FOUNDATIONS

Foundations have for a long time been available in several civil law jurisdictions, starting in Liechtenstein in the late 1930s, later in other European countries and more recently in Panama and the Netherland Antilles.

They were originally created for the purpose of providing protection for assets as well as confidentiality as the Second World War was about to break out. The combination of Liechtenstein foundations and Swiss banking secrecy was a great combination at that time.

Foundations have since become well known and very acceptable in many civil law jurisdictions, especially those in Europe and Latin America, where trusts are less well known, frequently misunderstood and not always acceptable, mainly because trusts often involve the complete surrender to the trustee of legal ownership and control of the settlor’s assets, which need not happen in the case of foundations.

Also, a foundation, like a company, is a distinct legal entity, which a trust is not, resulting in foundations and companies enjoying limited liability, but trustees being exposed to possible personal liability, certainly more so than a foundation’s council or officers or a company’s directors or officers.

A foundation does in fact constitute a hybrid between a trust and a company, having several aspects in common with one or the other, such as:

1. Like a company but unlike a trust, a foundation may enjoy unlimited duration.
2. Like a trust but unlike a company, a foundation has beneficiaries and can also have a protector.
3. Like a company but unlike a trust, a foundation must be registered and have a registered office.
4. Like a trust but unlike a company, a foundation can be established by will.
5. A foundation must have initial assets of a value of not less than $10,000.00, whereas there is no such minimum prescribed for trusts or companies, although, in practice, all three entities would probably have assets well in excess of $10,000.00, if not initially, then most likely when activated.
6. A foundation would normally have a foundation council, some of whose duties would be similar to those of a trustee or the directors of a company. Instead of a council, a foundation may have some other governing body or supervisory person, such as a protector. Also, a foundation must have a secretary and may also have other officers, which a company too would normally have.
7. Whilst a company must have articles of association, a foundation is not required to have articles, although it may do so. In the absence of articles all provisions concerning the conduct and operation of a foundation would normally be included in its charter or, where appropriate, a foundation would simply rely upon the provisions contained in the Act.
8. Like a trust or an IBC, a foundation may redomicile in another jurisdiction and a foundation established in another jurisdiction may redomicile in The Bahamas. The statutory provisions are similar to those for an IBC.
9. Like a trust, which may include in terrorem provisions in its trust instrument, a foundation may include such provisions in its charter.
I would anticipate that the most popular purpose for which foundations will be established in the Bahamas will be the holding and management of assets. In fact, such purpose must be included in its main purposes or objects and be so specified in its charter.

Other purposes for which foundations may be used include:-

1. Estate planning.
2. Tax planning.
3. Asset protection.
4. Preserving family wealth.
5. Preserving confidentiality.
6. Segregation of assets.
7. Establishing charities.

There are no doubt many purposes for which trusts or companies are presently used, for which foundations may also be used and, when there are purposes for which a company is better qualified than a foundation, a company for such purposes could be set up as a subsidiary of a foundation.

A foundation may be created by a charter duly executed by the founder or founders, or by a will with the testator as the founder. If the charter makes provision for revocation of the foundation, then the founder may revoke same at any time after its creation.

The charter of a foundation must state its name, details of the founder, its purposes or objects, the initial assets being endowed, the designation of its beneficiaries or how they are to be ascertained or that it is a charity, the definite or indefinite period for which it is established and details of its secretary and registered office.

The charter may also make provisions for the reservation of rights or powers to the founder, the appointment of officers, the appointment of an auditor, the appointment of a foundation council, the appointment of a protector, the amendment of the charter, the making of articles, the endowment of additional assets, the addition or removal of beneficiaries and the redomiciliation of the foundation.

There is a model charter set forth in the Schedule to the Act, all or some of the provisions of which may be adopted by a foundation.

The charter and articles (if any) may, but need not be filed at the Registry.

However, in order to register a foundation there must be filed at the Registry:

1. a statement signed by the secretary or the foundation’s attorney containing its name, the date of the charter, a summary of the foundation’s purposes and objects, the date of the articles (if any), details of the foundation’s founder, first officers, foundation council or other governing body or supervisory person and registered office, the period for which it is established and the value of its initial assets.

2. a statutory declaration of due compliance signed by the secretary or the foundation’s attorney.

The above documents must, of course, be accompanied by the prescribed registration fee.

If the charter is amended as to any of the items contained in the above statement, the secretary must file at the Registry within 14 days of such amendments taking effect a notice containing details of same.
beneficiaries who are treated as residents for exchange control purposes.

Provisions for a foundation's liquidation or winding up and its subsequent removal from the Register are contained in the Act, as are provisions for its restoration to the Register in certain circumstances.

Finally, there is provision for the making of regulations for creating forms, prescribing fees, establishing liquidation and winding up procedures, etc. It is hoped that these regulations will soon be prepared and be ready when the Act is passed, which I understand and hope will take place early next year as foundations are a product whose time has come, in fact came several years ago, for a common law jurisdiction such as The Bahamas and we would like to be able to offer this product to our clients before Cayman or Barbados, who I hear are presently working on their own foundation laws.
1. Short title and commencement.
2. Interpretation.
3. Definition of foundation.
4. Purpose and objects of foundation.

5. Mode of establishment of foundation.
7. Articles of a foundation.
8. Initial Assets.

10. Appointment and qualification of officers.
11. Duties, etc. of officers.
13. Registered office.
15. Duties etc. of foundation council.
16. Appointment and qualification of auditor, etc.

17. Restriction on registration of foundations by certain names.
18. Change of name.
19. Power to require foundation to change name.
20. Misleading name.

22. Effect of registration.
23. Conclusiveness of certificate of registration.
24. Effect of charter and articles.
25. Pre-registration actions.

26. Limitation on the capacity of a foundation.
27. Power of officers to bind the foundation.
28. No duty to enquire as to capacity.
29. Execution of contracts, deeds, instruments and other documents.
30. Publication of name by foundation.
39. Inspection of minute books.
40. Meeting of members of foundation council.
41. Rights of a beneficiary to information.

PART VIII
FINANCIAL

42. Keeping of books of account.
43. Income and expenditure account and balance sheet.
44. Assets to be set out separately in balance sheet.
45. Balance sheet to include particulars as to companies.
46. Accounts to contain particulars as to loans to, and remuneration of officers.
47. Signing of balance sheet.
48. Right to receive copies of balance sheets and auditor’s report.
49. Special Audit.

PART IX
AMENDMENT AND DISSOLUTION

50. Revocation and amendment of charter.
51. Power of foundation to redomicile.
52. Liquidation.
53. Winding-up.
54. Removal from the Register.
55. Restoration to Register.

PART X
REGISTRAR

56. Documents to be kept at the registered office.
57. Delivery to the Registrar of documents in printed form.
58. Delivery to the Registrar of documents otherwise than in printed form.
59. Keeping of the Register by the Registrar.
60. Inspection, production and evidence of documents kept by the Registrar.
61. Enforcement of duty of foundation to file documents with the Registrar.
63. Confidentiality.
64. Certificate of Good Standing.

PART XI
MISCELLANEOUS

65. Indemnification.
66. In terrorem provisions.
67. Restriction against alienation.
68. forced heirship.
69. Exemptions.

70. Default provisions.
71. Offences.
72. Notice.
73. Fees.
74. Regulations and Forms.
Enacted by the Parliament of The Bahamas

PART I
PRELIMINARY

Short title
1. (1) This Act may be cited as the Foundations Act, 2004.

Interpretation.
2. (1) In this Act -
“articles” means the regulations provided for in section 7;
“assets” means the property in whatever form vested from time to time in a foundation, which property shall not be the property of the founder or the beneficiary;
“auditor” means a chartered or certified public accountant;
“authorised signatories” means -
(a) the persons authorised by a foundation in accordance with its charter or articles (if any) to sign, singly or jointly as resolved by the officers from time to time, on behalf of, and thereby to bind, the foundation, to the extent so resolved; or
(b) all the officers for the time being of a foundation signing jointly;
“beneficiary” means a person -
(a) designated as such in the charter or articles (if any) of a foundation; or
(b) where no beneficiary is so designated, a person identified as such -
(i) by the body appointed for this purpose by the founder in the
foundation so that the property is the asset of that foundation and includes whatever act may be necessary in relation to any particular property effectively to so transfer title;

“foundation” means the legal entity, defined in section 3, established and registered under this Act;

“foundation council” and “council” mean the council of a foundation, if any, and to which sections 14 and 15 of this Act shall apply;

“founder” means -

(a) the person who subscribes to the charter establishing a foundation acting either for himself or on behalf of another; or

(b) in the case of establishment of a foundation by the duly executed will of a deceased founder, that person acting alone for himself, and who endows that foundation by transfer of title with its initial assets;

“governing bodies”, in relation to a foundation, means -

(a) the officers;

(b) the foundation council; and

(c) any other supervisory person or persons specified or identified by the charter or the articles (if any), acting jointly or singly, as may be required by 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 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;

“natural person” means an individual;

“officer”, in relation to a foundation, means the person for the time being appointed in accordance with the charter of that foundation and this Act as an officer and acting in that capacity;
"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 a foundation;

"secretary" means the person appointed in accordance with section 12;

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

(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) A foundation -
   (a) established by a charter;
   (b) holding assets which have been transferred to that foundation by one or more founders for the purpose set out in subsection (4); and
   (c) which has been 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) Assets transferred to a foundation shall be the assets of that foundation, shall cease to be the assets of the founder and shall not become the assets of a beneficiary unless distributed in accordance with the provisions of the charter or the articles (if any) and this Act.

(4) The assets transferred by the founder shall be managed, including being realized, applied, administered, invested and disbursed in accordance with the charter or the articles (if any) and
such acts and activities shall be ancillary or incidental to its main purpose or purposes.

(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 objects of a foundation shall not include -

(a) carrying on of an activity otherwise 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 section 52(4) shall apply.

PART II
ESTABLISHMENT

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
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 foundation in accordance with the provisions of the charter; and
(c) the registration of the 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 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
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 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 subsection (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).

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:
(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;

(g) the name and address in The Bahamas of the secretary to the foundation and the address of the registered office in The Bahamas of the foundation.

(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 for the maintenance of the objects of the foundation 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 (if appointed) and how he shall be appointed or removed and also how he shall conduct himself 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
(1) Except where the charter is contained in a will, for the revocation of the foundation.

(3) 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.

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

(5) Except as is provided for in subsection (6), the charter of a foundation shall be in the form of a deed 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.

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

(7) The charter of a foundation shall -

(a) be typed or printed;

(b) be divided into paragraphs numbered consecutively; and

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

Articles
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 identifying any beneficiary, or supplementary beneficiaries, of the foundation;

(c) determining the minimum level of assets of the foundation in the absence of which no
the provisions of this Act in respect of that matter shall apply.

(4) Except as is provided for in subsection (5), the articles shall be in the form of a deed 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; or

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

(5) The articles established on the death of a founder shall be in the form of a duly executed will and shall comply with subsection (6).

(6) 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.

Initial

8. The Registrar shall not register a foundation unless the charter requires the foundation to have assets of a value of not less than ten thousand (10,000.00) Bahamian or United States dollars or the equivalent thereof in any other currency.

Powers and obligations

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 rights of a founder in respect of the formation of a foundation shall not devolve upon his successors in title or assigns.

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

(4) Where a founder has made an undertaking, recorded in the charter of the foundation, to endow assets to a foundation, whether that undertaking is to endow the assets to the foundation before or after the registration of the charter, the foundation -

(a) may enforce that undertaking against the founder; and
transfer to the foundation in fulfillment of the covenant; 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.

10. (1) The founder or founders of a foundation, or where the foundation charter is a will, an executor of that will, shall before registration of the 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 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) 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;

(d) 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
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 or executor 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 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) Where a person is appointed as an officer of a foundation, he shall so continue and the provisions of this section and section 11 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.
(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 (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 persons who comply with this section as officers.

(11) Where an officer has failed to comply with subsection (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 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, the Court may order the removal of such officer and the appointment in his place as an officer of a 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.

(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) Nothing in this section shall be construed as making a person appointed as an officer of a foundation liable in any legal proceedings (whether civil or criminal) for any act or omission of that foundation.

Duties, etc. 11. (1) The duties and responsibilities of an officer shall not be fiduciary in nature, but rather administrative.
Subject to subsection (6), the officers of a foundation acting jointly shall be a governing body of the foundation and, as against a third party, the officers so acting shall be the foundation.

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.

Except where the charter of a foundation otherwise provides, the officers of a 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 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.

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.

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

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.

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
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 secretary.

12. (1) There shall be a secretary appointed in respect of a foundation 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, shall before registration of a foundation appoint a person to be the secretary to that foundation.

(3) Where, by virtue of this section the appointment of a secretary to a foundation to be registered, or which is registered, is required, the founder or the executor, as the case may be, or, after the registration, the officers, shall appoint -

(a) a person, satisfying the requirements to be the secretary to a foundation;

(b) ensure that, so long as the requirement in respect of a secretary continues, a person satisfying those requirements is so appointed; and

(c) deliver to the Registrar the name and address of every person who has been appointed as secretary and who has consented to be the secretary to the foundation.

(4) The requirements referred to in subsection (3)(a) are that the secretary is duly licensed as a provider of financial and corporate services under the Financial and Corporate Service Providers Act, 2000, or as a trust company under the Banks and Trust Companies Regulation Act, 2000, and is not precluded from being appointed as an officer by section 10(2).

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

(6) A secretary 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.
foundation shall be the secretary in respect of that foundation and all matters to which reference is made in this Act to the secretary and in particular, but without limiting the generality of the foregoing, shall, on behalf of the foundation -

(a) 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 written law;

(b) where the Registrar, by notice served on the foundation and the secretary, requires the foundation to take any action or give any information concerning itself, take such action or give such information within the time specified in the notice or, if no such time is specified, within a reasonable time,

and where in this Act or in any other written 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 secretary 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 secretary to a foundation by or under this Act or any other written law.

(10) Where a secretary is appointed to a foundation, the provisions of this section shall apply to that secretary until -

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

(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 death or bankruptcy of the natural person being the secretary;

(f) the winding up or dissolution, as the case may
(12) Nothing in this section shall be construed as making the secretary appointed to a foundation liable in any legal proceedings (whether civil or criminal) for any act or omission of the foundation.

Registered office.

13. (1) A foundation shall have a registered office in The Bahamas which shall be the address of the secretary 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 office 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.

14. (1) Where provision is made in the charter of a foundation for the appointment of a foundation council, such foundation council may consist of two or more natural persons or a legal person and one or more natural persons or a legal person by itself.

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

(a) if appointed before registration, may be appointed by the founder or an administrator appointed under section 5(6);

(b) if a person has been empowered by the founder or
(4) Where an officer 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 the such person, as if the reference to an officer were a reference to such a natural person.

(5) A person shall not be appointed as a foundation council or as 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, or the administrator, or the officers, 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 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, and any notice provided for in this Act
(11) Where the Court is satisfied that -

(a) an application made under subsection (10) 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 persons who comply with this section as a foundation council or member of the foundation council.

(12) Where a foundation council or member of a foundation council has failed to comply with subsection (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 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, the Court may order the removal of that person and the appointment of a person who complies with this section as a foundation council or member of the foundation council.

(13) The provisions of the charter and this Act in respect of foundation councils or 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 foundation council or member appointed in any other way provided for in this Act.

(14) Notwithstanding that a person has ceased to be a foundation council or 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 governing body or supervisory person or persons, the provisions of this section and section 15 shall apply mutatis mutandis, subject to the charter, to that appointment and that governing body, person or persons.

(16) Nothing in this section shall be construed as making a foundation council or member of a foundation council liable in any legal proceedings (whether civil or criminal) for any act or omission of the foundation.

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 -
(3) Subject to subsections (1) and (2), the charter or the articles 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(11) in respect of access to the books, records and accounts 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.

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
(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;
(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
(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, and any notice provided for in this Act relating to the ending of the appointment of a person as an auditor has been given as required by this Act.

(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) Every auditor shall have a right of access at all times to the books and 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
(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

17. (1) No 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 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
(e) which in the opinion of the Registrar is offensive;

(f) which contains “Chamber of Commerce”; or

(g) 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 Minister no foundation shall 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 Minister no foundation shall 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;

(c) in the opinion of the Registrar is undesirable; or

(d) includes any word or expression for the time being specified by order of the Minister.

(4) In determining for the purposes of subsection (1)(b) or (c) whether one name is the same as another or so nearly the same 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:
prospective foundations for such period or periods as he shall in his absolute discretion deem appropriate.

(8) 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 like a name appearing at the time of registration in the Register;

(b) is the same as or, in the opinion of the Registrar too like 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 like another.

(3) If it appears to the Registrar that -

(a) misleading information has been given for the purpose of the registration of a 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.
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.
Registration 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 secretary to the foundation or the counsel and attorney 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;
(iii) a summary of 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;
(v) the name of the founder and his address in The Bahamas for the service of documents;
(vi) the names and addresses of the foundation’s first officers (including its secretary);
(vii) the name and address of the foundation council or other governing body or supervisory person;
(viii) the address of the foundation’s registered office;
(ix) the period for which the foundation is established;
(x) the value of the foundation’s initial assets; and
(xi) such other particulars as the
The documents mentioned in subsection (1) shall be accompanied by the prescribed fee.

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.

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 foundation the Registrar shall certify that the foundation is registered as a foundation.

(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 all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and 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 foundation council or other similar governing body or member thereof, 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 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
severally liable in respect of that action and shall be entitled to the benefit of that action.

**PART VI**

**CAPACITY**

<table>
<thead>
<tr>
<th>Limitation on the capacity of a foundation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
<tr>
<td>(2) A member of a governing body of a foundation 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.</td>
</tr>
<tr>
<td>(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 -</td>
</tr>
<tr>
<td>(a) where there is a foundation council or other supervisory person or persons, by resolution of the foundation council or those other person or persons; or</td>
</tr>
<tr>
<td>(b) in any case by a resolution signed by all the officers for the time being.</td>
</tr>
<tr>
<td>(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.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Power of officers to bind the foundation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>27. (1) In favour of a person dealing with a foundation in good faith, the power of the officers to bind the foundation, or authorise others to do so, may be assumed.</td>
</tr>
<tr>
<td>(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.</td>
</tr>
<tr>
<td>(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.</td>
</tr>
</tbody>
</table>
deeds, 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 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
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
authentication by a foundation may be signed by the authorised signatories of the foundation.

Publication 30. (1) Every foundation -

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 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
of governing bodies, etc. 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 the contract to serve the foundation, shall require the 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 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.

(2) Subject to subsection (3), any provision, whether contained in the charter or the articles of a foundation or in any contract with the foundation or otherwise, for exempting any officer of the foundation from or indemnifying him against, any liability which
(4) If, in any proceedings for negligence, default, misconduct, breach of duty or breach of trust 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, breach of duty or breach of trust, 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, breach of duty or breach of trust, 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, breach of duty or breach of trust, 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, breach of duty or breach of trust.

(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

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
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 meetings

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 by post 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:
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 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 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, member of the foundation council or other supervisory person 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 who is responsible 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 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
person, when a quorum shall be that one legal person;

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

(f) the members shall pass resolutions -

(i) in so far as the charter or articles do not otherwise provide; and

(ii) 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 or officer 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.

Rights of a beneficiary to information.

41. (1) A person who is designated as a beneficiary by virtue of the charter or the articles (if any) of a foundation or identified as such by the person or body appointed for this purpose by the founder or by the foundation council, and has a vested interest in all or some of the foundation's assets shall be notified in writing by the officers of his interest and shall be entitled -

(a) to receive on request information from the
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) A request to receive information or inspect documents as provided for in subsection (1) shall be made in writing to the secretary.

(3) 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 documents, 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.

(4) 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 hereunder, is himself in default.

PART VIII
FINANCIAL

Keeping of books of account.

42. (1) A foundation shall cause to be kept proper books of account with respect to -

(a) all sums of money received, expended and distributed by the foundation and the matters in respect of which the receipt and expenditure takes place;
(b) all sales and purchases of goods by the foundation; and
(c) the assets and liabilities of the foundation.

(2) The books of account 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
and balance foundation and subsequently once at least in every calendar year lay
sheet 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.

(2) The officers shall (unless waived by the
foundation council) cause to be made out in every calendar year, and to
be laid before the foundation in a meeting, a balance sheet as at the
date to which the income and expenditure account is made up, and there
shall be attached to every such balance sheet a report by the officers
with respect to the state of the foundation's affairs in relation to the
achievement of the object of the foundation.

(3) A person who, being an officer of a
foundation, fails to take all reasonable steps to comply with the
provisions of this section is in default.

(4) Every balance sheet of a foundation shall
contain a summary of the assets and liabilities together with such
particulars as are necessary to disclose the general nature of the
liabilities and the assets of the foundation and shall state how the
values of the assets have been arrived at.

(5) The provisions of this section are in addition
to other provisions of this Act requiring other matters to be stated in
balance sheets.

Assets to 44. Where any of the assets of a foundation
be set out consist of shares in, or amounts owing (whether on account of
separately a loan or otherwise) from a company or companies, the
in balance aggregate amount of those assets, distinguishing shares
sheet. and indebtedness, shall be set out in the balance sheet of the
foundation separately from all its other assets, and where a foundation
is indebted, whether on account of a loan or otherwise to a company or
companies, the aggregate amount of that indebtedness shall be set out in
the balance sheet of the foundation separately from all its other
liabilities.

Balance 45. (1) Where a foundation holds shares either
sheet to directly or through a nominee in a company (in this section
include referred to as "a subsidiary company") or in two or more
particulars subsidiary companies, there shall be annexed to the balance
as to sheet of the foundation a statement, signed by the persons by
companies. whom in pursuance of section 47 the balance sheet is signed, stating how
(b) losses of a subsidiary company have been taken into account by the officers of the foundation in arriving at the profits and losses of the foundation as disclosed in its accounts.

(2) It shall not be necessary to specify in any such statement as required by subsection (1) the actual amount of the profits or losses of any subsidiary company, or the actual amount of any part of any such profits or losses which has been dealt with in any particular manner.

(3) If in the case of a subsidiary company the auditor's report on the balance sheet of that company does not state without qualification that the auditor has obtained all the information and explanations he has required and that the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of the subsidiary company's affairs according to the best of his information and the explanation given to him and as shown by the books of the subsidiary company, the statement which is to be annexed to the balance sheet of the foundation shall contain particulars of the manner in which the report is qualified.

(4) For the purposes of this section, the profits or losses of a subsidiary company mean the profits or losses shown in any accounts of the subsidiary company made up to a date within the period to which the accounts of the foundation relate, or, if there are no such accounts of the subsidiary company available at the time when the accounts of the foundation are made up, the profits and losses shown in the last previous accounts of the subsidiary company which became available within that period.

(5) If for any reason the officers of the foundation are unable to obtain such information as is necessary for the preparation of such statement, the officers who sign the balance sheet shall so report in writing and their report shall be annexed to the balance sheet in lieu of the statement.

Accounts to contain particulars as to loans to, and remuneration of officers.

46. (1) The accounts which in pursuance of this Act are to be laid before every foundation in a meeting shall, subject to the provisions of this section, contain particulars showing -

(a) the amount of any loans which during the period to which the accounts relate have been made either by the foundation or by any other person under a guarantee from or on a
or by or from any subsidiary company (as defined in section 45).

(2) In this section, "emoluments" include fees, percentages and other payments made or consideration given, directly or indirectly, to an officer as such, and the money value of any allowances or perquisites belonging to his office.

Signing of balance sheets

(1) The balance sheet of a foundation shall be signed by the sole officer or on behalf of the officers by two of the officers and the auditor's report (if any) shall be attached or appended to or accompany the financial statements, and the report shall be read before the foundation in a meeting, and shall be open to inspection as specified in this Act.

(2) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published or where an auditor is appointed, any copy of a balance sheet is issued, circulated or published without having a copy of the auditor's report attached thereto, the foundation and every officer who is knowingly a party to the default, is in default.

Right to receive copies of balance sheets and auditor’s report.

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 in that behalf to the foundation, with a copy of the balance sheet and auditor's report (if any) at no charge and if default is made in furnishing such a copy of the foundation every officer who is responsible is in default.

Special audit.

49. (1) Where, on an application by a founder, an officer or the foundation council or any other supervisory person 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 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
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.

50. (1) 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, 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 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 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
(iii) 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 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 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.
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 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 (15), 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
before the expiration of twenty-one days 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 shall be in default.

(19) A notice (signed by the secretary to the foundation) 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 redomicile.

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

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

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

(2) In this section “relevant country” means a country having regulation of foundations generally or reasonably compatible with the provisions of this Act and shall include Austria, Liechtenstein, Panama, the Netherlands Antilles and such other countries as may from time to time be specified by order of the Minister as “relevant countries”.

(3) A foundation established under the laws of a relevant country shall be entitled to redomicile as a foundation established and registered under this Act notwithstanding any provision to the contrary in the laws of the relevant country.

(4) A foundation established under the laws of a relevant country may, if it will satisfy the requirements prescribed for a foundation by section 4, 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
(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
(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
(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
in the charter or the articles (if any) of a foundation, where there are more than one remaining beneficiary the remaining assets shall be divided equally between them.

(7) 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 herein 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.

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(1), 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 stating that the foundation no longer satisfies 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
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

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, 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 due and payable under
this Act, the Registrar shall restore the name of the foundation to the
(b) 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

56. (1) Every foundation shall keep at its registered office a file containing accurate copies of all documents filed at the Registry as well as accurate copies of its foundation charter and articles (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 who is responsible are in default.
(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 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
(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

59. (1) The Registrar shall keep a register of documents delivered to him and which he is required to retain under this Act 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 ten years, after which time they may, in the Registrar's absolute discretion, be destroyed.

Inspection,

et there, of which direct oral evidence would be admissible.

production

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.
foundation file with or deliver to the Registrar any account or
to file other document, or to give notice to him of any matter, fails
documents with to make good the default within fourteen days after the
the Registrar. service of a notice on the foundation requiring it to do so, the Court
may, on an application made to the Registrar 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
62. (1) The Registrar shall cause to be published in
notification. 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), that is to say -

(a) any copy of a winding-up order in respect of a
foundation;
(b) any order for the dissolution of a foundation;
(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.

Confiden-
63. (1)(a) Subject to paragraphs (b) and (c), the
tiality. Registrar or any officer, employee, agent or adviser of the Registrar
who discloses any information relating to -

(i) the affairs of the Registrar;
disclosure -

(i) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;
(ii) for the purpose of assisting the Registrar to exercise any functions conferred on him by this Act, by any other Act or by regulations made thereunder;
(iii) in respect of the affairs of a foundation or of a founder or beneficiary of a foundation, with the consent of the foundation, founder or beneficiary, as the case may be, which consent has been voluntarily given;
(iv) where the information disclosed is or has been available to the public from any other source;
(v) where the information disclosed is in a manner that does not enable the identity of any foundation or of any founder or beneficiary of the foundation to which the information relates to be ascertained;
(vi) to a person with a view to the institution of, or for the purpose of -
(a) criminal proceedings,
(b) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties,
(c) disciplinary proceedings relating to the discharge by a public officer, protector, officer or a member or employee of the Registrar or foundation of his duties, or
(vii) in any legal proceedings in connection with -
(a) the winding-up or liquidation of a foundation, or
(b) the appointment or duties of a receiver of a foundation.
(c) Subject to paragraph (f), the Registrar may disclose to an overseas regulatory authority information necessary to enable that
(ii) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.

(e) The Registrar may decline to exercise his powers under paragraph (c) unless the overseas regulatory authority undertakes to make such contribution towards the cost of the exercise as the Registrar considers appropriate.

(f) Nothing in paragraph (c) authorises a disclosure by the Registrar unless —

(i) the Registrar has satisfied himself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or

(ii) the Registrar has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Registrar; and

(iii) the Registrar is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority’s regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that authority; and

(iv) the Registrar is satisfied that information provided following the exercise of his powers under paragraph (c) will not be used in criminal proceedings against the person providing the information.

(g) Where in the opinion of the Registrar it appears necessary in relation to any request for assistance received from an overseas regulatory authority to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in obtaining information requested by the overseas regulatory authority, the Registrar shall immediately notify the Attorney-General with particulars of the request, and shall send him copies of all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to amicus curiae, to appear or take part in any proceedings in The Bahamas, or in
(2)(a) No person who has acquired information in his capacity as:-

(i) an officer of a foundation;
(ii) a protector of a foundation;
(iii) a member of a foundation council;
(iv) a member of any other governing body of a foundation;
(v) any other supervisory person;
(vi) a counsel and attorney for a foundation, or
(vii) an auditor of a foundation;

shall, without the express or implied consent of the founder or founders and the beneficiary or beneficiaries of the foundation, disclose to any person any such information relating to the identity of the beneficiary or beneficiaries of the foundation or its assets, liabilities, transactions or accounts, except:-

(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.

(b) 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.

(c) Every person who contravenes the provisions of paragraph (a) 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 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 if he is satisfied that -

(a) the name of the foundation is on the Register;
(b) the foundation has filed at the Registry all documents required by this Act to be so filed; and
(c) the foundation has paid all fees and penalties 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 or removed from the Register.
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 or protector shall be
personally liable for the acts, receipts, neglects or defaults of any
other officer, foundation council member 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 judgment, 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, willful default or misconduct, fraud or dishonesty.

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 and such forfeiture shall be valid and enforceable
when there is no discretion with regard to such enforcement.

(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.
63

donating property to a foundation may benefit from the provisions of this section.

Forced

68. Foundations shall enjoy the benefit of the
heirship. Trusts (Choice of Governing Law) Act as if they were trusts governed by
the laws of The Bahamas and the founder or founders were a settlor or
settlers for the purpose of such Act, the terms, conditions and
provisions of which shall apply mutatis mutandis to foundations as if
they were contained in this Act.

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.

(2) The Exchange Control Regulations Act shall not
apply to a private 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 donor or
beneficiary with respect to any interest given to or received from a
foundation.

(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 personalty is included in such
assets.

Default

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 or the foundation
council or some other supervisory person, 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
(c) where the application and the order are in respect of default by an officer, by that officer.

Offences. 71. 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.

Notice. 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 secretary 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 secretary 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.
respect of the several matters mentioned in regulations made for this purpose the several 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.

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,
   (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 and 54;

(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:
Preliminary

1. (1) This deed shall provide for the formal establishment of a Foundation in the Commonwealth of The Bahamas (“The Bahamas”) under the Foundations Act, 2004 (“the Act”).

   (2) The Foundation Charter will address all of the statutory requirements for creating a Bahamian foundation.

   (3) Once the appropriate application, statement, statutory declaration and fee have been filed and accepted by the Registrar of Foundations in The Bahamas (“the Registrar”), the Registrar will issue a certificate of registration.

   (4) The Charter will convey legal status to the foundation from the date of such certificate.

   (5) The Charter will be subject to the overriding provisions of the Act and any statutory regulations.

Foundation Name

2. Upon proper application, registration and the issuance by the Registrar of a certificate, all in accordance with the provisions of the Act, this Foundation shall become a legal entity and shall be known as the __________ Foundation (“the Foundation”).

Founder

3. (1) The Founder of the Foundation is ______ of __________.

   (2) The aforementioned address shall be the address for service of documents on the Founder.

Registered Office

4. (1) The Registered Office of the Foundation is located in the Island of New Providence in The Bahamas at __________.

   (2) The aforementioned address shall be the
Duration of Foundation

6. The Foundation is established for an indefinite period.

Initial Endowment

7. (1) The initial endowment to the Foundation shall consist of the sum of Ten thousand dollars, ($10,000.00) which has been transferred, without consideration, into the Foundation and which shall form the initial assets of the Foundation. The Founder hereby certifies that he is the owner of the endowment with good, valid and marketable title which is free and clear of all liens, charges, encumbrances and any third party claims of any nature whatsoever, and that all actions necessary to pass title to the Foundation have been effectively and properly carried out.

(2) Upon the vesting of assets in the Foundation, such assets shall become the sole property of the Foundation, shall no longer be the property of the Founder and shall not become the property of any Beneficiary unless distributed in accordance with the provisions of this Charter or the Articles (if any).

(3) The endowment of supplementary assets, in addition to the initial assets, is hereby authorized, provided, however, that any such further endowment or endowments, must be accepted by the unanimous approval of the Officers or the Foundation Council.

Objects

8. (1) The assets transferred by the Founder, and now being the assets of the Foundation, shall be managed, including being realized, applied, administered, invested and disbursed for the following purposes -

(a) to engage in any act, activity, purpose or object, which is not unlawful, immoral or contrary to any public policy in The Bahamas or prohibited under the terms of this Charter; and

(b) to make gifts of its income and/or capital as the Foundation’s Officers may by unanimous resolution determine after the Foundation Council (if any) has approved such gifts.

(2) A purpose or object of the Foundation may but need not be charitable.
management of its assets do such things as are necessary for their proper administration, including but not limited to, buying and selling of such assets and engaging in any other acts, activities or investments 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 purpose or purposes.

General Foundation Powers

9. (1) The Foundation, acting through the Officers or any other governing body, shall have such powers as are permitted by law for the time being in force in The Bahamas, irrespective of Foundation benefit, and may perform all acts and engage in all activities necessary or conducive to the conduct or attainment of the objects of the Foundation.

(2) Except as otherwise provided in the Articles (if any) or the Act, the Officers of the Foundation shall act either by a simple majority of the Officers present at an ordinary meeting of the Officers or unanimously by the circulation of a written document duly signed by each Officer in lieu of a meeting.

(3) A party to a transaction with the Foundation is not bound to inquire as to whether the transaction is permitted under this Charter or the Articles (if any) or as to any limitation of the Officers to bind the Foundation.

Officers

10. (1) The Founder shall, before registration, and as a statutory requirement to achieve legal status for the Foundation, appoint one or more persons who shall satisfy the requirements and comply with the restrictions under the Act, to be Officers of the Foundation, one of whom shall be the Secretary. The Founder may appoint such other initial Officers before registration as the Founder may determine, including one or more assistants to any of the initial Officers so appointed. Subsequent appointments of Officers or the filling of vacancies shall be dealt with in accordance with the Articles (if any).

(2) The duties and terms of office of the Officers, including, but not limited to, the specification of matters concerning their removal, period of office, meetings and representative authority of the Officers may be established under the Articles (if any) of the Foundation. Failing that, then such duties and terms of office
Foundation Council

11. (1) The Founder may, by a memorandum in writing, before registration, appoint a person or committee of persons to serve as a Foundation Council to the Foundation. In the absence of the Founder’s appointment of a Foundation Council, the Officers may appoint a Foundation Council.

(2) The duties and terms of office of the Foundation Council, including, but not limited to, the specification of matters concerning their removal, period of office, meetings, remuneration and representative authority of the Foundation Council, may be established under the Articles (if any) of the Foundation or failing that then such duties and terms may be established at any time after registration by a resolution of the Officers at their sole discretion.

Beneficiaries

12. (1) The initial and remaining Beneficiary or Beneficiaries, and any supplementary Beneficiary or Beneficiaries of this Foundation may be those persons as designated in the Articles (if any). Failing that, the Officers shall by resolution, with the prior written consent of the Foundation Council, or failing the appointment of any Foundation Council, then the Officers at their sole discretion, may, select the initial and remaining Beneficiary or Beneficiaries, and may select any supplementary Beneficiary or Beneficiaries of the Foundation following registration.

(2) The rights and restrictions of the Beneficiaries may be those as stipulated within the Articles (if any) of the Foundation. Failing that, the Officers, with the prior written consent of any Foundation Council, or if there is no Foundation Council, then the Officers at their sole discretion will establish the rights of any Beneficiary or Beneficiary by resolution.

Reservation of Founder Rights and Obligations

13. (1) The rights of the Founder in respect of the formation of the Foundation shall not devolve upon his successors in title or assigns.

(2) Any person who shall endow assets to the Foundation after its registration shall not thereby acquire the powers of the Founder.

(3) If, for whatever reason, the Founder shall not have endowed the assets to the Foundation as provided for herein either
Residence and Governing Law

14. The Foundation shall be resident and domiciled in The Bahamas. For so long as the Foundation is resident and domiciled in The Bahamas, the proper law of the Foundation is the law of The Commonwealth of The Bahamas and its validity, construction and all rights hereunder, are to be governed by the laws of The Commonwealth of The Bahamas.

Amendment of Charter

15. (1) The Foundation may at any time after registration change its name or modify this Charter in any manner whatsoever, provided that such changes or modifications are consistent with the provisions of the Act and provided that the certain procedures set out in sub-paragraph (2) are adhered to.

(2) The procedure referred to in sub-paragraph (1) is as follows -

(a) the Founder or the Officers, shall convene a meeting of the Founder (if remaining), the Officers, the Foundation Council (if any) or any other supervisory person, in accordance with the provisions for calling the Annual Meeting of Officers as stipulated under Section 35 of the Act; and

(b) the resolution for amendment of this Charter shall be adopted only if agreed to by the Founder, if remaining, and by all the Officers and by the Founder Council (if any) or all other supervisory persons.

(3) In the event it is not possible to amend the Charter because of the withdrawal of the Founder, the Foundation Council may resolve to make such amendments as are necessary in the circumstances to maintain the objects of the Foundation and shall submit the resolution to the Supreme Court of The Bahamas for approval.

(4) Where an amendment of the Charter has been made an application may be made to the Court by the Founder, any single Officer, the Foundation Council (if any) or any other supervisory person or an auditor, to have the amendment cancelled, provided that no such person shall have already voted in favor of the amendment. Such an application must follow the procedures as stipulated under Section 50 (12) of the Act.
Seal

18. The Foundation will have a Seal, the safe custody of which shall be provided for by the Officers. The procedures as to the proper use of the Seal may be provided for under the Articles (if any) or, failing that, the Officers will by resolution establish such procedures and imprint of the Seal shall be kept at the Registered Office.

Notices

19. Any notice or document that must be served on the Foundation may be served either by hand delivery or by sending it through the post in a prepaid letter, or by fax or electronically, addressed to the Secretary of the Foundation at the Registered Office of the Foundation. In respect of the manner, effectiveness and time of service, the provisions of the Act shall apply.

IN WITNESS WHEREOF, the Founder has hereunto set his hand and seal for the purpose of forming a Foundation under the laws of the Commonwealth of The Bahamas on this the ______ day of ___________________, 20______.

______________________________

Signed, sealed and delivered by the Founder in the presence of:-

______________________________
the Secretary or Notary Public
SCHEDULE A

Beneficiaries

SCHEDULE B

The Cancer Society of The Bahamas

OBJECTS AND REASONS

The object of the Bill is to provide the legislative basis for the establishment of foundations as vehicles for the holding of private assets endowed on the foundation for the benefit of identified persons or classes of persons. The Bill sets out the characteristics of a foundation, the method of setting up and registering it, the qualifications and duties of the officers and of any supervisory individuals for which the founder makes provision in the documents establishing the foundation, for the general conduct of a foundation and for the liquidation and winding up of a foundation. The Bill establishes the registration arrangements, makes provision for fees payable for administrative services and determines penalties for non-compliance with the statutory requirements.

Clause 1 prescribes the title of the Act.
Clause 2 defines the specific terms used in the Act.
Clause 3 defines a private foundation by reference to the method of establishment, its assets holding function and the registration under the Act. It provides for the status of a registered foundation, the status of the assets of the foundation and their management.

Clause 4 regulates the purposes for which a foundation may be used. A foundation is precluded from carrying on a number of activities, and provision is made for the foundation to be liquidated if it acts in contravention of the restrictions.

Clause 5 deals with the establishment of a foundation either by a deed of endowment or by the will of a deceased person, in either case referred to as the foundation charter.
Clause 9 defines the powers and obligations of a person who endows a foundation with its initial assets.

Clause 10 specifies the eligibility of a person to be an officer of a foundation, the requirement to have officers appointed to a foundation, the method of appointing and the arrangements for a person to cease to be an officer. The clause also deals with the liabilities of officers.

Clause 11 spells out the duties of officers and specifies the limitations on the powers of officers as well as setting out those powers.

Clause 12 deals with the qualifications of a person to be appointed as the secretary of a foundation, the method of appointment, the duties of secretary and the arrangements when a person ceases to be the secretary.

Clause 13 makes provision for the requirement that every foundation shall have a registered office in The Bahamas, for the notification to the Registrar of the address of the office and of any change in the address.

Clause 14 specifies the eligibility of a person to be a member of a foundation council the method of appointing and the arrangements for a person to cease to be a member of a foundation council.

Clause 15 details the duties of the foundation council and the rights and powers of a committee and of the members individually.

Clause 16 deals with the appointment of an auditor to a foundation, specifying the circumstances in which an auditor shall or may be appointed, the qualifications of the auditor, the remuneration of the auditor and the arrangements when the auditor ceases to be eligible to be so appointed or when his appointment terminates. The clause also deals with the duties and powers of an auditor and the method of resolving a dispute between the auditor and the foundation.

Clauses 17 to 20 deal with the name by which a foundation may be registered, the ability of the foundation to change its name, a requirement to change a name and the method of dealing with a misleading name.

Clause 21 sets out the method of registering a foundation, specifying the documents which must accompany the application.

Clause 22 provides for the issuing of a certificate of registration and the status of the foundation when the requirements of clause 21 have been met.

Clause 23 provides that the certificate of registration
Clause 26 deal with any limitation on the powers of a foundation and actions outside those powers, as against a third party and in relation to the actions of the officers.

Clauses 27 and 28 are concerned with the powers of officers in relation to the foundation and third parties.

Clause 29 specifies the ways in which a foundation can execute documents.

Clauses 30 and 31 specify the information to be published in relation to the foundation.

Clause 32 specifies the requirements about disclosure of interests by members of governing bodies, etc.

Clause 33 deals with the liability of members of governing bodies, etc. to the foundation for negligence, etc.

Clauses 34 to 39 make provisions for the calling of and the timing of meetings of the officers, the conduct of business and the keeping of records and the right of inspection of the records.

Clause 40 deals with the holding of meetings by members of a foundation council.

Clause 41 specifies the rights of the beneficiary of a foundation to information.

Clauses 42 to 48 are concerned with the obligation of the foundation to keep accounts and the form of those accounts. The clauses also deal with the right to receive or inspect the books of accounts and any auditor's report.

Clause 49 introduces the opportunity for a founder or any member of a governing body of a foundation to apply to the Supreme Court for the appointment of a special auditor who reports back to the Court.

Clause 50 specifies the circumstances in which and the method by which a foundation charter may be amended.

Clause 51 makes provisions for redomiciliation in and out of The Bahamas by a foundation.

Clauses 52 to 54 deal with liquidation of a foundation, winding up and removal from the Register and make provision for the issuing of regulations further prescribing the procedures to be followed.

Clause 55 deals with restoration to the Register.

Clause 56 deals with documents to be kept at the registered office.

Clauses 57 to 58 deal with the form of documents delivered to the Registrar.
Clause 65 provides indemnification for officers and others.

Clause 66 validates in terrorem provisions.
Clause 67 validates restrictions against alienation.
Clause 68 deals with forced heirship.
Clause 69 sets out a number of exemptions.
Clauses 70 and 71 are concerned with non-compliance;
Clause 70 specifies default provisions and clause 71 makes provision for offences and the imposition of criminal penalties.
Clause 72 specifies arrangements in respect of the serving of any notice under the Act.
Clause 73 makes provision for fees.
Clause 74 specifies enabling powers for the making of regulations and deals with the form of documents required under the Act.
The Schedule contains a Model Foundation Charter.