of a special auditor under subsection (1) may be made conditional on the lodging by the applicant with the court of an amount, to be determined by the court, by way of security for the costs of carrying out the special audit.

(3) The provisions of section 16 in respect of access to information shall apply to a person appointed under this section.

(4) The auditor appointed under this section shall submit his report to the court within such time as the court may determine.

(5) If, in the opinion of the court the report of the auditor is evidence of the failure complained of, or any other serious failure to comply with the charter or the articles (if any) or the requirements of this Act in the conduct of a foundation, the court shall make such orders as it thinks fit for the purpose of maintaining the objects of the foundation.

(6) The court shall make such order as to costs as it thinks fit, taking into account whether or not the application was well founded, and where the application was not well founded the court may order that any loss or cost occasioned to the foundation by the special audit be met by the applicant.

PART IX

AMENDMENT AND DISSOLUTION

Revocation and amendment of charter.
31 of 2007, s. 22.

50. (1) Subject to section 6(2)(l), where there is provision in the charter of a foundation that the charter may be revoked, the founder or, where there is more than one founder, the founders acting jointly and unanimously, or, if one founder dies prior to the registration of the foundation, the remaining founder or founders, or, when so empowered in the charter, the foundation council may revoke the charter.

(2) Subject to subsections (3) and (4), the charter of a foundation may be amended before the registration of the foundation.

(3) Where there is more than one founder of a proposed foundation, in the event that, before registration, one founder withdraws —

(a) the charter shall not be revoked;

(b) the charter may be amended only in accordance with the objects stated in the charter, to the extent necessary to take account of the withdrawal of the particular founder or in accordance with subsection (5), and the amendment shall be in the same form as the charter and signed by the same person or persons who signed the charter and the secretary or be notarised and form part of the charter.

(4) Where there is one founder of a proposed foundation, or there is only one remaining founder, in the event that before registration that founder withdraws —

(a) the charter shall not be revoked;

(b) the charter may be amended only in accordance with the objects stated in the charter, to the extent necessary to permit compliance with the provisions of section 21, or in accordance with subsection (6), and the amendment shall be in the same form as the charter and signed by the same person or persons who signed the charter and the secretary or be notarised and form part of the charter.

(5) The procedure referred to in subsection (3)(b) shall be as follows —

(a) the founder or founders, or the officers, shall convene a meeting of —

(i) the remaining founder or founders;

(ii) the officers or the persons identified as officers in the foundation charter; and

(iii) the foundation council, if any, or any other supervisory person, of the proposed foundation in accordance with the requirements of section 35;

(b) the resolution for amendment of the charter shall be adopted only if agreed to by all the remaining founders, and by any officer, or person identified as an officer, and any foundation council or any other supervisory person, who was nominated by or represented the interest of the founder who has withdrawn and such a person shall consent to the resolution if he is satisfied that the amendment is in accordance with subsection (3)(b).

(6) The procedure referred to in subsection (4)(b) shall be as follows —

(a) the officers shall convene a meeting of —

(i) the officers, or the persons identified in the charter; and

(ii) the foundation council, if any, or any other supervisory person, of the proposed foundation in accordance with the requirements of section 35;

(b) the resolution for amendment of the charter shall be adopted only if agreed to by the officers, or persons identified as officers and the foundation council or all other supervisory persons,

and such persons shall consent to the resolution if satisfied that the amendment is in accordance with subsection (4)(b).

(7) After the registration of a foundation where, as provided for in section 6(2)(g), the charter of a foundation makes provision for the amendment of the charter after registration, the charter may be amended in accordance with that provision and the procedure contained in subsection (8).

(8) The procedure referred to in subsection (7) is as follows —

(a) the founders, or the officers, shall convene a meeting of the remaining founder or founders, the officers and the foundation council, if any, or any other supervisory person, of the foundation in accordance with the requirements of section 35;

(b) the resolution for amendment of the charter shall be adopted only if agreed to by all remaining founders and by the officers and the foundation council or all other supervisory persons.

(9) In the event that it is not possible to comply with the relevant provisions of this section in respect of the amendment of a charter of a foundation because —

(a) of the withdrawal of a founder;

(b) of a failure to reach agreement between the founders or the remaining founders; or

(c) no provision was made in the foundation charter for amendment of the charter after registration,

the officers of the foundation may resolve on such amendments as are necessary in the circumstances to maintain the objects of the foundation and shall submit the resolution containing such amendments to the court for approval.

(10) Where the charter of a foundation has been amended under subsection (3), (4) or (7), application may be made to the court for the amendment to be modified or cancelled and if an application is made under this

subsection, the amendment shall not have effect except in so far as it is confirmed by the court.

(11) Such an application as is provided for in subsection (10) may be made by a founder, an officer or a person identified as an officer, the foundation council or any other supervisory person, or an auditor, but an application shall not be made by any person who has consented to or voted in favour of the amendment.

(12) The application under subsection (10) shall be made within twenty-one days after the date on which the resolution altering the charter was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(13) The court may, on an application made by a foundation pursuant to subsection (10), make an order confirming the amendment either wholly or in part and on such terms and conditions as it thinks fit, and may —

(a) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the withdrawal of any dissentient founder or founders; and

(b) give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(14) The order of the court may (if the court thinks fit) provide for the withdrawal from the charter of any founder, and for the reduction accordingly of the capital of the foundation, and may make such alterations in the charter and articles (if any) as may be required in consequence of that provision.

(15) If the order of the court requires a foundation not to make any, or any specified, amendment to its charter the foundation or the founders and officers of the foundation shall not have power without the leave of the court to make any such amendment in breach of that requirement.

31 of 2007, s. 22.

(16) The validity of an amendment to the charter shall not be questioned on the ground that it was not authorised according to the provisions of this section except in proceedings taken under subsection (10) for the purpose before the expiration of twenty-one days under

subsection (12) after the date of the resolution in that behalf.

(17) Where an amendment is made in the charter every copy of the charter issued by or on behalf of the foundation or by any officer of the foundation after the date of the amendment shall be in accordance with the amendment.

(18) If, where any amendment has been made to the charter, the foundation and any officer of the foundation at any time after the date of the amendment issues or causes or permits to be issued any copies of the charter which are not in accordance with the amendment, such foundation and officer are in default.

31 of 2007, s. 22.

(19) A notice (signed by the foundation agent, the secretary or the foundation council, whichever is appropriate) containing details of the amendment of any of the particulars contained in the statement filed pursuant to section 21(1)(a) shall (within fourteen days of such amendment taking effect) be delivered to the Registrar, who shall retain and file the notice in the Register.

Power of foundation to re-domicile.

51. (1) This section shall apply to foundations —

(a) established outside The Bahamas in another country which are to be redomiciled in The Bahamas; and

(b) registered in The Bahamas which are to be redomiciled in another country.

(2) In this section "another country" means a country having regulation of foundations generally or reasonably compatible with the provisions of this Act.

(3) Subject to subsection (4), a foundation established under the laws of another country shall be entitled to redomicile as a foundation established and registered under this Act provided the laws of such country allow it to redomicile.

(4) A foundation established under the laws of another country may, if it will satisfy the requirements prescribed for a foundation by section 4 and any other relevant sections of this Act, redomicile in The Bahamas as a foundation established and registered under this Act by delivering to the Registrar —

(a) an application, written in the English language, duly signed by the foundation's officers or protector or their equivalent persons or body and

notarised and (where applicable) apostilled, requesting the Registrar to register the foundation under this Act;

(b) a statement and statutory declaration containing the particulars required by section 21 and also evidence satisfactory to the Registrar that the foundation is in good standing, all (where applicable) apostilled; and

(c) the prescribed fee specified in section 21.

(5) Sections 21, 22 and 23 shall apply *mutatis mutandis* to foundations redomiciled and registered under this section and such foundations shall, after they shall have been redomiciled and registered hereunder, be bound by this Act as if they were new foundations duly registered under this Act.

(6) From the time of the issue by the Registrar of a certificate of registration under section 22 —

(a) the foundation to which the certificate relates shall —

(i) be capable of exercising all powers of a foundation registered under this Act; and

(ii) no longer be treated as a foundation registered under the laws of the country from which it was redomiciled;

(b) all assets of the foundation, including *choses in action*, shall continue to be vested in the foundation;

(c) the foundation shall continue to be liable for all of its claims, debts, liabilities and obligations;

(d) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due and no cause existing, against the foundation or against any foundation council member or any officer or agent thereof, shall be released or impaired by its registration under this Act; and

(e) no proceedings, whether civil or criminal, then pending by or against the foundation or against any foundation council member or any officer or agent thereof, shall be abated or discontinued by its registration under this Act, but the proceedings may be enforced, prosecuted, settled or compromised by or against the foundation or against the foundation council

member or the officer or agent thereof, as the case may be.

(7) Subject to any limitations in its foundation charter or articles (if any), a foundation registered under this Act may redomicile and register under the laws of another country in the manner provided under those laws.

(8) A foundation registered under this Act that redomiciles and registers under the laws of another country, shall not cease to be a foundation registered under this Act unless the laws of the other country permit such redomiciliation and registration and the foundation has complied with those laws.

(9) Where a foundation registered under this Act redomiciles and registers under the laws of another country —

(a) the foundation shall continue to be liable for all of its claims, debts, liabilities and obligations that existed prior to its registration under the laws of the other country;

(b) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing against the foundation or against any foundation council member or any officer or agent thereof, shall be released or impaired by its registration under the laws of the other country; and

(c) no proceedings, whether civil or criminal, pending by or against the foundation or against any foundation council member or any officer or agent thereof, shall be abated or discontinued by its registration as a foundation under the laws of the other country, but the proceedings may be enforced, prosecuted, settled or compromised by or against the foundation council member or the officer or agent thereof, as the case may be.

(10) Where a foundation registered under this Act is redomiciled and registered under the laws of another country, the foundation shall submit to the Registrar a certified and (where applicable) apostilled copy of the certificate of registration issued by the registrar or other relevant competent authority in that country and upon receiving such copy certificate the Registrar shall strike the foundation off the Register and certify that the foundation has ceased to be a foundation registered under this Act.

Liquidation.

52. (1) A foundation shall be liquidated where —

(a) the foundation was established for a definite period and that period has expired;

(b) in the circumstances specified in subsection (2), the officers have resolved by unanimous resolution to liquidate the foundation;

(c) the foundation is unable to pay its debts; or

(d) the court has ordered the liquidation of the foundation.

(2) The officers shall resolve unanimously to liquidate a foundation if, but only if —

(a) the effect of an amendment to the charter under section 50 so requires;

(b) the objects of the foundation have been fulfilled or have become incapable of being fulfilled;

(c) any provision of the charter so requires.

(3) In the event that the officers —

(a) fail to pass the unanimous resolution required to be passed by subsection (2); or

(b) other than in one of the circumstances listed in that subsection pass or purport to pass a resolution to liquidate the foundation,

a founder, a member of the foundation council or other governing body of the foundation, the remaining beneficiary or any person appointed by the charter for this purpose may apply to the court for an order in the case provided for in paragraph (a), requiring the liquidation of the foundation or in the case provided for in paragraph (b), precluding the liquidation.

(4) The court shall order the liquidation of a foundation which has adopted, whether in the charter or in practice, objects precluded by section 4 (5), and which has failed to comply with any order of the court to remedy the default in the time specified in the order.

(5) The procedures specified in regulations made for this purpose and in section 53, and regulations made under that section, shall apply to the liquidation of a foundation under this section.

Winding up.

53. (1) An application to the court for the winding up of a foundation shall be by petition, presented, subject to the provisions of this section and regulations made for the purpose, either by the foundation, or by any creditor or creditors (including any contingent or prospective creditor

or creditors), or by all or any of those parties, together or separately.

(2) Where a foundation is being wound-up voluntarily as a result of a decision, other than an order of the court, to liquidate the foundation under section 52, a winding-up petition may be presented by an official receiver of the court as well as by any other person so authorised under subsection (1), but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding-up cannot be continued with due regard to the interests of the creditors.

(3) Subject to subsection (4), the assets of a foundation remaining after the winding-up is completed shall be the property of the remaining beneficiary, to whom they shall be transferred.

(4) In the event that —

(a) there is no remaining beneficiary or the remaining beneficiary refuses to accept the transfer of the remaining assets; and

(b) there is no relevant provision in the charter, the remaining assets shall be deemed to be *bona vacantia* and shall accordingly belong to the Treasurer of The Bahamas and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Treasurer of The Bahamas.

(5) In the absence of a provision to the contrary in the charter or the articles (if any) of a foundation, where there is more than one remaining beneficiary willing to accept the transfer of the remaining assets, the remaining assets shall be divided equally between them.

(6) The procedures to be adopted and the distributions to be made in a winding-up of a foundation shall be those provided in regulations made for the purpose and —

(a) different procedures may be so provided in different circumstances; and

(b) the regulations —

(i) shall have effect in relation to a foundation as if the provisions therein had been contained in this Act;

(ii) may, in the application of the provisions of this Act to the winding-up of a foundation,

make such variation to the provisions of this Act as may be necessary properly to wind up the foundation.

(7) The set-off provision in section 37 of the Bankruptcy Act shall apply *mutatis mutandis* to a foundation where the foundation is liquidated or wound-up.

Ch. 69.

Removal from the Register.

54. (1) Where the Registrar has reasonable cause to believe that a foundation registered under this Act no longer satisfies the requirements prescribed for a foundation by section 4 (5), the Registrar shall serve on the foundation a notice that the name of the foundation may be removed from the Register if the foundation no longer satisfies those requirements.

(2) If the Registrar does not receive a reply within thirty days immediately following the date of the service of the notice referred in subsection (1), he shall serve on the foundation another notice that the name of the foundation may be removed from the Register if a reply to the notice is not received within thirty days immediately following the date thereof and that a notice of the contemplated removal will be published in the Gazette.

(3) If the Registrar —

(a) receives from the foundation a notice which does not satisfy him that the foundation meets the requirements prescribed for a foundation by section 4 (5), in reply to a notice served on the foundation under subsection (1) or (2); or

(b) does not receive a reply to a notice served on the foundation under subsection (2) as required by the subsection,

he shall publish a notice in the Gazette that the name of the foundation will be removed from the Register unless the foundation or another person satisfies the Registrar that the name of the foundation should not be removed.

(4) At the expiration of a period of ninety days immediately following the date of the publication of the notice under subsection (3), the Registrar shall remove the name of the foundation from the Register, unless the foundation or any other person satisfies the Registrar that the name of the foundation should not be removed, and the Registrar shall publish notice of the removal in the Gazette.

(5) If a foundation has failed to pay any licence fee due under this Act, the Registrar shall publish in the Gazette and serve on the foundation a notice stating the amount of the licence fee payable by it and stating that the name of the foundation will be removed from the Register if the foundation fails to pay the licence fee within thirty days of the date of such notice.

(6) If a foundation fails to pay the licence fee stated in the notice referred to in subsection (5) within thirty days, the Registrar shall then remove the name of the foundation from the Register.

(7) A foundation whose name has been removed from the Register under this section remains liable for all claims, debts, liabilities and obligations of the foundation, and the removal does not affect the liability of any of its council members, officers or agents.

Restoration to Register and effect of removal.

55. (1) If the name of a foundation has been removed from the Register under section 54, the foundation, or a creditor or liquidator thereof, may apply to the court to have the name of the foundation restored to the Register.

(2) If upon an application under subsection (1) the court is satisfied that —

(a) at the time the name of the foundation was removed from the Register, the foundation did satisfy the requirements prescribed for a foundation by section 4 (5); and

(b) it would be fair and reasonable for the name of the foundation to be restored to the Register,

the court may order the name of the foundation to be restored to the Register upon payment to the Registrar of all outstanding licence fees and other fees due and payable under this Act and, upon restoration of the name of the foundation to the Register, the name of the foundation shall be deemed never to have been removed from the Register.

(3) If the name of a foundation has been removed from the Register under section 54 due to non-payment of licence fees, the foundation, or a creditor or liquidator thereof, may within five years immediately following the date of the removal, apply to the Registrar to have the name of the foundation restored to the Register and, upon payment to the Registrar of all outstanding licence fees and

other fees (if any) due and payable under this Act, the Registrar shall restore the name of the foundation to the Register and upon restoration of the name of the foundation to the Register, the name of the foundation shall be deemed never to have been removed from the Register.

(4) Where the name of a foundation has been removed from the Register, the foundation, its officers, the foundation council and other supervisory persons may not —

(a) carry on any business or in any way deal with the assets of the foundation;

(b) commence or defend any legal proceedings, make any claim or claim any right for, or in the name of the foundation; or

(c) act in any way with respect to the affairs of the foundation.

(5) Notwithstanding subsection (4), where the name of the foundation has been removed from the Register, the foundation or a creditor or liquidator thereof may —

(a) make application for restoration of the name of the foundation to the Register;

(b) continue to defend proceedings that were commenced against the foundation prior to the date of the removal; and

(c) continue to carry on legal proceedings that were instituted on behalf of the foundation prior to the date of the removal.

(6) The fact that the name of the foundation is removed from the Register does not prevent —

(a) that foundation from incurring liabilities;

(b) any creditor from making a claim against that foundation and pursuing the claim through to judgment or execution; or

(c) the appointment by the court of a liquidator for that foundation.

PART X
REGISTRAR

Documents to be kept at the registered office. *31 of 2007, s. 23.*

56. (1) Every foundation shall keep at its registered office a file containing —

(a) accurate copies of all documents filed at the Registry;

(b) accurate copies of the foundation charter and articles, (if any);

(c) the name and address of the founder and his address in The Bahamas for service of documents; and

(d) the name and address of the foundation council or other governing body or supervisory person, if any.

(2) The copy documents required to be kept by a foundation under this section shall during business hours be open to the inspection of any founder, officer, foundation council member or other supervisory person.

(3) If any inspection required under this section is refused or if there is a failure to comply with subsection (1) the foundation and every officer is in default.

(4) In the case of such a refusal as is referred to in subsection (3), the court may by order compel an immediate inspection of the file.

Delivery to the Registrar of documents in printed form.

57. (1) This section applies to the delivery to the Registrar under any provision of this Act of documents in printed form.

(2) The document shall —

(a) state in a prominent position the name and the registered number of the foundation to which it relates;

(b) be in the form approved by the Registrar; and

(c) conform to such requirements as the Registrar may specify for the purpose of enabling him to copy any document.

(3) If a document is delivered to the Registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or if there are two or more such persons, on any

of them), a notice indicating the respect in which the document does not comply.

(4) Where the Registrar serves such a notice as is specified in subsection (3), then, unless a replacement document —

(a) is delivered to him within fourteen days after the service of the notice; and

(b) complies with the requirements of this section (or section 58) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

(5) For the purposes of any provision requiring delivery within a specified period no account shall be taken of the period between the delivery of the original document and the end of the period of fourteen days after service of the Registrar's notice.

Delivery to the Registrar of documents otherwise than in printed form.

58. (1) This section applies to the delivery to the Registrar under any provisions of this Act of documents other than in printed form.

(2) Any requirement to deliver a document to the Registrar, or to deliver a document in the approved form, is satisfied by the communication to the Registrar of the requisite information in any non-printed form approved by the Registrar.

(3) Where the document is required to be signed or sealed, it shall instead be authenticated in such manner as may be approved by the Registrar.

(4) A document shall —

(a) contain in a prominent position the registered number of the foundation to which it relates;

(b) be in the form approved by the Registrar; and

(c) be furnished in such manner, and conform to such requirements, as the Registrar may specify for the purpose of enabling him to read and copy the document.

(5) If a document is delivered to the Registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there were two or more such persons, on any of them), a notice indicating the requirements in respect of which the document does not comply.

(6) Where the Registrar serves such a notice, then, unless a replacement document —

(a) is delivered to him within fourteen days after service of the notice; and

(b) complies with the requirements of this section (or section 57) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

(7) For the purposes of any provision requiring delivery within a specified period no account shall be taken of the period between the delivery of the original document and the end of the period of fourteen days after service of the Registrar's notice.

Keeping of the register by the Registrar.

59. (1) The Registrar shall keep a register of documents delivered to him and which he is required to retain under this Act and he may retain and store documents delivered to him in compliance with any requirement of this Act in whatever form he thinks fit provided it is possible to inspect the information contained in the document and to produce a copy of it in printed form and this shall be sufficient compliance with any duty of his to register any document.

(2) The originals of documents delivered to the Registrar in printed form and which are to be retained by him shall be kept by him for the duration of the foundation and thereafter for ten years, after which time they may, in the Registrar's absolute discretion, be destroyed.

Inspection, production and evidence of documents kept by the Registrar.

60. (1) Any person may, on payment of the prescribed fee or fees, inspect the Register and may require a copy in such form as the Registrar considers appropriate of any documents or information contained in the Register.

(2) A copy of a document certified in writing by the Registrar (whose official position it is unnecessary to prove), to be an accurate record of the document delivered to him and retained by him under this Act, is in all legal proceedings, admissible in evidence as of equal validity with the original document and as evidence of any facts stated therein, of which direct oral evidence would be admissible.

(3) Copies of or extracts from records furnished by the Registrar may, instead of being certified by him in

writing to be an accurate record, be sealed with his official seal.

(4) Any person may require a certificate of the registration of a foundation, signed by the Registrar or authenticated by his official seal.

(5) Any requirement of this Act as to the supply by the Registrar of a document may, if the Registrar thinks fit, be satisfied by the communication by the Registrar of the requisite information in any non-printed form approved by him.

(6) Where the document is required to be signed by him or sealed with his official seal and is a communication in a non-printed form, it shall instead be authenticated in such manner as may be approved by the Registrar.

Enforcement of duty of foundation to file documents with the Registrar.

61. (1) If a foundation, having made default in complying with any provision of this Act which requires it to file with or deliver to the Registrar any account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the foundation requiring it to do so, the court may, on an application made by a founder, an officer, a foundation council member or any other supervisory person, or a creditor, of the foundation or by the Registrar, make an order directing the foundation and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the foundation or by any officer of the foundation responsible for the default.

Official notification.

62. (1) The Registrar shall cause to be published in the Gazette notice of the issue or receipt by him of documents of any of the following descriptions (stating in the notice the name of the foundation, the description of the document and the date of issue or receipt) —

(a) any copy of a winding-up order in respect of a foundation;

(b) any order for the dissolution of a foundation; and

(c) any notice of removal from the Register of a foundation.

(2) A foundation shall not be entitled to rely against other persons on the happening of any of the above events

if the event had not been officially notified at the material time and is not shown by the foundation to have been known at that time to the person concerned, or if the material time fell on or before the fifteenth day after the date of official notification (or, where the fifteenth day was a non-business day, on or before the next day that was not) and it is shown that the person concerned was unavoidably prevented from knowing of the event at that time.

(3) In subsection (2), "official notification" means the notification of the document relating to that event in the Gazette under subsection (1) and "officially notified" shall be construed accordingly.

Confidentiality.

63. (1) No person who has acquired information in his capacity as —

(a) an officer of a foundation;

(b) a protector of a foundation;

(c) a member of a foundation council;

(d) a member of any other governing body of a foundation;

(e) any other supervisory person;

(f) a counsel and attorney for a foundation; or

(g) an auditor of a foundation,

shall, without the express or implied consent of a beneficiary or the consent by a parent or legal guardian of a minor or incapacitated beneficiary, disclose to any person any such information relating to the identity of such beneficiary or his interest in the foundation, except — *31 of 2007, s. 24.*

(i) when lawfully required or permitted to do so by any court of competent jurisdiction within The Bahamas; or

(ii) under the provisions of any law of The Bahamas.

(2) Nothing contained in this subsection shall prejudice or derogate from the rights and duties subsisting at common law between the above persons and the founder or founders and the beneficiary or beneficiaries of a foundation.

(3) Every person who contravenes the provisions of subsection (1) shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.

Certificate of Good Standing.

64. (1) The Registrar shall, upon request by any person and payment of the prescribed fee, certify that a foundation registered under this Act is of good standing in the following respects if he is satisfied that —

(a) the name of the foundation is on the Register; and

(b) the foundation has paid all fees required by this Act to be paid.

(2) The Certificate of Good Standing issued under subsection (1) shall indicate whether or not the foundation is in the process of being liquidated, wound up, dissolved (if within his knowledge) or removed from the Register.

PART XI
MISCELLANEOUS

Indemnification. *31 of 2007, s. 25.*

65. (1) Every officer, foundation council member, other supervisory person and protector of a foundation who acted honestly and in good faith shall be indemnified by the foundation against all costs, charges, losses, expenses, and liabilities incurred by him in the execution and discharge of his duties or in relation thereto, and the amount for which such indemnity is provided shall immediately attach as a lien on the property of the foundation, and have priority over any claims of the foundation.

(2) No officer, foundation council member, other supervisory person or protector shall be personally liable for the acts, receipts, neglects or defaults of any other officer, foundation council member, supervisory person or protector, or for joining in any receipt or other act for conformity, or for any loss or expense incurred by the foundation as a result of insufficiency or deficiency of title to any property acquired by order of the officers for or on behalf of the foundation, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the foundation shall be advanced or invested, or for any loss or damage arising out of the bankruptcy, insolvency, or tortious or criminal act or omission of any person with whom any money, securities or effects shall be deposited, or for any loss occasioned by an error of judgement, omission, default or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of his office or in relation thereto, except where the same shall happen through his

own gross negligence, wilful default or misconduct, fraud or dishonesty.

(3) The indemnification specified in subsections (1) and (2) shall not apply to an act of fraud on the part of a foundation agent. *31 of 2007, s. 25.*

In terrorem provisions.

66. The charter or articles (if any) of a foundation may make provision for a beneficiary or beneficiaries to forfeit their benefits or rights thereunder in the event that they should challenge the establishment of the foundation, the endowment of any of the foundation's assets, the charter or the articles (if any) or any provision thereof or any decision of the foundation council or other supervisory persons that does not damage or seek to damage their benefits or rights and such forfeiture shall be valid and enforceable when there is no discretion with regard to such enforcement.

Restriction against alienation.

67. (1) Notwithstanding any rule of law or equity to the contrary, it shall be lawful for an instrument of disposition to provide that any estate or interest in any property given or to be given by a foundation to a beneficiary shall not during the life of the beneficiary, or such lesser period as may be specified in the instrument of disposition, 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 such provision shall take effect accordingly.

(2) Where property is given subject to any of the restrictions contained in subsection (1), the right to derive income from such property by a beneficiary and any income derived therefrom 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 property is given 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 provisions for such removal in the instrument of disposition and in the manner specified therein.

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

Forced heirship.

68. (1) In this section —

"dispose" and "disposition", in relation to property, means every form of conveyance, transfer, assignment, lease, mortgage, pledge or other transaction by which any legal or equitable interest in property is created, transferred or extinguished;

"formalities" in relation to a disposition of property means any documentary or other actions required generally by the laws of a relevant jurisdiction for all dispositions of like form concerning property of like nature, without regard to —

(a) the fact that the particular disposition is made to a foundation;

(b) the terms of the foundation;

(c) the circumstances of the parties to the disposition; or

4 of 2007, s. 2.

(d) any other particular circumstances,

but includes any special formalities required by reason that the party effecting the disposition is not of full age or is subject to a mental infirmity;

"founder" means a natural person who is the founder of a foundation and endows same with assets.

"heirship right" means any right, claim or interest in, against or to property of a person arising, accruing or existing in consequence of, or in anticipation of, that person's death, other than any such claim, or interest created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of the property of such person;

"personal relationship" includes every form of relationship by blood or marriage, including former marriage and in particular relationship between two persons which exists if —

(a) one is the child of the other, natural or adopted, whether or not the adoption is recognized by law, legitimate or illegitimate;

(b) one is married to the other, whether or not the marriage is recognized by law;

(c) one cohabits with the other or so conducts himself or herself in relation to the other as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parents and child or husband and wife; or

(d) a personal relationship exist between each of them and a third person,

but no change in circumstances shall cause a personal relationship once established to terminate; *4 of 2007, s. 2.*

"property" means moveable and immovable property;

(2) This section applies to every foundation and disposition of property to a foundation established and existing in The Bahamas.

(3) Subject to subsection (4), all questions arising in regard to a foundation established and existing under this Act or in regard to any disposition of property to it, including, without prejudice to the generality of the foregoing, questions as to —

(a) the capacity of the founder;

(b) any aspect of the validity of the foundation or disposition or the interpretation or effect thereof;

(c) the administration of the foundation, whether the administration be conducted in The Bahamas or elsewhere, including questions as to powers, obligations, liabilities and rights of the governing bodies or supervisory persons of the foundation and their appointment and removal; or

(d) the existence and extent of powers, conferred or retained by the founder, including powers of variation or revocation of the foundation charter and validity of any exercise thereof,

shall be determined in accordance with the laws of The Bahamas, without reference to the laws of any other jurisdictions with which the foundation or disposition may be connected.

(4) Subsection (3) —

(a) shall not validate —

(i) any disposition of property which is neither owned by the founder nor the subject of a power in that behalf vested in the founder;

(ii) any disposition of immovable property situate in a jurisdiction other than The Bahamas in which such disposition is invalid according to the laws of such jurisdiction;

(iii) any testamentary disposition which is invalid according to the laws of the testator's domicile;

(b) shall not affect the recognition of foreign laws in determining whether the founder is the owner of the property or is the holder of a power to dispose of such property;

(c) shall take effect subject to any express term of a disposition to the contrary; and

(d) shall not affect the recognition of foreign laws prescribing generally, without reference to the existence or terms of the foundation, the formalities for the disposition of property.

(5) Without limiting the generality of subsection (3), it is hereby expressly declared that no disposition of property to be held by a foundation established and existing under this Act is void, voidable, liable to be set aside or defective in any manner by reference to a foreign law; nor is the capacity of any founder to be questioned nor is the foundation or any beneficiary or other person to be subjected 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 disposition avoids or defeats rights, claims or interest conferred by foreign law upon any person by reason of a personal relationship to the founder or by way of heirship rights or contravenes any rule of foreign law or any foreign, judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interest.

(6) An heirship right conferred by foreign law in relation to the property of a living person shall not be recognized as —

(a) affecting the ownership of immovable property in The Bahamas or movable property wherever situate for the purposes of paragraphs (a) and (b) of subsection (4) or for any other purpose; or

(b) constituting an obligation or liability for the purposes of the Fraudulent Dispositions Act or for any other purpose. Ch. 78.

(7) A foreign judgement shall not be recognized or enforced or give rise to any estoppel insofar as it is inconsistent with subsection (5) or subsection (6).

(8) This section shall apply to every disposition of property to a foundation made after the commencement of this Act, whether such property is situate in The Bahamas or elsewhere.

Exemptions.

69. (1) A foundation shall not be subject to any business licence fee, income tax, capital gains tax or any other tax on income or distributions accruing to or derived from such foundation or in connection with any transaction to which that foundation is a party.

Ch. 360.

(2) The Exchange Control Regulations Act shall not apply to a foundation registered under this Act or to any transaction by a foundation, provided such foundation does not have any founders or beneficiaries who are treated as residents for Exchange Control purposes.

(3) No estate, inheritance, succession or gift tax, rate, duty, levy or other charge is payable by a founder or beneficiary with respect to any interest given to or received from a foundation.

Ch. 370.

(4) Notwithstanding any provision of the Stamp Act, all instruments to which a foundation is a party —

(a) relating to transactions in respect of the assets of a foundation; and

(b) relating to other transactions concerning the business of a foundation,

shall be exempt from the payment of stamp duty, provided in the case of assets no Bahamian real property or personality is included in such assets.

Default provisions.

70. (1) Where a foundation or an officer of a foundation is in default under any provision of this Act, an application may be made to the court by a founder, an officer, the foundation council or some other supervisory

person, a beneficiary, or the Attorney-General specifying the default and seeking a remedy.

(2) Where the court is satisfied that it is just and equitable in the circumstances to do so, it may order the remedy sought, or may make such other order as it sees fit for the attainment of the objects of this Act and to obtain compliance with this Act.

(3) Where the order of the court under subsection (2) has the effect of granting the application, it shall order that the costs of the applicant in bringing the application as well as the costs of the action shall be met —

(a) where the application and the order are in respect of default by the foundation, by the foundation;

(b) where the application and the order are in respect of default by the foundation but, in the opinion of the court, the default was the responsibility of an officer, by that officer;

(c) where the application and the order are in respect of default by an officer, by that officer.

Offences.
13 of 2005, s. 7.

48 of 2011, s. 3

71. (1) An officer, member of the foundation council, other supervisory person or an auditor of a foundation shall be guilty of an offence punishable on summary conviction by a fine of ten thousand dollars or imprisonment for two years or both if he knowingly and with intent to deceive —

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

(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.

48 of 2011, s. 3

(2) A person who without reasonable cause contravenes section 42, or fails to comply with any other provision of this Act for which no other penalty is provided, commits an offence and shall be liable on summary conviction to a fine not exceeding ten thousand dollars.

Notice.
13 of 2005, s. 7.

72. (1) Where there is provision in this Act for the service of notice on any person, the notice shall be in writing and may be served in person, by post, by fax or electronically.

(2) In respect of service —

(a) in person, the date of service shall be the date on which the notice was deposited at the address last notified to the foundation agent (if appointed) secretary (if appointed) of a foundation by the person entitled to receive service as his address for service or, where no address has been so notified, the last known address of that person for the receipt of written communications;

(b) by post, the date of service shall be the fifth day following the day upon which the properly addressed and stamped envelope containing the notice was delivered to the Post Office and service shall be at the address last notified to the foundation agent (if appointed) secretary (if appointed) of a foundation by the person entitled to receive service as his address for service or, where no address has been so notified, the last known address of that person for the receipt of written communications; *31 of 2007, s. 27.*

(c) by fax or electronic means, the date of service shall be the date of transmission recorded by the transmitter and the address shall be the fax number or electronic address last notified to the foundation agent (if appointed) secretary (if appointed) of a foundation by the person entitled to receive service as his number or address for receipt of fax or electronic communications. *31 of 2007, s. 27.*

Fees.
13 of 2005, s. 7.

73. (1) There shall be paid to the Registrar in respect of the several matters mentioned in regulations made for this purpose the annual fee and other fees therein specified and, without prejudice to the generality of the foregoing, a fee may be so specified in respect of the performance by the Registrar of any function under this Act, including the receipt by him of any notice or other document which under this Act is required to be delivered to him and in the absence of the specified fee being paid, the Registrar shall not be required to perform any function.

(2) Provision may be made in regulations in respect of supplementary fees payable where any notice or

document, which under this Act is required to be delivered to the Registrar within a specified time, is delivered to him after the specified time.

(3) The Registrar may charge a fee for any services provided by him otherwise than in pursuance of an obligation imposed on him by this Act.

Regulations and forms.
13 of 2005, s. 7.

74. (1) The Minister may make regulations for the purpose of prescribing anything required or permitted by this Act to be prescribed and, without prejudice to the generality of the foregoing, shall make provision by regulation for —

(a) matters in relation to redomiciliation for the purpose of giving effect to section 51;

(b) such provisions in relation to the —

(i) liquidation;

(ii) winding up; and

(iii) removal from and restoring to the Register, of a foundation as may be necessary for the purpose of giving effect to sections 52, 53, 54 and 55;

31 of 2007, s. 7.

(c) the fees payable under this Act as provided by section 73; and

(d) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act,

and such regulations may contain different provisions in respect of different matters and may make such transitional provisions as the Minister may determine.

(2) Where by this Act any person is required to —

(a) make an application;

(b) deliver a document;

(c) provide an extract; or

(d) confirm or certify any information,

to the Registrar he shall, subject to the provisions of this Act, do so in a form and, where appropriate, on a form approved for the purpose by the Registrar.

(3) Subject to the provisions of this Act, any certificate or other document to be issued by the Registrar shall be in a form approved by the Registrar.

SCHEDULE *31 of 2007, s. 28.*

MODEL FOUNDATIONS CHARTER*

COMMONWEALTH OF THE BAHAMAS FOUNDATION CHARTER

THE.....FOUNDATION

THIS CHARTER is made the.....day of.....20 for the purpose of establishing The.....Foundation ("the foundation") pursuant to the provisions of the Foundations Act ("the Act") of the Commonwealth of The Bahamas ("The Bahamas"). Ch. 369D.

REGISTRATION

1. The foundation shall forthwith submit to the Registrar a written application for registration together with the documents specified in section 21 of the Act and the prescribed fee and shall not pursue any of its purposes or objects unless or until the Registrar shall have issued to the foundation a certificate of registration under section 22 of the Act.

FOUNDATION NAME

2. Unless or until changed the name of the foundation shall be and remain "The.....Foundation". The name may be changed by the foundation council from time to time, but with the prior written consent of the founder if then alive and not mentally incapacitated (such incapacitation being so certified in writing by the founder's physician or so determined by a court of competent jurisdiction).

FOUNDER

3. The name and address of the founder are

.....of.....

..... and the founder's address for the service of documents in The Bahamas is.....

ASSETS OF THE FOUNDATION

4. (1) Immediately following registration under the Act the founder shall endow the foundation with initial assets having a value of US$.....and until this charter shall be revoked or the foundation shall be

liquidated, wound up or otherwise terminated it shall keep and maintain assets having a value of no less than US$10,000.00 or the equivalent in any other currency.

(2) The founder and any other party may from time to time endow the foundation with such supplementary assets as may be acceptable to the foundation council.

REVOCATION AND AMENDMENT

5. (1) The founder may at any time revoke this charter by giving written notice thereof to the foundation council, whereupon the foundation council shall refund or cause to be refunded all assets then remaining to the founder or to such other person or persons as the founder may have nominated in such notice of revocation.

(2) This charter may be amended before or after registration of the foundation in accordance with the provisions of section 50 of the Act and provided that any such amendment is in the reasonable best interests of the foundation or its beneficiary or beneficiaries.

PURPOSES AND OBJECTS

6. The foundation's main purposes or objects shall be to manage its assets and to do all such things, to conduct all such activities and to exercise all such powers as are reasonably necessary therefor or ancillary or incidental thereto or otherwise authorized by section 4 of the Act, including but not limited to the making of payments or in specie distributions to or for the benefit of beneficiaries.

BENEFICIARIES

7. (1) The founder may by written notice to the foundation council designate the beneficiary or beneficiaries (including the remaining beneficiary or beneficiaries) and may by similar notice from time to time remove or add beneficiaries.

(2) The founder may also by written notice to the foundation council establish or amend the dispositive provisions pursuant to which distributions to the beneficiary or beneficiaries are to be made, whether during the life of the foundation or upon its liquidation, winding up or other termination.

(3) Distributions to beneficiaries may be made by the foundation council or by the officers pursuant to the written directions of the foundation council.

(4) Should the founder die without having designated a beneficiary or beneficiaries or should all designated beneficiaries have died or otherwise ceased to exist prior to the distribution of the foundation's remaining assets, then such assets shall be distributed to..... and the foundation shall subsequently be terminated.

DURATION OF FOUNDATION

8. The foundation is established for an indefinite period, subject however to the revocation of this charter or the foundation being liquidated, wound up or otherwise terminated.

SECRETARY AND REGISTERED OFFICE

9. (1) The secretary to the foundation shall be …… of ....., which address shall also be the foundation's Registered Office.

(2) Whenever the secretary's address is changed the Registered Office shall at the same time be changed to such new address.

(3) The duties and responsibilities of the Secretary shall be as specified in the Act or elsewhere in this charter.

OFFICERS AND SEAL

10. (1) In addition to the secretary the founder may by written notice to the foundation council appoint one or more other officers and specify their duties and responsibilities (if different from those specified in the Act) and their term of office.

(2) The founder may by written notice to the foundation council and the officers add or remove officers; if the secretary is removed, a suitably qualified successor secretary must at the same time be appointed by the founder or the foundation council immediately thereafter if the founder fails to do so.

(3) Whenever the foundation has three (3) or more officers their decisions or resolutions may be made or passed by a simple majority.

(4) The foundation shall have a seal for affixing to deeds or documents whenever and by whomsoever so authorized by the officers or the secretary if there are no other officers, who shall provide for the seal's safe custody.

FOUNDATION COUNCIL

11. (1) The foundation council shall be .....

of .....

(2) The duties and responsibilities of the foundation council shall be as specified in the Act and this charter.

(3) The founder may remove the foundation council by written notice to it and at the same time or soon thereafter may appoint a new foundation council to succeed it.

(4) The foundation council and the officers shall liaise and co-operate with each other to ensure the smooth operation of the foundation and the fulfilment of their respective duties and responsibilities for the benefit of the foundation and its beneficiary or beneficiaries.

(5) The foundation council may in its absolute discretion appoint persons by power of attorney to carry out particular duties outside The Bahamas on behalf of the foundation or the foundation council.

PROTECTOR/COMMITTEE OF PROTECTORS

12. (1) The founder may by written notice to the foundation council appoint a protector or committee of protectors and in such notice specify their duties and responsibilities and, in the case of a Committee, the founder may also specify how it shall meet and conduct its affairs.

(2) The founder may remove the protector or committee of protectors by written notice to the foundation council and the protector or committee of protectors and at the same time or soon thereafter may appoint a new protector or committee of protectors to succeed him or them. In the event of the founder's death or mental incapacitation, such powers may be exercised by the foundation council.

AUDITOR

13. (1) The founder may by written notice to the foundation council appoint an auditor for the purpose of auditing the financial records and statements of the foundation.

(2) The founder may remove the auditor by written notice to the foundation council and the auditor and

at the same time or soon thereafter may appoint a new auditor to succeed him.

(3) An auditor may also be appointed or removed by the foundation council, but with the prior written consent of the founder if then alive and not mentally incapacitated.

REMUNERATION AND OTHER CONDITIONS

14. When appointing officers, a foundation council, a protector or committee of protectors or an auditor the founder may in his absolute discretion specify remuneration and other conditions of employment for their respective services.

REDOMICILIATION

15. The foundation council may, whenever it considers same to be in the reasonable best interests of the foundation or its beneficiary or beneficiaries, redomicile the foundation in another country, but with the prior written consent of the founder if then alive and not mentally incapacitated and in full compliance with the provisions of section 51 of the Act.

POWERS RESERVED TO THE FOUNDER

16. (1) In addition to the powers reserved to the founder in this charter, the founder may by written notice to the foundation council assume the power to give advice or directions to the foundation council with regard to investments.

(2) Whenever the foundation council or officers shall make investments pursuant to such advice or directions (as reasonably interpreted by them) they shall not be liable for any losses occasioned thereby.

(3) Upon the death or mental incapacitation of the founder all powers reserved to him or consents required of him shall be exercised or given (if deemed appropriate) by the protector or committee of protectors if appointed and then holding office.

(4) The founder may from time to time by notice in writing to the foundation council renounce all or any of the powers reserved to him or assign same to the protector or committee of protectors (if appointed) or to the foundation council.

ARTICLES

17. The founder or the foundation council may in their absolute discretion make Articles to include regulations of the kind described in section 7 of the Act.

GOVERNING LAW, ETC.

18. This charter (except for its provisions which otherwise provide as permitted by the Act) shall be subject to the overriding provisions of the Act and all Regulations promulgated thereunder and all of the provisions of this charter shall be construed in accordance with and governed by the laws of The Bahamas, the courts of competent jurisdiction in which shall be the forum for the administration of the foundation unless and until the foundation is redomiciled to another country, when the governing law and forum of administration shall move to that other country.

HEADINGS

19. The headings are inserted only for convenient reference and shall not affect the interpretation of the provisions to which they relate.

IN WITNESS WHEREOF the founder has hereunto set his hand for the purpose of establishing the foundation under the laws of The Bahamas.

.....

Signed by the founder in the presence of:

.....

The secretary or Notary Public

**The Charter would have to be modified if a foundation agent is to be appointed or the foundation is not going to appoint a foundation council, especially clauses 9 and 11.*