

## **ARRANGEMENT OF SECTIONS**

Section

### **PART I - PRELIMINARY MATTERS**

1. Short title and commencement.
2. Interpretation.

### **PART II - ESTABLISHMENT OF A FOUNDATION**

3. Establishment of a foundation.
4. Documents to be delivered to the Registrar upon registration.
5. Registration of a foundation.
6. Purposes for which a foundation can be established etc.
7. Capacity of a foundation.
8. Capacity of councillors to bind a foundation.
9. Name which may be used by a foundation.
10. Changing the name of a foundation.
11. Power of Registrar to require change of name of a foundation.

### **PART III - COUNCILLORS AND SECRETARY**

12. Councillors.
13. Secretary.
14. Duties of councillors.
15. Duty of confidentiality.
16. Indemnification.
17. Insurance.
18. Register of councilors etc.
19. Meeting of councillors.

### **PART IV - THE GUARDIAN**

20. Appointment and qualification of guardian.
21. Duties and powers of guardian.

### **PART V - ACCOUNTS AND AUDIT**

22. Accounts.
23. Audit.

### **PART VI - FORCED HEIRSHIP, RESTRICTION ON ALIENATION AND FORFEITURE OF BENEFITS**

24. Forced heirship.
25. Restriction against alienation.
26. Forfeiture of benefits.

**PART VII - INVESTIGATIONS INTO FOUNDATIONS**

27. Appointment of inspectors.
28. Powers of inspectors.
29. Production of records and evidence to inspectors.
30. Power of inspectors to call for councillor's bank account.
31. Authority for search.
32. Obstruction.
33. Failure to co-operate with inspectors.
34. Inspectors' report.
35. Power to bring civil proceedings on behalf of a foundation.
36. Expenses of investigating a foundation.
37. Inspector's report to be evidence.
38. Privileged information.

**PART VIII - CONTINUATION OF FOUNDATIONS**

39. Continuation in Saint Kitts.
40. Articles of continuance.
41. Certificate of continuance.
42. Preservation of foundation.
43. Foundation leaving Saint Kitts.
44. Conditions applicable to foundation leaving Saint Kitts.
45. Discontinuance and effect.

**PART IX - DISSOLUTION OF FOUNDATIONS**

46. Dissolution.
47. Court dissolution.
48. Distribution of assets.
49. Dissolution by Registrar.
50. Revival of a foundation.
51. Regulations for dissolution.

**PART X - REGISTRAR**

52. Registrar and other officers.
53. Seal.
54. Registration numbers.
55. Size, durability, etc. of documents delivered to the Registrar.
56. Form of documents to be delivered to the Registrar.
57. Certificate of good standing.
58. Fees and forms.
59. Inspection of documents kept by the Registrar.
60. Enforcement of duty to make returns.

**PART XI - GENERAL PROVISIONS**

**Articles of foundation**

- 61. Articles of a foundation.
- 62. Amendment of articles.

**By-laws of foundation**

- 63. By-laws of foundation.

**Taxes and stamp duties**

- 64. Exemption from taxes.
- 65. Exemption from stamp duties.
- 66. Annual return.

**Miscellaneous Matters**

- 67. Assets of a foundation.
- 68. Form of a foundation's records.
- 69. Examination of records and admissibility of evidence.
- 70. Production and inspection of records where offence suspected.
- 71. Legal professional privilege.
- 72. Right to refuse to answer questions.
- 73. Power of Court to grant relief in certain cases.
- 74. Offence of making false or misleading statements.
- 75. Accessories and abettors.
- 76. General powers of the Court.
- 77. Regulations.

**Schedule**

No. 8 of 2003.

*Foundations Act, 2003.*

Saint Christopher  
and Nevis.



I assent,

CUTHBERT M SEBASTIAN

*Governor-General.*

24<sup>th</sup> October 2003.

## **SAINT CHRISTOPHER AND NEVIS**

### **No. 8 of 2003**

AN ACT to provide for the establishment, operation and management of foundations; and to provide for related or incidental matters.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

#### **PART I - PRELIMINARY MATTERS**

1. This Act may be cited as the Foundations Act, 2003, and shall come into force on such date as the Minister may, by Order, appoint.

Short title and  
commencement.

2. In this Act, unless the context otherwise requires,

Interpretation.

“articles” means the articles of a foundation adopted in accordance with the provisions of section 61;

“auditor” means a person who

(a) is qualified as an accountant by examination conducted by

(i) any of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland,

(ii) the Canadian Institute of Chartered Accountants, or

(iii) the American Institute of Certified Public Accountants,

and is a practicing member in good standing with any one of those institutes; or

*Foundations Act, 2003 – 8.*

(b) is approved by any supervisory body of the accounting profession recognised under the laws of Saint Christopher and Nevis;

“beneficiary” means a person designated as such pursuant to the provision of the articles or by-laws of a foundation;

“body corporate” means any body corporate wherever or however incorporated, other than a corporate sole;

“company” means any body corporate wherever or however incorporated, other than a corporate sole;

“councillor” means a person appointed as councillor in accordance with section 12;

“Court” means the Eastern Caribbean Supreme Court or any Court with similar jurisdiction established in succession to that Court;

“exempt foundation” means a foundation which is exempt from taxes under section 64;

“Federation” means the Federation of Saint Christopher and Nevis;

“foundation” means a foundation established under this Act or continued in Saint Kitts under Part VIII of this Act;

“founder” means any person who subscribes to the articles establishing a foundation and who transfers irrevocably the initial assets, if any, to the foundation;

“Gazette” means the Official Gazette of the Federation;

“guardian” means the person or committee of persons to which sections 20 and 21 of this Act apply;

“initial assets” mean assets irrevocably transferred by a founder at the time of establishment of a foundation and vested in and being the property of that foundation;

“interdict” means a person in respect of whom a curator has been appointed by any court having jurisdiction, whether in the Federation or elsewhere, in matters concerning mental disorder;

“legal person” means a company or foundation;

“Minister” means the Minister responsible for finance;

“minor” means a person who under the laws of the Federation or under the laws of his or her domicile has not reached the age of legal capacity;

*Foundations Act, 2003 – 8.*

“Official Seal” means the official seal of the Registrar pursuant to section 53;

“ordinary foundation” means a foundation that is not an exempt foundation;

“partnership” means any partnership, limited partnership or other unincorporated association wherever and however established;

“person” includes a legal person;

“Register” means the Register of Foundations kept by the Registrar in compliance with Part X of this Act;

“registered office” means the office in Saint Kitts to which all communications and notices may be addressed;

“Registrar” means the Registrar of Foundations appointed pursuant to section 52;

“secretary” means a person appointed to be secretary of a foundation pursuant to section 13;

(2) A reference in this Act to a Part or section by number only is a reference to the Part or section of that number contained in the Act.

(3) A reference in a section or other division of this Act to a subsection or paragraph or sub-paragraph by number or letter only is a reference to the subsection, or paragraph or sub-paragraph of that number or letter contained in the section or other division of the Act in which the reference occurs.

## **PART II - ESTABLISHMENT OF A FOUNDATION**

3. (1) A founder or a person acting on behalf of the founder may, on delivering the articles of the foundation to the Registrar and on payment of the prescribed registration fees apply to have the foundation registered in accordance with the provisions of this Act.

Establishment of a foundation.

(2) Upon the registration of a foundation, the foundation shall be a separate and independent legal entity in its own right, capable of suing and being sued in its own name.

(3) Articles of Association of a foundation which are delivered to the Registrar shall be in the English language and shall be in such form and contain such particulars as are set out in section 61 of this Act.

(4) The establishment of a foundation shall not be completed until

*Foundations Act, 2003 – 8.*

- (a) the articles of the foundation are registered in accordance with the provisions of this Act; and
- (b) a certificate of establishment is issued in accordance with section 5.

(5) A person who acts on behalf of a founder shall be a person authorised to carry on trust or corporate business under the relevant laws of the Federation.

Documents to be delivered to the Registrar.

4. (1) For the purpose of registering a foundation under this Act, there shall be delivered to the Registrar an original copy of the articles of the foundation accompanied by a statement signed by, or on behalf of, the founder setting out

- (a) the foundation's name and address of its registered office;
- (b) the particulars of any initial assets to be transferred to the foundation and an understanding that the founder will transfer the said assets to the foundation immediately upon registration;
- (c) whether the foundation is an ordinary or an exempt foundation;
- (d) the particulars with respect to any person who is to be the secretary to the foundation;
- (e) an undertaking, in case of an exempt foundation, that the councilors of the foundation shall forthwith notify the Minister, by notice in writing, if the foundation ceases to qualify as an exempt foundation; and
- (f) any other particulars provided under or in accordance with this Act.

Registration of a foundation.

5. (1) If the Registrar is satisfied that all the requirements of this Act in respect of the registration of a foundation have been complied with, he shall register the articles delivered to him under section 3.

(2) Upon the registration of the articles referred to in subsection (1), the Registrar shall

- (a) allocate a registration number to the foundation in accordance with section 54; and
- (b) issue a certificate of establishment in respect of the foundation stating
  - (i) the name of the foundation,
  - (ii) its registration number, and

*Foundations Act, 2003 – 8.*

(iii) the date of registration of its articles

(3) Each certificate of establishment shall be signed by the Registrar and be sealed with the Official Seal.

(4) The certificate of establishment shall be conclusive evidence of the establishment of the foundation.

6. (1) A foundation shall be established for the purposes for which foundations are normally established, which purposes shall be spelt out in the articles of the foundation and are permissible under the laws of Saint Christopher and Nevis.

Purposes for which foundations may be established etc.

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

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

(4) The Minister may, by Order, provide that foundations, which intend to carry on or which are carrying on any business specified in the Order as being finance business, shall be subject to such regulations as the Minister may prescribe.

(5) An Order made under this section may provide for the payment of annual and other fees, and for the imposition of fines for any breach of the matters specified in the Order.

7. (1) Subject to this Act, a foundation has the capacity, rights, powers, and privileges of an individual person.

Capacity of a foundation.

(2) Subsection (1) does not authorize a foundation to carry on any transaction in breach of

- (a) any law that prohibits the transaction; or
- (b) any law that requires permission or licence to carry on the transaction.

(3) A foundation shall not carry on any transaction or exercise any power that it is restricted by its articles or by-laws from carrying on or exercising, nor shall a foundation exercise any of its powers in a manner contrary to its articles and by-laws.

(4) A transaction carried out by a foundation, including the

*Foundations Act, 2003 – 8.*

transfer of property, shall not be invalid by reason only that the act is contrary to its articles or by-laws.

Capacity of  
councillors to bind  
the foundation.

8. (1) Any person dealing with a foundation in good faith shall be entitled to assume that the Councillors have power to bind the foundation or authorise others to do so.

(2) The Councillors of a foundation shall observe any limitations on their powers flowing from the articles of the foundation, and any action by the Councillors which, but for section 7, would be beyond the powers of the foundation may only be ratified by the foundation by resolution of the founder or guardian.

Name which may  
be used by a  
foundation.

9. (1) The name of a foundation shall end with the word “Foundation”.

(2) The Registrar may refuse to register

(a) the foundation; or

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

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

Changing the  
name of a  
foundation.

10. (1) Subject to section 11, a foundation may, by resolution of the Councillors, change its name.

(2) Where a foundation changes its name under this section, the Registrar shall enter the new name on the Register in place of the former name, and shall issue a certificate of establishment altered to meet the circumstances of the case, and the change of name shall have effect from the date on which the altered certificate is issued.

(3) A change of name by a foundation under this Act shall not affect any rights or obligations of the foundation or render defective any legal proceedings by or against it, and any legal proceedings which have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

Power of  
Registrar to  
require change of  
name of a  
foundation.

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

(2) The direction, if not made the subject of an application to the Court under section (3), shall be complied with within three months from the date of the direction or such longer period as the Registrar may allow.

(3) The foundation may, within twenty one days from the date of the direction given under subsection (1), apply to the Court to set it aside, and upon any such application the Court may set the direction

aside or confirm it, or make such other direction as it thinks fit.

(4) If the Court confirms the direction, it shall specify a period not being less than twenty eight days within which the direction shall be complied with, and may order the Registrar to pay the foundation such sum if any as it thinks fit in respect of the expenses to be incurred by the foundation in complying with the direction.

(5) A foundation which fails to comply with a direction under this section commits an offence and shall be liable to a fine not exceeding 2,500 dollars and, in the case of a continuing offence, to a further fine not exceeding 250 dollars for each day in respect of which the offence continues.

### **PART III - COUNCILLORS AND SECRETARY**

12. (1) The business and affairs of a foundation shall be managed by a board of Councillors which shall consist of one or more persons.

Councillors.

(2) Subject to subsection (5), the first Councillors of a foundation may be appointed in the articles of the foundation upon the establishment of the foundation or in such other manner as may be provided by the articles or by-laws.

(3) Subject to subsection (2), the appointment and removal of councillors shall be effected in accordance with the provisions of the articles or by-laws of the foundation.

(4) The remuneration of councillors shall be fixed in accordance with the provisions of the articles or by-laws of the foundation.

- (5) A person shall not qualify as a councillor of a foundation,
- (a) in the case of a natural person, if that person is a minor or an interdict;
  - (b) in the case of a legal person, if that person is a subject of any legal proceeding which may result in the entity being wound up or otherwise dissolved.
  - (c) if the person is a guardian of a foundation of which that person is the sole councillor; or
  - (d) if the person is disqualified from being a councillor under this Act or any other law.

13. (1) A foundation shall have a secretary who is authorized to carry on either trust or corporate business in Saint Christopher under the relevant laws.

Secretary.

(2) The secretary of a foundation may be a natural or legal person, except that a foundation shall not have as its secretary, in the case of a natural person, a person who is the sole councillor of a

*Foundations Act, 2003 – 8.*

foundation, or in the case of a legal person, a legal person the sole manager of which is the councillor of the foundation.

(3) Subject to this Act, the secretary shall be appointed by the councillors for such term, and at such remuneration, and upon such conditions as they may think fit, and a secretary so appointed may be removed by them

(4) Anything required or authorized to be done by or to the secretary may, if the secretary's office is vacant or for any other reason when the secretary is unable to act, be done by or to a councillor authorized generally or specially in that behalf by the councillors.

(5) For the purposes of subsection (3), the term "manager" means a director, councillor, managing partner or liquidator of a legal person, except its secretary.

Duties of  
councillors.

14. (1) A councillor, in exercising his or her powers and discharging his or her duties, shall

- (a) act honestly and in good faith with a view to the interests of the foundation, and
- (b) exercise the care, diligence and skill which a reasonably prudent person would exercise in comparable circumstances.

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

Duty of  
confidentiality.

15. (1) Subject to the provisions of any law of the Federation, and except as is necessary for the proper administration of a foundation, the councillors of the foundation shall keep confidential all information regarding the nature and amount of the assets of the foundation and the conduct of their administration.

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

- (a) to the inspectors appointed under section 27;
- (b) to, subject to the terms of the articles and by-laws,
  - (i) the founder,
  - (ii) the guardian, or
  - (iii) any beneficiary of the foundation who is not a minor or interdict; or
- (c) pursuant to an order of the Court.

*Foundations Act, 2003 – 8.*

(3) Subject to the provisions of this Act, the terms of the articles and by-laws, and to any order of the Court, the councillors shall not be required to produce and make available to any person, any document which

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

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

Indemnification.

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

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

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

(4) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including

*Foundations Act, 2003 – 8.*

legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

Insurance.

17. A foundation may purchase and maintain insurance in relation to any person who is or was a councillor, guardian, secretary or a liquidator of the foundation, or who at the request of the foundation is or was serving as a councillor, guardian, secretary or a liquidator, of, or in any other capacity is or was acting for, another foundation, against any liability asserted against the person and incurred by the person in that capacity, whether or not the foundation has or would have had the power to indemnify the person against the liability under section 16.(1).

Register of  
councillors etc.

18. (1) Each foundation shall keep, at its registered office, a register of its councillors, guardian and secretary.

(2) The register referred to in subsection (1) shall contain the following particulars:

- (a) in the case of a natural person,
  - (i) his or her present forenames and surnames,
  - (ii) his or her former forenames and surnames,
  - (iii) his or her business or usual residential address,
  - (iv) his or her nationality,
  - (v) his or her business occupation, and
  - (vi) his or her date of birth;
- (b) in the case of a legal person,
  - (i) its name and any former names,
  - (ii) the address of its registered or principal; and
- (c) such as particulars as the Registrar may require.

(3) The register referred to in subsection (1) shall, during business hours, be open to inspection by the Registrar, founder, councillor, guardian, and secretary of the foundation, and shall be open for inspection for a period of not less than two hours in each business day.

(4) If an inspection required under this section is refused, or if there is a failure to comply with sub-section (1), the foundation and every councillor of the foundation who is in default commits an offence and shall be liable to a fine not exceeding 2,500 dollars for each day in respect of which the offence continues.

Meetings of  
Councillors.

19. (1) Subject to any limitations contained in the articles or by-laws of the foundation, the councillors of the foundation shall meet at such times and in such manner and places within or outside the Federation as they may determine.

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

(3) The provisions of the Schedule shall have effect with regard to meetings of the councillors of a foundation and such other matters as are specified in that Schedule subject to the provisions of the articles or by-laws of the foundation.

#### **PART IV - THE GUARDIAN**

20. (1) Where the articles of a foundation provides for the appointment of a guardian such guardian may be a natural or legal person.

Appointment and qualification of guardians.

(2) The founder or a beneficiary of a foundation may be appointed as a guardian but a sole councillor may not act as guardian.

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

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

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

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

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

*Foundations Act, 2003 – 8.*

(7) Where, for the time being, no guardian is appointed to a foundation or the number of persons so appointed is less than that required by the articles or the by-laws of the foundation and there is no provision in the articles or the by-laws for the appointment of a new or additional guardian an application may be made to the Court by

- (a) the founder;
- (b) a councillor; or
- (c) a remaining guardian;

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

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

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

Duties and powers  
of guardian.

21. (1) A guardian of a foundation shall

- (a) take such action as the guardian may deem necessary to ensure compliance by the foundation and the councillors with the provisions of the articles and the by-laws of the foundation, and this Act, and
- (b) generally supervise the management and conduct of the foundation by the councillors.

(2) Subject to subsection (1), the articles or the by-laws of a foundation may

- (a) specify the power of the guardian; and
- (b) provide powers in addition to those provided in this Act.

(3) The guardian of a foundation shall have full right of access to the books, records and accounts of the foundation.

(4) The guardian of a foundation shall, in addition to the rights conferred on the guardian by the articles or the by-laws, or this Act, have the right

- (a) to be informed of all meetings of the councillors;
- (b) to table business to be considered at meetings;

*Foundations Act, 2003 – 8.*

- (c) to attend and be heard but not to vote at such meetings;
- (d) where any business of a foundation is conducted by
  - (i) the circulation of documents, to be included in the circulation of documents at the time that they are circulated to the councillor, or
  - (ii) the delegation of powers to a councillor or an agent, to be informed of the terms and any exercise of the delegation.

(5) References in sub-sections (3) and (4) to the guardian of a foundation apply to all guardians holding office at the relevant time acting jointly and severally.

**PART V - ACCOUNTS AND AUDIT**

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

Accounts.

- (a) all sums of money received, expended and distributed by the foundation and the matters in respect of which the receipt, expenditure and distribution takes place;
- (b) all sales and purchases 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 councillors think fit, and shall at all times be open to inspection by the councillors, the guardian and the auditor, and the books of account required by this section to be kept shall be preserved for a period of twelve years from the date on which they are made.

(3) Where a councillor 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 willful act been the cause of any default thereunder by the foundation that councillor is in default.

23. Unless the articles or the by-laws otherwise provide it shall not be obligatory for the councillors to appoint an auditor.

Audit.

**PART VI - FORCED HEIRSHIP, RESTRICTION ON ALIENATION AND FORFEITURE OF BENEFITS.**

24. (1) No foundation governed by the laws of the Federation, and no transfer of property to a foundation which is valid under the laws of the Federation shall be void, voidable, liable to be set aside or defective

Forced heirship.

*Foundations Act, 2003 – 8.*

in any manner by reference to the law of a foreign jurisdiction.

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

- (a) the laws of any foreign jurisdiction prohibit or do not recognize the concept of a foundation; or
- (b) the transfer of property to the foundation, or any provision of its articles or its by-laws avoids or defeats rights, claims or interest conferred by foreign law on any person by reason of a personal relationship to the founder or subsequent transferor or by way of heirship rights, or contravenes any rule of foreign law or any foreign, judicial or administrative order or action intended to recognise, protect, enforce or give effect on any such rights, claims or interest.

Restriction against alienation.

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

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

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

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

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

Forfeiture of benefits.

26. The articles or by-laws of a foundation may provide that any beneficiary shall forfeit his benefits or rights or potential interest thereunder in the event that he or she challenges the creation of the foundation, the transfer of any assets to the foundation, the articles or

by-laws or any provision thereof or any decision of the councillors or the guardian.

#### **PART VII - INVESTIGATIONS INTO FOUNDATIONS**

27. (1) Where the Minister has prima facie evidence that
- (a) a foundation was created or is to be dissolved for an unlawful or fraudulent purpose; or
  - (b) the transactions or affairs of a foundation are or have been conducted unlawfully or with intent to defraud any person; or
  - (c) persons concerned with the establishment, transactions or affairs of a foundation have in connection therewith acted fraudulently or dishonestly; or
  - (d) in any case it is in the public interest that an investigation of the foundation be made;

Appointment of inspectors.

the Minister may appoint one or more inspectors to investigate the affairs of the foundation and to make a report to the Minister as the Minister may direct.

(2) The appointment may be made on the application of the Registrar, or of any person who is a councillor or a guardian or a beneficiary or a creditor or liquidator of the foundation sought to be investigated.

(3) The Minister may, before appointing inspectors, require the applicant, other than the Registrar, to give security, up to an amount not exceeding 25,000 dollars or such other sum as may be prescribed for payment of the costs of the investigation.

(4) This section applies whether or not the foundation is being dissolved.

28. The inspectors may at any time in the course of their investigation, without the necessity of making an interim report, inform the Minister and the Attorney General of matters coming to their knowledge as a result of the investigation which, in their opinion, shows that an offence has been committed.

Powers of inspectors.

29. (1) If the inspectors consider that any person is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may, subject to section 71 and 72, require that person

Production of records and evidence to Inspectors.

- (a) to produce and make available to them all records which are in that person's custody or power relating to that matter;

*Foundations Act, 2003 – 8.*

- (b) at reasonable times and on reasonable notice to attend before them; and
- (c) otherwise to give them such assistance in connection with the investigation which they may reasonably require for the purpose of the investigation, and that person is reasonably able to give.

(2) The inspectors may, for the purposes of the investigation, examine on oath any person referred to in sub-section (1), and may administer an oath accordingly.

(3) An answer given by a person to, or the failure to answer, a question put to that person by the inspectors in exercise of the powers conferred by this section may be used in evidence against that person in any subsequent proceedings.

Powers of inspectors to call for councillor's bank account.

30. If the inspectors have reasonable grounds to believe that a councillor of the foundation whose affairs they are investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person, and whether in the Federation or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which in the opinion of the inspectors constitute misconduct, whether fraudulent or not, on the part of that councillor towards the foundation, the inspectors may require the councillor to produce and make available to them all records in the councillor's possession or under the councillor's control relating to that bank account.

Authority for search.

31. (1) The inspectors may, for the purpose of an investigation, apply to the Court for a warrant under this section in relation to specified premises.

(2) If the Court is satisfied that the conditions specified in subsection (3) are fulfilled, it may issue a warrant authorising a police officer or any other person named in the warrant to enter the specified premises, using such force as is reasonably necessary for the purpose, and search the premises.

(3) The conditions referred to in subsection (2) are the following:

- (a) that there are reasonable grounds for suspecting that there is on the premises material, whether or not it can be particularised, which is likely to be of material assistance, whether by itself or together with other material, to the investigation for the purpose of which the application is made, and
- (b) that the investigation for the purposes of which the

*Foundations Act, 2003 – 8.*

application is made might be prejudiced unless immediate entry can be secured to the premises.

(4) Where a person enters premises in the execution of a warrant issued under this section, that person may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of material assistance, whether by itself or together with other material to the investigation for the purpose of which the warrant was issued.

(5) In this section, “premises” includes any place and, in particular, includes,

- (a) a vehicle, vessel, aircraft or hovercraft;
- (b) an offshore installation; and
- (c) a tent or movable structure.

32. A person who willfully obstructs a person acting in the execution of a warrant issued under section 31 commits an offence and is liable to imprisonment for a term not exceeding two years or a fine of up to 20,000 dollars or both.

Obstruction.

33. (1) Where a person

- (a) fails to comply with the provisions of section 29 or 30; or
- (b) refuses to answer any question put to that person by the inspectors for the purpose of the investigation;

Failure to co-operate with inspectors.

that person commits an offence, and the inspectors, by certifying in writing that the person has refused to comply with any of the provisions referred to in this Part may refer the matter to the Court for determination in accordance with subsection (2).

(2) The Court shall, upon receipt of a certificate referred to in subsection (1), inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may, if satisfied that such person has committed an offence under this Part, impose a penalty on the offender as if the offender committed the offence of contempt of the Court.

(3) Notwithstanding subsections (1) and (2), no proceedings for an offence or for the recovery of any penalty shall be instituted under this Part against any person who refuses to answer any question if the refusal is made pursuant to section 72.

34. (1) The inspectors may, and if so directed by the Minister shall, make interim reports to the Minister, and on the conclusion of their investigation shall make a final report to the Minister.

Inspectors' report.

*Foundations Act, 2003 – 8.*

- (2) The Minister may
- (a) forward a copy of report made by the inspectors to the foundation's registered office,
  - (b) furnish a copy on request and on payment of the prescribed fee to
    - (i) a councillor of the foundation which is the subject of the report,
    - (ii) the guardian of the foundation,
    - (iii) a person whose conduct is referred to in the report,
    - (iv) the auditors of the foundation,
    - (v) the applicants for the investigation,
    - (vi) any other person whose financial interests appear to the Minister to be affected by the matters dealt with in the report, whether as a creditor of the foundation, or otherwise; and
  - (c) cause the report to be printed and published.

Power to bring civil proceedings on behalf of a foundation.

35. (1) If, from any report made or information obtained under this Part, it appears to the Minister that civil proceedings ought, in the public interest, to be brought by the foundation, the Minister may bring the proceedings in the name and on behalf of the foundation.

(2) The Minister shall, at the expense of the Government, indemnify the foundation against any costs or expenses incurred by it in connection with proceedings brought under this section, and not recovered under section 36.

Expenses of investigating a foundation.

36. (1) The expenses of, and incidental to, an investigation by inspectors shall be defrayed in the first instance by the Minister, but the following shall be liable to make repayment to the Minister to the extent specified:

- (a) a person who
  - (i) is convicted in proceedings on a prosecution instituted as a result of the investigation, or
  - (ii) is ordered to pay the costs of the whole or any part of the proceedings brought under section 35;
- (b) a foundation in whose name proceedings are brought under section 35 up to the amount or value of any sums or property recovered by it as a result of the proceedings,

*Foundations Act, 2003 – 8.*

- (c) a foundation which has been the subject of the investigation except so far as the Minister otherwise directs, and
- (d) the applicant or applicants for the investigation, other than the Registrar, to the extent, if any, which the Minister may direct.

(2) For the purposes of this section, costs or expenses incurred by the Minister in connection with proceedings brought under section 35 shall be treated as expenses of the investigation giving rise to the proceedings.

(3) A person liable under subsection (1) is entitled to a contribution from any other person liable under the same sub-section according to the amount of their respective liabilities under that subsection.

(4) Expenses to be defrayed by the Minister under this section shall, so far as not recovered under this section, be paid out of money provided by the Government.

(5) There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Minister may determine in respect of his or her general staff costs and overheads.

37. (1) A copy of a report of the inspectors certified by the Minister to be a true copy, shall be admissible in legal proceedings as evidence of the opinion of the inspectors in relation to a matter contained in the report.

Inspector's report  
to be evidence.

(2) A document certified as mentioned in subsection (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

38. Nothing in this Part requires the disclosure or production to an inspector

Privileged  
information.

- (a) by a person of information or records which that person would in an action in the Court or under section 72 be entitled to refuse to disclose or produce on the grounds of legal professional privilege except, if that person is a lawyer, the name and address of that person's client;
- (b) by the bankers, as such, of a foundation of information or records relating to the affairs of any of their customers other than the foundation or its councillors under investigation.

**PART VIII - CONTINUATION OF FOUNDATIONS**Continuation in  
Saint Kitts.

## 39. (1) An entity

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

in this Act called an “overseas foundation” may, if not prohibited under the laws of that other jurisdiction, apply to the Registrar for a certificate of continuance under this Act.

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

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

- (a) is authorised in accordance with the law applicable to the overseas foundation before continuance under this Act; and
- (b) is an amendment that a foundation under this Act is entitled to make.

Articles of  
Continuance.

40. (1) Articles of continuance shall be written in English language, but if they are written in a language other than English, articles of continuance shall be accompanied by a certified translation in the English language.

## (2) Articles of continuance shall

- (a) be signed by all of the councillors or equivalent officers of the foundation;
- (b) state the name of the overseas foundation and the name under which it is being continued;
- (c) state the jurisdiction under which it is established;
- (d) state the date on which it was established; and
- (e) state such other provisions as are required for the articles of a foundation under this Act.

Certificate of  
continuance.

41. (1) Upon receipt of articles of continuance, the Registrar shall if he is satisfied that the requirements of sections 39 and 40 have been complied with, issue a certificate of continuance.

## (2) On the date shown in the certificate of continuance,

- (a) the overseas foundation becomes a foundation to

*Foundations Act, 2003 – 8.*

which this Act applies as if the foundation had been established under this Act;

- (b) the articles of continuance become the articles of the continued foundation; and
- (c) the certificate of continuance is the certificate of establishment of the continued foundation.

42. (1) When an overseas foundation is continued as a foundation under this Act

Preservation of foundation.

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

43. Subject to section 45, a foundation may,

Foundation leaving St Kitts.

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

apply to the appropriate official or public body of the other jurisdiction to be continued as an entity in the other jurisdiction as if it had been established under the laws of the other jurisdiction.

44. A foundation may not apply for continuance in another jurisdiction, nor may it be continued under the laws of another jurisdiction, as an entity established in that other jurisdiction pursuant to section 43 unless the laws of that other jurisdiction provide that

Conditions applicable to foundation leaving St Kitts.

- (a) the property of the foundation continues to be the property of the entity;
- (b) the entity continues to be liable for the obligations of the foundation;

*Foundations Act, 2003 – 8.*

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

Discontinuance  
and effect.

45. (1) Upon receipt of a notice satisfactory to him that a foundation that has made an application under section 43 has been continued as an entity under the laws of another jurisdiction, the Registrar must file the notice and issue a certificate of discontinuance in accordance with this Act.

(2) After a certificate of discontinuance is issued under subsection (1) in respect of a foundation that is continued as an entity under the laws of another jurisdiction, the foundation's name shall be removed from the Register of Foundations, but such removal does not affect section 44.

(3) For the purposes of this Part, "entity" includes a body organised in another jurisdiction under legislation similar to this Act; and the words "establish" and "establishment" shall be construed accordingly.

#### **PART IX - DISSOLUTION OF FOUNDATIONS**

Dissolution.

46. (1) A foundation shall be dissolved where the

- (a) the foundation is established for a definite period and that period expires;
- (b) the purpose of the foundation is fulfilled or becomes incapable of fulfillment, and the councillors, by unanimous decision, resolve so;
- (c) any provision of the articles of the foundation so requires;
- (d) the Court orders that the foundation be dissolved.

(2) Where a foundation is dissolved pursuant to the provisions of subsection (1), the councillors, or such other person as may be authorized by the articles of the foundation to supervise the dissolution of the foundation, shall do all things that are necessary for orderly supervision of the foundation, and shall collect the assets of the foundation, and after discharging or making adequate provision for the discharge of the obligations of the foundation shall distribute the remaining assets in the manner provided in section 74.

*Foundations Act, 2003 – 8.*

47. (1) A foundation may, upon application, by an order of Court be dissolved if the Court is of the opinion that it is just and equitable that the foundation be dissolved.

Court dissolution.

(2) An application for the dissolution of a foundation may be made to the court by the foundation, councillor of the foundation, guardian of the foundation or by a creditor of the foundation.

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

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

Distribution of assets.

(2) In the event that

- (a) there is no person entitled to receive the remaining assets of the foundation as provided in subsection (1); or
- (b) the person entitled to receive the remaining assets refuses to accept the transfer of the assets; and
- (c) there is no relevant provision in the articles or by-laws of the foundation;

the remaining assets shall vest in the Crown and shall be dealt with accordingly.

49. (1) Subject to subsection (2), the Registrar may dissolve a foundation where the foundation fails to file its annual statement, or fails to pay the prescribed annual fees within the time specified by this Act, or fails to comply with any other provision of this Act.

Dissolution by Registrar.

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

- (a) the Registrar gives the foundation not less than 90 days' notice of the proposed dissolution, stating the reasons for the proposed dissolution, and addressed to its registered office; and
- (b) the foundation has failed prior to the dissolution to correct the omission.

50. (1) A foundation that has been dissolved may be revived upon application to the Registrar made by any interested person.

Revival of foundation.

*Foundations Act, 2003 – 4.*

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

Regulations for dissolution etc.

51. The Minister may, for the purposes of this Part, make such regulations as may be necessary for the dissolution and revival of foundations.

### **PART X - REGISTRAR**

Registrar and other officers.

52. (1) For the purposes of the registration of foundations under this Act, there shall be appointed by the Minister a person to be known as the Registrar of Foundations and such other officers as may be necessary to assist the Registrar in the exercise of his functions under this Act.

(2) Any functions of the Registrar under this Act may, to the extent authorised by the Registrar, be exercised by any of the officers referred to in subsection (1).

(3) The Minister may, at any time and from time to time, by Order, require that the Registrar of Companies appointed pursuant to the Companies Act, No. 23 of 1996 shall also be the Registrar of Foundations for such period as the Minister may determine.

(4) In this section, “officer” means a person on the staff of the Registrar.

Seal.

53. The Minister shall direct that a seal to be known as the Official Seal be prepared for use by the Registrar in the authentication or other issue of documents required for or in connection with the registration of foundations under this Act.

Registration number.

54. (1) The registrar shall allocate to every foundation a number, which shall be the foundation’s registration number.

(2) The registration numbers of foundations shall be in such form, consisting of one or more sequences of figures or letters or any combination thereof as the Registrar may, from time to time, determine.

Size, durability, etc. of documents delivered to the Registrar.

55. (1) For the purpose of ensuring that documents delivered to the Registrar are of standard size, durable and easily legible, the Minister may prescribe such requirements as the Minister considers appropriate, and different requirements may be prescribed for different documents or classes of documents.

(2) Where a document is delivered to the Registrar, whether

*Foundations Act, 2003 – 8.*

an original document or a copy, which in the Registrar's opinion does not comply with the prescribed requirements, the Registrar shall serve on a person by whom the document was delivered a notice stating his opinion to that effect and indicating the requirements with which in his opinion the documents does not comply.

(3) Where the Registrar serves a notice under sub-section (2), then for the purposes of any enactment which enables a penalty to be imposed in respect of a failure to deliver to the Registrar a document required to be delivered and, in particular where the penalty imposed may be by reference to each day during which the failure continues, a duty to deliver a document to the Registrar shall be treated as not having been discharged by the delivery of that document, except that no account is to be taken of days beginning with the day on which the document was delivered to the Registrar and ending with the fourteenth day after the date of service of the notice under sub-section (2).

56. (1) Where this Act requires a document to be delivered to the Registrar, and the form of the document has not been prescribed, it shall be sufficient compliance with that requirement if

Form of documents to be delivered to the Registrar.

- (a) the document is delivered in a form which is acceptable to the Registrar; or
- (b) the information in question is delivered in material other than a document, being material which is acceptable to the Registrar; and
- (c) the document or information, as the case may be, is accompanied by the prescribed fee.

(2) In this section, any reference to delivering a document includes, in the case of a notice, the giving of such notice.

57. The Registrar shall, on request by any person and on payment of the prescribed fee, certify that a foundation registered under this Act is of good standing, if the Registrar is satisfied that

Certificate of good standing.

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

58. (1) The Minister may, by Order, require the payment to the Registrar of such fees as may be prescribed in respect of

Fees and forms.

- (a) the performance by the Registrar of such functions under this Act as may be specified in the Order,

*Foundations Act, 2003 – 8.*

including the receipt by the Registrar of any document under this Act which is required to be delivered to the Registrar; and

- (b) the inspection of documents or other material held by the Registrar under this Act.

(2) Where a fee is provided for or charged under this section, no action need be taken by the Registrar until the fee is paid, and, where the fee is payable on the receipt by the Registrar of a document required to be delivered to the Registrar, the Registrar shall be deemed not to have received the document until the fee is paid.

(3) The Minister may prescribe forms to be used for any of the purposes of this Act and the manner in which any document to be delivered to the Registrar is to be authenticated.

(4) Unless otherwise provided in this Act, any document required to be delivered to the Registrar by a foundation shall be signed by a councillor or the secretary of the foundation.

(5) Fees paid to the Registrar shall be paid into the Consolidated Fund.

Inspection of documents kept by the Registrar.

59. (1) Subject to the provisions of this section, no inspection or production of documents kept by the Registrar under this Act shall be permitted, except that any of the councillors or a guardian of a foundation may, by notice in writing to the Registrar, authorise the person named in the notice

- (a) to inspect a document of the foundation delivered to the Registrar under this Act or, if the Registrar thinks fit, obtain a copy thereof; or
- (b) to require a certificate of establishment of the foundation or a copy, certified or otherwise, of any other document or part of any other document referred to in paragraph (a);

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

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

Enforcement of duty to make returns.

60. (1) Where a foundation, which fails to comply with a requirement to deliver to the Registrar any document or to give notice to

the Registrar of any matter, and does not make good the failure within fourteen days after the service of a notice on the foundation requiring it so to do, the Court may, on an application made to it by a councillor or guardian of the foundation, or by the Registrar, make an order directing the foundation to make good the failure within a time specified in the order.

(2) The order of the Court may provide that all or any part of the costs of and incidental to the application shall be borne by the foundation or by any councillor of the foundation responsible for the failure or shall be apportioned between the foundation and any councillor or councillors so responsible.

(3) Nothing in this section shall prejudice the application of any provision imposing penalties on the foundation or its councillors in respect of a failure mentioned in subsection (1).

## **PART XI - GENERAL PROVISIONS**

### **Articles of a foundation**

61. (1) The articles of a foundation shall state
- (a) the name of the foundation;
  - (b) the 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 Federation for service of documents on the founder,
  - (c) the purposes and objects of the foundation;
  - (d) the initial assets of the foundation and a statement of those assets;
  - (e) the manner of designation of the beneficiary or the identification of a person, body or class of persons by reference to which the beneficiary is to be ascertained;
  - (f) whether the foundation is established for a definite or indefinite period and, where it is established for a definite period, that period;
  - (g) the name and address in the Federation of the secretary to the foundation and the registered address of the foundation.

Articles of a foundation.

*Foundations Act, 2003 – 8.*

(2) Subject to the provisions of this Act, the articles of a foundation may 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 the councillors of the foundation, including the number and description of those persons;
- (c) for the appointment, removal and period of office of the auditor, if any, to the foundation and may provide that the appointment of an auditor is at the discretion of the guardian;
- (d) for the appointment of a guardian for the maintenance of the objects of the foundation and specifying the duties, functions, powers and rights to remuneration of a guardian, if appointed, and how he shall be appointed or removed and also how he shall conduct himself whilst in office;
- (e) for the appointment of persons to act by power of attorney or otherwise to carry out particular duties on behalf of the foundation;
- (f) permitting amendment to the articles of the foundation and specifying circumstances in which they may be amended;
- (g) requiring or permitting the making of by-laws;
- (h) providing for the transfer to the foundation of supplementary assets in addition to the initial assets; and
- (i) for the addition or removal of beneficiaries.

(3) The articles of a foundation shall be in a form of a deed and shall,

- (a) where a founder is a natural person, be executed by the founder in the presence of a notary public or the secretary named in the articles; or
- (b) where a founder is a legal person, be executed on behalf of the founder by the person authorised for that purpose in the presence of a notary public or the secretary named in the articles.

(4) The articles of a foundation shall be

- (a) typed or printed; and

(b) divided into paragraphs and numbered consecutively.

62. (1) Where the articles of a foundation make provision for the amendment of the articles after registration, the articles may (subject to any provision in the articles) be amended pursuant to the following procedure:

Amendment of articles.

- (a) the founder or the councillors, shall convene a meeting of
  - (i) the founder,
  - (ii) the councillor, and
  - (iii) the guardian, if any, of the foundation in accordance with the requirements of section 21. (4); and
- (b) the resolution for amendment of the articles shall be adopted only if agreed by
  - (i) the founder,
  - (ii) the councillors, and
  - (iii) the guardian.

(2) If it is not possible to comply with the relevant provisions of this section because the founder is no longer living or in existence or no provision was made in the foundation's articles for amendment of the articles after registration, the councillors of the foundation

- (a) may resolve on such amendments as in their opinion are necessary in the circumstances to maintain the objects of the foundation; and
- (b) shall apply to the Court for its approval of the proposed amendments.

(3) On any such application the Court may make an order confirming the amendments, either wholly or in part, and on such terms and conditions as it thinks fit, or may make such other orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(4) A notice, signed by the secretary, containing details of the amendment of any of the particulars contained in the statement filed pursuant to section 66 shall, within fourteen days of the amendment coming into effect, be delivered to the Registrar, who shall retain and file the same in the Register.

#### **By-laws of foundation**

63. (1) Where the articles of a foundation provide that by-laws may be adopted, such by-laws may include regulations

By-laws of foundation.

*Foundations Act, 2003 – 8.*

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

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

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

#### **Taxes and stamp duties**

Exemption from taxes.

64. (1) Notwithstanding any provision to the contrary in any law or statute of the Federation, a foundation shall not be subject for assessment or liable to any tax in the Federation, and the beneficiaries of a foundation shall similarly be exempt from all income, capital gains and withholding taxes which may arise out of their interest in the foundation so long as the foundation effects transactions exclusively with persons who are not resident in the Federation.

(2) A foundation and its beneficiaries shall not lose their exemption under subsection (1) by reason only that the foundation

- (a) effects transactions with, or buys or sells or otherwise deals in any securities issued or created by, any person resident in the Federation who is exempt from all income, capital gains and withholding taxes under any law of the Federation;
- (b) effects or concludes in the Federation contracts or arrangement, including contracts or arrangements with any person resident in the Federation for employment with, or of the supply of goods and services to, the foundation, and exercises in the Federation all other powers, so far as may be necessary for their proper performance;
- (c) carries on any part of its administration within the Federation, and holds meetings in the Federation;
- (d) owns or leases property in the Federation for the carrying on of any part of its administration or as a residence for its councillors, guardian or beneficiaries; or

*Foundations Act, 2003 – 8.*

- (e) transacts banking business with any person resident in the Federation who is authorised to carry on banking business under any law of the Federation.

(3) Notwithstanding any provision to the contrary in any law or statute of the Federation, no estate, inheritance, succession or gift tax, rate, duty, levy or other charge shall be assessed on or be payable by any person with regard to any property transferred to or held by or securities issued or created by or relating to an exempt foundation.

(4) In this section

- (a) “person” includes an individual and a body corporate and
- (b) “resident in the Federation” means a person (other than a beneficiary of an exempt foundation) who ordinarily resides within the Federation or carries on business from an office or other fixed place within the Federation and “not resident in the Federation” shall be construed accordingly.

65. Notwithstanding any provision to the contrary in any law or statute of the Federation no stamp duties shall be payable by any person with regard to any transaction in any securities issued or created by or relating to transfer of property to or any of an exempt foundation.

Exemption from stamp duties.

66. (1) A foundation shall, in each year, before the end of the month following the month in which the anniversary of its registration took place

Annual return.

- (a) complete an annual return containing the information current as at the anniversary of its registration in that year,
  - (b) deliver to the Registrar a copy of the return signed by the secretary of the foundation together with the prescribed filing fee; and
  - (c) file a copy of the return delivered to the Registrar in the foundation register referred to in section 18(1).
- (2) The annual return shall state
- (a) the name and registered address of the foundation;
  - (b) whether the foundation is an ordinary or an exempt foundation
  - (c) the full name and address of each councillor who is an individual, or in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered office;

*Foundations Act, 2003 – 8.*

- (d) an undertaking, in the case of an exempt foundation, that the councillors of the foundation will forthwith notify the Minister by notice in writing if the foundation no longer qualifies as an exempt foundation; and
- (e) that the information contained in the statement is current as at the anniversary of its registration in the year in which it is required to be delivered.

(3) If default is made in compliance with sub-section (1) or (2) every councillor of the foundation in default commits an offence and shall be liable to a fine not exceeding four times the prescribed filing fee and, in the case of an offence under sub-section (1)(b), to a fine not exceeding one half of the prescribed filing fee for each day in respect of which the offence continues.

**Miscellaneous matters**

Assets of a foundation.

67. Assets irrevocably transferred to a foundation shall

- (a) become the assets of that foundation;
- (b) cease to be the assets of the founder; and
- (c) not be the assets of a beneficiary unless and until distributed to such beneficiary in accordance with the provisions of the foundation's articles, the by-laws of the foundation or this act.

Form of foundation's records.

68. (1) The records, which a foundation is required by this Act to keep, may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device which is capable of reproducing the required information in intelligible written form within a reasonable time.

- (2) A foundation shall take reasonable precautions
  - (a) to prevent loss or destruction of;
  - (b) to prevent falsification of entries in; and
  - (c) to facilitate detection and correction of inaccuracies in;

the records required by this Act to be kept.

(3) A foundation which fails to comply with the provisions of subsection (2) and any councillor responsible for such failure commits an offence and shall be liable to a fine not exceeding 2,500 dollars.

Examination of

69. (1) If any record referred to in section 68(1) is kept otherwise

*Foundations Act, 2003 – 8.*

than in intelligible written form, any duty imposed on the foundation by this Act to allow examination of, or to furnish extracts from, that record shall be treated as a duty to allow examination of, or to furnish a copy of the extract from, the record in intelligible written form.

and admissibility of evidence.

(2) The records kept by a foundation in compliance with this Act shall be admissible in the form in which they are made intelligible under subsection (1) as prima facie evidence of all facts and other matters stated in the records.

70. If, on an application by the Attorney General, there is shown to be reasonable cause to believe that a person has, while a councillor or a guardian of a foundation, committed an offence in connection with the management of the foundation's affairs and that evidence of the commission of the offence may be found in any records of or under the control of the foundation, the Court may make an order

Production and inspection of records where offence is suspected.

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

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

Legal professional privilege.

72. A person may refuse to answer any question put to him pursuant to any provision of this Act if that person's answer would or might tend to expose that person, or the spouse of that person, to proceedings under the law of the Federation or elsewhere for an offence or for the recovery of any penalty.

Right to refuse to answer questions.

73. (1) If, in any proceedings for negligence, default, or breach of duty against a councillor or guardian of a foundation it appears to the Court that the councillor or guardian is or may be liable in respect of the negligence, default or breach of duty, but that the person acted honestly and that having regard to all circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach of duty, the Court may relieve that person, either wholly or partly, from liability on such terms as the Court thinks fit.

Power of Court to grant relief in certain cases.

*Foundations Act, 2003 – 8.*

(2) If a councillor or guardian has reason to believe that a claim will or might be made against him in respect of negligence, default or breach of duty he may apply to the Court for relief, and the Court shall have the same power to relieve him as it would have had if proceedings for negligence, default or breach of duty had been brought against him.

Offence of making false or misleading statements.

74. (1) Any person who makes a statement in any document, material, statement or information which is required to be returned under section 66 or which is required to be delivered to the Registrar under this Act which, at the time and in the light of circumstances under which it is made, is false or misleading with respect to any material fact or omits to state any material fact, the omission of which makes the statement false or misleading, commits an offence and shall be liable to imprisonment for a term not exceeding two years or a fine or both.

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

Accessories and abettors.

75. Any person who knowingly or willfully aids, abets, counsels, causes, or procures the commission of an offence under this Act shall be liable to be dealt with, tried and punished as a principal offender.

General powers of the Court.

76. (1) Where, on the application of the Attorney General or the Registrar, the Court is satisfied that any person has failed to comply with any requirement made by or pursuant to this Act, or committed any breach of duty as a councillor the Court may order the foundation or that person to comply with the requirement or, so far as the breach of duty is capable of being made good, to make good the breach.

(2) The Court shall not make an order against any person under this section unless that person is given the opportunity of adducing evidence and being heard in relation to the matter to which the application relates.

Regulations.

77. (1) The Minister may generally make regulations to give effect to the provisions of this Act, and, without prejudice to the generality of the foregoing, the Minister may make regulations prescribing any matter which is required to be prescribed under this Act.

(2) The power conferred on the Minister by subsection (1) may, except in so far as this Act otherwise provides, be exercised

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases; and

- (b) so as to make in relation to the case in relation to which it is exercised
  - (i) the full provision to which the power extends or any less provision, whether by way of exception or otherwise, or
  - (ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class for different purposes of this Act, or
  - (iii) any such provision either unconditionally or subject to any specified conditions.

(3) Without prejudice to any provision of this Act, regulations made under this Act may contain such transitional, consequential, incidental or supplementary provisions as may appear to the Minister to be necessary or expedient for the purposes of the regulations.

## **SCHEDULE**

### (SECTION 19)

#### **Annual meeting of councillors**

1. (1) The foundation shall, in each year, hold at least one meeting of the councillors as its annual meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it.
- (2) The founder and the guardian shall be entitled to
  - (a) be notified of the meeting
  - (b) table business to be considered at the meeting, and
  - (c) attend and be heard at the meeting
 but shall not be entitled to vote at such a meeting.

#### **Requisition of meeting**

2. (1) The councillors of a foundation, notwithstanding anything in the articles, if any, of the foundation, shall, on the requisition of
  - (a) the founder, or
  - (b) the guardian,
 forthwith proceed to convene a meeting of the councillors.
- (2) The requisition shall
  - (a) state the objects of the meeting,
  - (b) be signed by the requisitioner, and

(c) be deposited at the registered address of the foundation.

- (3) If the councillors do not within twenty one days from the date of the requisition convene a meeting, the requisitionist may convene the meeting, provided that the said meeting is held within sixty days from the said date.
- (4) A meeting convened under this paragraph by the requisitionist shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the councillors.
- (5) Any reasonable expenses incurred by the requisitionist by reason of the failure of the councillors 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 service to such of the councillors as were in default.

#### **Quorum for meetings of councillors**

3. The quorum for a meeting of councillors shall be that fixed by the articles or the by-laws of the foundation; but where no quorum is so fixed, a meeting of councillors shall be properly constituted for all purposes if at the commencement of the meeting one half of the total number of councillors are present in person or by alternate.

#### **Consents of councillors**

4. Subject to any limitation in the articles or the by-laws of a foundation, an action which may be taken by the councillors at a meeting, other than an annual meeting convened in accordance with paragraph 1, may also be taken by a resolution of councillors consented to in writing or by telex, telegram, cable or other written electronic communication, without the need for any notice.

#### **Alternates for councillors**

5. (1) Subject to any limitations in the articles or the by-laws, a councillor may by a written instrument appoint an alternate who need not be a councillor.
- (2) An alternate for a councillor appointed under sub-paragraph (1) is entitled to attend meetings in the absence of the councillor who appointed him and to vote or consent in the place of the councillor.

#### **Agents**

6. (1) The councillors may, by a resolution of the councillors, appoint any person, including a person who is a councillor, to be an agent of the foundation.
- (2) Subject to any limitation in the articles or the by-laws, any agent shall have such powers and authority of the councillors as are set forth in the articles, the by-laws or in the resolution of councillors appointing the agent, except that no agent has any power or authority with respect to the matters requiring a resolution of councillors under this Act.

- (3) The resolution of councillors appointing any person to be an agent of the foundation may authorise the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent by the foundation.

**Minutes of meetings**

7. (1) Each foundation shall cause minutes of all proceedings at meeting of councillors to be entered in books kept for that purpose.
- (2) The minutes referred to in sub-paragraph (1), if purporting to be signed by the Chairman of the meeting at which the proceedings took place, or by the Chairman of the next succeeding meeting, shall be evidence of the proceedings.
- (3) Where minutes are made in accordance with the provisions of this paragraph the proceedings at any meeting of the councillors of a foundation then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings which took place at that meeting to have duly taken place.

MARCELLA A LIBURD  
*Deputy Speaker*

Passed by the National Assembly this 18<sup>th</sup> day of September 2003.

JOSÉ LLOYD  
*Clerk of the National Assembly*