

**FOUNDATIONS ACT**

Act 8 of 2012 – 1 July 2012

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**FOUNDATIONS ACT**

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Foundations Act.

**2. Interpretation**

In this Act—

“administrator” means a person appointed as such under section 6;

“approved form” means such form as the Registrar may approve;

“Articles” means the Articles of a Foundation, made by the Council under section 10;

“beneficiary” means a person—

- (a) who is entitled to benefit under a Foundation; or
- (b) in whose favour a power to distribute any Foundation property may be exercised;

“charitable Foundation” means a foundation referred to in section 7;

“charter” means the charter of a Foundation;

“Code” means the Code Civil Mauricien;

“Commission” has the same meaning as in the Financial Services Act;

“Council” means the Council of a Foundation;

“Court” means the Supreme Court;

“current standing”, in relation to a Foundation, means that—

- (a) it is registered according to the law of the relevant country;
- (b) it has paid all fees or charges due for the current year; and
- (c) it is not in the process of being wound up and no proceedings for the removal of its name from the register are pending;

“endow” —

- (a) means, whether by way of a covenant or otherwise and with or without consideration, to pass the title in property absolutely to a Foundation so that it is the property of that Foundation; and
- (b) includes to do any act which may be necessary for the effective transfer of any title in property;

“executor” —

- (a) means a person named in a will, or nominated by the testator to carry out the directions of the will; and
- (b) includes, in the case of a foreign will, the executor’s duly appointed lawful agent;

“financial statement” means a statement approved by a Council, which presents fairly the financial position, financial performance and cash flow of a Foundation and contains such other information as may be required by the Registrar;

“Foundation” means a Foundation established in Mauritius or elsewhere and registered in accordance with this Act;

“founder” means a person who endows a Foundation with its initial assets;

“initial assets” means the property transferred to a Foundation in accordance with section 11 (1);

“law practitioner” has the same meaning as in the Law Practitioners Act;

“liquidator” means a person qualified to be an insolvency practitioner under the Insolvency Act;

“management company” has the same meaning as in the Financial Services Act;

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“non-citizen” has the same meaning as in the Non-Citizens (Property Restriction) Act;

“officer” means a person, including an auditor, appointed as such under section 18;

“property” includes movable and immovable property, wherever situated, and rights and interests in the property, whether vested, contingent, defeasible or future;

“protector” or “committee of protectors” means the person or persons appointed in accordance with a charter and having such powers and duties as may be specified in the charter;

“records” means the records, including accounting records, and documents required to be kept by a Foundation under sections 37 and 38;

“register” means the register of Foundations required to be maintained under section 28;

“Registrar” means the Registrar of Companies, appointed under the Companies Act, who shall also be the Registrar of Foundations;

“remaining beneficiary” means the person who, according to a charter, shall be entitled to receive any assets remaining after the dissolution or winding-up of the Foundation;

“secretary” means the secretary of a Foundation appointed under section 13;

“supervisory person”, in relation to a Foundation, means a member of the Council of the Foundation, a protector or a committee of protectors;

“will” means—

- (a) a will duly established and executed according to the Code; or
- (b) in the case of a foreign will, a will duly executed in accordance with the law governing the testator’s estate.

### **3. Purpose and objects of Foundation**

(1) (a) A Foundation may be formed in Mauritius or elsewhere for such purposes as may be provided in its charter, including the carrying out of the objects specified in it.

(b) Where a Foundation is established by means of a will, a reference to its charter shall, where appropriate, be construed as reference to the will.

(2) The objects of a Foundation shall be valid and enforceable, except where they are contrary to the laws of Mauritius.

(3) The objects of a Foundation may be—

- (a) charitable or non-charitable, or both;
- (b) for the benefit of a person or a class of persons, or to carry out a specified purpose, or both.

(4) Notwithstanding articles 893, 896, 931 and 1130 of the Code, property and rights may be transferred to or endowed upon a Foundation in accordance with this Act.

### **4. Founder**

(1) A founder may be a beneficiary of a Foundation of which he is the founder.

(2) A founder who is a non-citizen and endows property to a Foundation shall be considered to have had the capacity to endow property to the Foundation where, at the time of the transfer, he was of full age and sound mind under—

- (a) the laws of Mauritius;
- (b) the laws of his domicile or nationality; or
- (c) the proper law of the transfer.

(3) Notwithstanding any other enactment, where a non-citizen endows property to a Foundation, the transfer shall not be set aside, avoided or otherwise declared invalid or ineffective by virtue of any rule or law —

- (a) of his domicile or nationality relating to inheritance or succession or any rule or law of a similar nature;
- (b) restricting the right of a person to dispose of his property during his lifetime so as to preserve the property for distribution at his death, or any rule or law having similar effect.

## **PART II – ESTABLISHMENT OF FOUNDATION**

### **5. Need for registration of Foundation**

(1) A founder or, in the case of a Foundation established by will, the executor may, subject to this Act, apply for registration of a Foundation under section 23.

(2) A Foundation shall not have legal personality unless it is registered and has been issued with a certificate of registration by the Registrar in accordance with section 24.

### **6. Foundation established by will**

(1) Where a Foundation is established by means of a will, there shall, for the purposes of this Act, be only one founder who shall be the testator.

(2) Where 2 or more testators have made concurrent wills establishing a Foundation and those wills take effect simultaneously, the testators shall be deemed to be one founder.

(3) The executor of the will shall—

- (a) as soon as practicable, appoint a Council in accordance with the will; and
- (b) on registration of the Foundation, periodically, and in any case at intervals of not more than 60 days, keep the Council informed of the progress of the will.

(4) Where, at the expiry of a period of 12 months from the death of the founder, the registration of the Foundation has not been effected, an application shall be made by the executor to the Court for the appointment of an administrator to ensure that the—

- (a) endowment of the property to be the initial assets of the proposed Foundation is made in accordance with the will; and
- (b) proposed Foundation is registered under this Act.

(5) The Court may, on receipt of an application under subsection (4), appoint an administrator who shall, at all times, be under the supervision of the Court.

(6) The administrator shall—

- (a) where there is no Council, appoint a Council in accordance with the will;
- (b) take such steps, including the institution of legal proceedings in Mauritius or elsewhere, to ensure that the initial assets are, or shall be, duly acquired by the proposed Foundation;
- (c) administer, or cause to be administered, conserve and improve in a proper manner, without undue risk, the property to be the initial assets of the proposed Foundation in accordance with the terms of the will and conserve and improve such property until such time as it is vested in the Foundation; and
- (d) take such steps as are, in his opinion, necessary to ensure that title in the property is properly vested in the Foundation.

(7) The Court shall, on being satisfied that—

- (a) an application for registration of the proposed Foundation under section 23 has been made; and
- (b) the documents specified in section 23 (1) (c) to (e) are available,

terminate the appointment of the administrator.

(8) The costs of the administrator, including his remuneration as approved by the Court, shall be met by the executor—

- (a) out of the property specified in the will as being the initial 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.

(9) The registration of a Foundation established by will may be contested on the death of the testator only on the ground that the will purporting to establish it was not duly executed within a period of 3 years from the date when probate of the will was granted.

## **7. Charitable Foundation**

(1) A Foundation shall be a charitable Foundation where it has as its exclusive purpose or object—

- (a) the relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the protection of the environment;
- (e) the advancement of human rights and fundamental freedoms; or
- (f) any other purpose beneficial to the public in general.

(2) A Foundation shall be a charitable Foundation, notwithstanding the fact that—

- (a) the object or purpose may not be of a public nature or for the benefit of the public, but may benefit a section of the public, or members of the public, or that it may also benefit privately one or more persons or objects within a class of persons not resident in Mauritius;
- (b) the Foundation is liable to be modified or terminated, whether by the exercise of a power of appointment or disposition of assets;
- (c) its Council has the power to defer the distribution of the benefits to any charity or other beneficiary of the Foundation for a period not exceeding the duration of the Foundation; or
- (d) the charitable objects are pursued in Mauritius or elsewhere and are beneficial to the community in Mauritius or elsewhere.

(3) Articles 910 and 911 of the Code shall not apply to a charitable Foundation.

## **8. Charter of Foundation**

(1) The charter of a Foundation shall specify—

- (a) the name of the Foundation;
- (b) the particulars of the founder, including—
  - (i) his name and address;
  - (ii) where the founder is a body corporate, its name and registered address and particulars of its directors and controlling members; and
  - (iii) an address for the founder in Mauritius for service of documents;
- (c) the purposes and objects of the Foundation;
- (d) the endowment of the property which shall be the initial assets of the Foundation;
- (e) the beneficiary of the Foundation or the manner in which he may be appointed and, if applicable, the manner in which he may be removed;
- (f) the period, if any, for which the Foundation is established;
- (g) the name and address of the secretary;
- (h) the address of the registered office of the Foundation; and
- (i) the procedure for the appointment of the Council or of a protector or committee of protectors and its or his powers and duties.

(2) The charter of a Foundation may also provide for any other matter in respect of the Foundation, including provisions—

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

- (b) for the appointment, removal, period of office and representative authority of officers of the Foundation, including the number and description of such persons;
  - (c) for the appointment, removal and period of office of the auditor, if any, of the Foundation;
  - (d) for the appointment and removal of a protector or committee of protectors of the Foundation, as well as—
    - (i) the duties, functions, powers and remuneration of the protector or committee of protectors; and
    - (ii) their relationship with the Council whilst in office;
  - (e) for the appointment, removal and period of office of the members of the Council and the holding of its meetings;
  - (f) for the circumstances in which amendments to the charter may be made and the procedure to be complied with for such amendments;
  - (g) requiring or permitting the drafting of Articles;
  - (h) providing for the endowment of property to the Foundation in addition to the initial assets;
  - (i) for the appointment of additional beneficiaries; and
  - (j) for the circumstances, if any, in which the Foundation may be redomiciled and the conditions to be satisfied in respect of such redomiciliation.
- (3) The charter of a Foundation shall be in writing and shall—
- (a) where the founder is a natural person, be signed by him; or
  - (b) where the founder is a body corporate, be signed on behalf of the founder, by the person or persons authorised for that purpose.

## **9. Amendment of charter**

(1) Subject to subsection (2), a Foundation may amend its charter in accordance with the charter or the Articles, if any.

(2) A Foundation shall notify the Registrar of any amendment it proposes to make to its charter.

(3) A notification under subsection (2) shall be made in such form and manner as the Registrar may determine and shall be accompanied by—

- (a) a declaration in writing by a law practitioner, legal consultant or law firm regarding compliance with all the relevant requirements of this Act and on which the Registrar shall be entitled to rely as sufficient evidence of that compliance; and
- (b) the fee specified in the Schedule.



(4) Where the Registrar is notified of the proposed amendment, he shall make an entry to that effect in the register.

#### **10. Articles of Foundation**

(1) Where the charter of a Foundation provides that Articles shall or may be made by the Council, the Articles may include provisions—

- (a) relating to the distribution of assets to be made by the Council;
- (b) for the identification of any initial or additional beneficiary of the Foundation;
- (c) for the identification of the remaining beneficiary on a winding-up of the Foundation and the distribution of assets to the remaining beneficiary;
- (d) for the regulation of the affairs of the Council.

(2) Where Articles are made by the Council under subsection (1), the Articles shall be signed by each member of the Council.

#### **11. Property of Foundation**

(1) A Foundation shall, from the time of its establishment, hold all property effectively transferred to it for the purposes and objects, and that property shall constitute the initial assets of the Foundation.

(2) Except in cases of fraud, all property effectively transferred to a Foundation under subsection (1) shall cease to be the property of the founder and the Foundation shall hold good title in such property.

(3) Any property referred to in subsection (1) shall become the property of a beneficiary only after any distribution made in accordance with the provisions of the charter or Articles, if any, and this Act.

(4) The property of a Foundation shall be managed and administered in accordance with the charter or Articles, if any, and this Act, for the purposes and objects described in the charter.

#### **12. Powers and obligations**

(1) Except where otherwise provided by the charter or Articles, if any, a person who endows assets to a Foundation after its registration shall not acquire the powers of a founder as a result.

(2) Where a founder has given an undertaking, recorded in the charter, to endow assets to a Foundation, the Foundation shall enforce that undertaking against the founder if, at the expiry of a period of 12 months—

- (a) from the date of registration; or
- (b) from such date as may be specified in the charter as the date on which the endowment shall take place,

those assets have not been transferred to the Foundation.

**13. Appointment and qualification of secretary**

(1) Every Foundation shall have a secretary—

- (a) which shall be a management company; or
- (b) who shall be such other person resident in Mauritius as may be authorised by the Commission.

(2) No person shall be appointed as or remain a secretary of a Foundation where—

- (a) in the case of a natural person, he is a—
  - (i) minor;
  - (ii) bankrupt;
  - (iii) person with any mental impairment; or
  - (iv) person who has been convicted of an offence involving fraud or dishonesty by a Court of law in Mauritius, or elsewhere;
- (b) in the case of a body corporate, it is the subject of any proceedings, in Mauritius or elsewhere, which may result in it being wound up or otherwise dissolved.

(3) The founder of a Foundation or, where the charter is a will, the executor or the administrator, shall, before the registration of the Foundation—

- (a) appoint a person as secretary of the Foundation; and
- (b)
  - (i) deliver to the Registrar the name and address of the person appointed as secretary and evidence that he has consented to be the secretary of the Foundation; and
  - (ii) inform the Commission, in writing, of the name and address of the person appointed as secretary.

(4) Where a secretary fails to satisfy a requirement under subsection (3), he shall give notice in writing of that fact to the Council and the Registrar within 7 days from the occurrence.

(5) Every secretary who intends to cease acting as the secretary to a Foundation shall—

- (a) give notice in writing of his intention to the Council not less than 7 days before the date on which he intends to cease to act as such; and
- (b) at the same time, lodge with the Registrar, and send to the Commission, a copy of the notice.

(6) The secretary shall, on behalf of a Foundation, accept service of all documents pursuant to any legal proceedings instituted against the Foundation.

(7) A person shall cease to act as secretary of a Foundation on—

- (a) the expiry of the period of 7 days from the date on which a notice is lodged under subsection (5);
- (b) the Foundation ceasing to be a foundation registered under this Act;
- (c) the liquidation or winding-up, as the case may be, of the Foundation; or
- (d) the occurrence of any other event which disqualifies him from acting as secretary.

(8) Notwithstanding the fact that a person has ceased to act as secretary to a Foundation, he shall remain liable for any liability he may have incurred as secretary and such liability may be enforced against him by the Foundation.

(9) Notwithstanding any defect in the appointment or qualification of a secretary, the acts of any secretary of a Foundation shall be valid.

#### **14. Registered office**

(1) Every Foundation shall have a registered office in Mauritius to which all communications and notices shall be addressed and which shall constitute the address for service of legal proceedings on the Foundation.

(2) The registered office of a Foundation shall be the place described as such in its charter, in accordance with section 8 (1) (h).

#### **15. Change of registered office**

(1) Subject to its charter or Articles, if any, and to subsection (3), a Foundation may, at any time, change its registered office.

(2) A Foundation shall file with the Registrar notice of the change, in a form approved by him, for registration.

(3) The change of the registered office shall take effect on the date stated in the notice, not being a date which is earlier than 7 days from the date the notice is registered.

#### **16. Council**

(1) Every Foundation shall have a Council which shall—

- (a) administer the property of the Foundation; and
- (b) carry out the objects of the Foundation.

(2) A Council shall be set up in accordance with the charter or Articles, if any, and this Act.

#### **17. Membership of Council**

(1) A Council shall have at least one member who shall be ordinarily resident in Mauritius.

(2) Every member of a Council shall be appointed in accordance with the provisions of the charter and this Act, and—

- (a) where appointed before registration, may be appointed by the founder, or, where the charter is a will, by the executor or administrator;
- (b) may be appointed by a person who has been empowered by the founder in the charter or Articles, if any, to make the appointment.

(3) Any officer, or his spouse or a person in a direct or collateral line of relationship with such a person, shall not be appointed as member of a Council.

(4) No person shall be appointed as or remain a member of a Council where—

- (a) in the case of a natural person, he is a—
  - (i) minor;
  - (ii) bankrupt;
  - (iii) person with any mental impairment; or
  - (iv) person who has been convicted of an offence involving fraud or dishonesty by a Court of law in Mauritius or elsewhere; or
- (b) in the case of a body corporate, it is the subject of any proceedings, in Mauritius or elsewhere, which may result in it being wound up or otherwise dissolved.

(5) The appointment of a person as member of a Council shall not be valid unless that person, prior to his appointment, has signed and delivered to the person making the appointment his written consent to be a member.

(6) A member of a Council shall, in the event that he ceases to satisfy any requirement of this section, give notice in writing of that event to the Council within 7 days from the occurrence of that event.

(7) A member of a Council who intends to cease acting as a member shall give notice in writing of his intention to the Council not less than 7 days before the day on which he intends to cease to act as such.

(8) A person shall cease to be a member of a Council on—

- (a) his discharge as a member of the Council, in accordance with the charter or the Articles, if any;
- (b) the Foundation ceasing to be registered under this Act;
- (c) the liquidation or winding-up, as the case may be, of the Foundation; or
- (d) the occurrence of any other event which disqualifies him from being a member of the Council.

(9) A Council shall, in writing, within 7 days from the date of any change in its membership, notify the Registrar of the change.

(10) Notwithstanding the fact that a person has ceased to be a member of a Council, any liability which he may have incurred in his capacity as such shall continue to be a liability enforceable against him by the Foundation.

### **18. Duties and powers of Council**

(1) A Council shall—

- (a) conduct the affairs of its Foundation in accordance with its charter and Articles, if any, and this Act;
- (b) generally supervise the management and conduct of its Foundation;
- (c) act honestly and in good faith with a view to promoting the best interests of the Foundation; and
- (d) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) (a) A Council may appoint such officers as may be necessary for the effective discharge of its duties and obligations under this Act, the charter and Articles, if any.

(b) An officer shall be under the supervision of the Council and shall act in accordance with the instructions of the Council.

(3) A charter, or Articles, if any, may specify the duties and powers of a Council and provide for other duties and powers, in addition to those provided for in subsections (1) and (2).

(4) Notwithstanding any defect in the appointment or qualification of a member of a Council, every act of the Council shall be valid.

### **19. Personal liability of officers and members of Council**

(1) This section applies to every officer of a Foundation and member of a Council.

(2) Nothing—

- (a) in the charter or Articles, if any; or
- (b) in a contract between a Foundation and a person to whom this section applies,

shall relieve, release or excuse that person from any liability arising from any fraud, wilful misconduct or gross negligence committed by such person.

## **PART III – NAME OF FOUNDATION**

### **20. Name of Foundation**

(1) The name of a Foundation registered under this Act shall end with—

- (a) the word “Foundation”; or
- (b) a word, in a foreign language, which has the same meaning as the word “Foundation”.

(2) No Foundation shall be registered under a name which includes—

- (a) the word “limited” or an abbreviation of the word “limited”;
- (b) the word “company” or an abbreviation of the word “company”;
- (c) the word “partnership” or “*Société*”, or an abbreviation of the word “partnership” or “*Société*”; or
- (d) a translation of the word “limited”, “company”, “partnership” or “*Société*” in the language or practice of any other country which conveys a similar meaning.

(3) No Foundation shall be registered under a name which is identical to that of an existing Foundation, a company registered under the Companies Act or a business registered under the Business Registration Act, or so nearly resembles that name as to be likely to mislead, except where the existing Foundation, company or business is in the course of being dissolved and signifies its consent in such manner as the Registrar may determine.

(4) Except with the Registrar’s written consent, in accordance with Practice Directions issued under section 24 (3), no Foundation shall be registered under a name which includes—

- (a) the word “Authority”, “Corporation”, “Government”, “Mauritius”, “National”, “President”, “Presidential”, “Regional”, “Republic”, “State”, or any other word which, in the Registrar’s opinion, suggests, or is likely to suggest, that it enjoys the patronage of the Government, a statutory corporation, or the Government of any other State;
- (b) the word “Municipal” or “Chartered” or any other word which, in the Registrar’s opinion, suggests, or is likely to suggest, a connection with a local authority in Mauritius or elsewhere;
- (c) the word “co-operative”; or
- (d) the words “Chamber of Commerce”.

(5) Except with the consent of the Court, no Foundation shall be registered under a name which, in the opinion of the Registrar, is undesirable or misleading.

[S. 20 amended by s. 7 (a) of Act 4 of 2017 w.e.f. 20 May 2017.]

## 21. Change of name

(1) An application to change the name of a Foundation shall—

- (a) be in the approved form; and
- (b) subject to its charter or Articles, if any, be made by passing a resolution of the Council to that effect and filing a copy of the resolution with the Registrar.

(2) Where the Registrar is satisfied that a Foundation has complied with subsection (1), the Registrar shall—

- (a) record the new name of the Foundation;

- (b) record the change of name of the Foundation on its certificate of registration; and
  - (c) require the Foundation to cause a notice to that effect to be published in such manner as he may direct.
- (3) The change of name of a Foundation shall—
- (a) take effect from the recording of the change of name under subsection (2); and
  - (b) not affect—
    - (i) the rights or obligations of the Foundation;
    - (ii) any legal proceedings—
      - (A) by or against the Foundation; or
      - (B) which may be pending or have commenced against the Foundation under its former name.

## **22. Use of Foundation name**

- (1) A Foundation shall ensure that its name is clearly stated—
- (a) in every written communication sent by it or on its behalf; and
  - (b) on every document issued or signed by it or on its behalf,
- and which evidences or creates a legal obligation of the Foundation.
- (2) Where the name of a Foundation is incorrectly stated in a document which evidences or creates a legal obligation of the Foundation and the document is issued or signed by or on behalf of the Foundation, every person who issued or signed the document shall be liable to the same extent as the Foundation, unless—
- (a) the person who issued or signed the document proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the Foundation; or
  - (b) the Court before which the document is produced is satisfied that it would not be just and equitable for the person who issued or signed the document to be so liable.
- (3) For the purposes of subsections (1) and (2), a Foundation may use a generally recognised abbreviation of a word or words in its name where it is not misleading to do so.
- (4) Where, within a period of 12 months immediately preceding a public notice given by a Foundation, the name of the Foundation is changed, the Foundation shall ensure that the notice states—
- (a) the change of name of the Foundation; and
  - (b) the name or names of the Foundation before the change.

## **PART IV – REGISTRATION**

### **23. Application for registration**

(1) An application for registration of a Foundation shall be made to the Registrar and shall—

- (a) be in the approved form;
- (b) contain the following particulars extracted from its charter—
  - (i) the name of the Foundation;
  - (ii) the date of—
    - (A) the charter; and
    - (B) any amendment made to the charter before its submission to the Registrar;
  - (iii) the purpose or purposes and objects of the Foundation;
  - (iv) the date of the Articles, if any, of the Foundation and of any amendment made to them before its submission to the Registrar;
  - (v) the name and address, in Mauritius, of the founder for the purpose of service of documents;
  - (vi) details of the beneficiary of the Foundation or the manner in which the beneficiary may be appointed and the manner in which he may be removed;
  - (vii) the name and address of the secretary;
  - (viii) the name and address of members of the Council;
  - (ix) the address of the registered office of the Foundation;
  - (x) the period, if any, for which the Foundation is established; and
  - (xi) such other particulars as the Registrar may require;
- (c) be accompanied by a list containing the names and addresses of the first officers of the Foundation;
- (d) be accompanied by a declaration in writing by a law practitioner, legal consultant or law firm regarding compliance with all the relevant requirements of this Act and on which the Registrar shall be entitled to rely as sufficient evidence of that compliance; and
- (e) be accompanied by a declaration made by the applicant that the information provided in the application is true and correct.

(2) An application under subsection (1) shall be accompanied by the fee specified in the Schedule.

### **24. Registration**

(1) Where the Registrar is satisfied that an application for the registration of a Foundation complies with this Act, the Registrar shall—

- (a) enter the particulars of the Foundation in the register;



- (b) assign a unique number to the Foundation, which shall be its Foundation number; and
- (c) issue a certificate of registration in the approved form.

(2) The Registrar may, from time to time, issue Practice Directions setting out the procedure to be followed for the registration of documents or production of records under this Act.

(3) Any Practice Directions issued under subsection (2) shall be published in the *Gazette* and shall remain in force unless amended or revoked by publication in the *Gazette*.

## 25. Certificate of registration

A certificate of registration of a Foundation issued under section 24 (1) (c) shall be conclusive evidence that—

- (a) the requirements of this Act regarding registration have been complied with; and
- (b) the date of registration of the Foundation is the date specified in the certificate of registration.

## 26. Separate legal personality

A Foundation registered under this Act shall have a separate legal personality as from the date a certificate of registration is issued under section 24 (1) (c).

## 27. Pre-registration actions

(1) Where—

- (a) before the 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) the Foundation is not precluded from doing so by its charter or Articles, if any,

the Foundation may, following its registration, ratify such action by a resolution of the Council.

(2) Any action ratified under subsection (1) shall be considered to be an action properly executed by the Foundation, and the Foundation shall be—

- (a) entitled to benefit from that action;
- (b) liable in respect of such action; and
- (c) liable for any failure to take such steps as may be necessary to give effect to that ratification.

## PART V – REGISTER

### 28. Register of Foundations

- (1) The Registrar shall establish and maintain a register of Foundations.

(2) The Registrar shall maintain a record of every Foundation registered under this Act and all documents filed in relation to the Foundation.

(2A) (a) Notwithstanding any other enactment, the Registrar may authorise the filing of any document, and the payment of any fee, under this Act to be made, submitted or done electronically through CBRIS or such other electronic system, and in such manner as the Registrar may approve.

(b) In this subsection—

“CBRIS” has the same meaning as in the Companies Act.

(3) The register shall be kept in such manner as the Registrar may determine and may be kept wholly or partly, by means of a device or facility—

- (a) that records or stores information electronically or by other similar means; and
- (b) that permits the information so recorded or stored to be readily inspected or reproduced in usable form.

(4) The register shall, in relation to a Foundation, contain a record of—

- (a) the name of the Foundation;
- (b) the address of the registered office of the Foundation;
- (c) the name and address of the founder;
- (d) the date of registration of the Foundation;
- (e) the period, if any, for which the Foundation is established;
- (f) the name and address of the secretary;
- (g) the name and address of members of the Council; and
- (h) such other matter as may be prescribed or otherwise considered appropriate by the Registrar.

[S. 28 amended by s. 19 (a) of Act 9 of 2015 w.e.f. 14 May 2015.]

## 29. Inspection of register

(1) Subject to this section, a person duly authorised by the secretary of a Foundation or the Commission may, on payment of the fee specified in the Schedule and during such time as the Registrar may determine, inspect—

- (a) the register;
- (b) the particulars of any registered document entered in any device or facility referred to in section 28 (3); or
- (c) any registered document, the particulars of which have been entered in any such device or facility.

(2) A person referred to in subsection (1) may, subject to this section, apply to the Registrar for—

- (a) a certificate of registration of a Foundation;
- (b) a copy of, or extract from, a document in a register kept by the Registrar;
- (c) the particulars of any registered document that have been entered in any device or facility referred to in section 28 (3); or
- (d) a copy of, or extract from, a registered document the particulars of which have been entered in any such device or facility.

(3) On receipt of an application made under subsection (2), the Registrar shall, on payment by the applicant of the fee specified in the Schedule, issue the document, particulars or copy, or certified copy, applied for.

(4) Unless otherwise ordered by the Court, the Registrar shall not be required to produce—

- (a) a registered document kept by him; or
- (b) evidence of the entry of particulars or a registered document in any device or facility referred to in section 28 (3),

and the Court shall not make an order where it is not satisfied that the evidence is necessary for the purposes of any proceedings.

(5) A copy of, or extract from, a registered document—

- (a) that constitutes part of the register kept by the Registrar; or
- (b) particulars of which have been entered in any device or facility referred to in section 28 (3),

certified to be a true copy, or extract, by the Registrar, shall be admissible in evidence in any legal proceedings to the same extent as the original document.

(6) An extract certified by the Registrar as containing particulars of a registered document that have been entered in any device or facility referred to in section 28 (3) shall, in the absence of proof to the contrary, be conclusive evidence of the entry of those particulars.

(7) No fee shall be payable by a Ministry or Government department under subsection (1) or (3).

### **30. Powers of inspection of Registrar**

(1) For the purpose of ascertaining whether a Foundation or an officer is complying with this Act, the Registrar may, on giving 7 days' written notice to the Foundation, call for the production of, or inspect, any record required to be kept by the Foundation.

(2) This section shall also apply to a Foundation redomiciled in Mauritius in accordance with section 47.

## **PART VI – CAPACITY, POWERS AND VALIDITY OF ACTS**

### **31. Capacity and powers**

(1) Subject to this Act and any other enactment, a Foundation shall have, both in and outside Mauritius—

- (a) full capacity to carry on or undertake any business activity, do any act, or enter into any transaction; and
- (b) for the purpose of paragraph (a), full rights, powers and privileges.

(2) Without prejudice to subsection (1) and notwithstanding any other enactment, a Foundation shall be capable of giving and entering into, being bound by and claiming all rights under a deed, mortgage or other instrument.

(3) The validity of any act done by a Foundation shall not be challenged on the ground of any lack of capacity by reason of anything in its charter or Articles, if any.

(4) Any member of a Council or a beneficiary may institute proceedings to restrain the performance of an act which, but for subsections (1), (2) and (3), would be beyond the capacity of the Foundation, but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the Foundation.

(5) Every officer shall be bound by any limitation on his powers, as may be specified in the charter or Articles, if any, and any action of the officer which, but for subsections (1), (2) and (3), would be beyond the capacity of the Foundation, may be ratified only by a unanimous resolution of its Council.

(6) A resolution of a Council under subsection (5) shall not affect any liability incurred by the officer, and relief from any such liability may be determined only by the Council.

### **32. Power of officers to bind Foundation**

(1) The power of an officer to bind a Foundation or to authorise any other person to do so may be presumed in favour of a person dealing with the Foundation in good faith.

(2) Subject to subsection (3), subsection (1) shall not affect the right of any member of a Council or of a Foundation to institute proceedings to restrain the performance of an act which is beyond the powers of an officer.

(3) No proceedings referred to in subsection (2) shall lie in respect of any act to be done in furtherance of any legal obligation arising from a previous act of a Foundation.

### **33. Method of contracting**

(1) A contract made on behalf of a Foundation—

- (a) which, where made between private persons, is required to be in writing, may be made in writing on behalf of the Foundation—
  - (i) and signed by the Foundation; or
  - (ii) by any person acting under its authority, express or implied, and may be varied or discharged in the same manner; or
- (b) which, where made between private persons, would be valid if made orally, may be made orally on behalf of the Foundation by any person acting under its authority, express or implied, and may be varied or discharged in the same manner.

(2) Subsection (1) shall apply to a contract or other obligation whether—

- (a) that contract or obligation was entered into in Mauritius or not; or

- (b) the law governing the contract or obligation is the law of Mauritius or not.

[S. 33 amended by s. 7 (b) of Act 4 of 2017 w.e.f. 20 May 2017.]

### **34. Disclosure of interest**

(1) A member of a Council shall, on becoming aware that he has an interest in a transaction or proposed transaction with the Foundation, forthwith disclose the nature and extent of his interest at a meeting of the Council as well as, where the monetary value of the member's interest can be quantified, the monetary value of that interest.

(2) A member of a Council shall not be required to comply with subsection (1) where—

- (a) the transaction or proposed transaction is between him and the Foundation; and
- (b) the transaction or proposed transaction is, or is to be, entered into in the ordinary course of the Foundation's business and on usual terms and conditions.

(3) A failure by a member to comply with subsection (1) shall not affect the validity of a transaction entered into by the Foundation or the member.

(4) This section shall apply to a protector or a committee of protectors as it applies to a member of the Council.

### **35. Rights of beneficiary to information**

A beneficiary of a Foundation shall, on written request to the secretary, be entitled—

- (a) to obtain information from the Foundation as regards the fulfilment of the objects of the Foundation;
- (b) to inspect and have a copy of—
- (i) the charter;
- (ii) the Articles, if any;
- (iii) any audit report, including any special audit report and books of account;
- (iv) any report on the financial position of the Foundation and the annual accounts; and
- (v) the minutes of proceedings of any meeting of the Council.

## **PART VII – RECORDS AND DOCUMENTS**

### **36. Records to be kept**

(1) A Foundation shall keep proper records of—

- (a) all sums of money received, expended and distributed, specifying the purpose of any such receipt, expense and distribution;

- (b) all sales and purchases made by the Foundation; and
- (c) the assets and liabilities of the Foundation.

(2) A Foundation shall keep accounting records which shall—

- (a) be sufficient to show and explain the transactions of the Foundation;
- (b) disclose with reasonable accuracy, at any time, the financial position of the Foundation; and
- (c) allow financial statements to be prepared.

### **37. Documents to be kept at registered office**

(1) Every Foundation shall keep at its registered office—

- (a) a file containing accurate records and a copy of all documents filed with the Registrar, including accurate copies of its charter and Articles, if any;
- (b) the minutes of proceedings of any meeting of the Council; and
- (c) a register showing the names and addresses of the members of its Council, any founder and any person who may have endowed assets to the Foundation.

(2) The records and copy of documents required to be kept by a Foundation under this section shall be open for inspection by any founder, officer, supervisory person, the Registrar or the Commission during business hours.

(3) Where an inspection under subsection (2) is refused, a person aggrieved by the refusal may make an application to the Court for an order directing the Foundation to allow an inspection of the records and copy of documents.

(4) Any record and copy of documents which a Foundation is required to keep under section 36 and this section shall be—

- (a) in the English language or French language;
- (b) in writing, stored or otherwise fixed on a tangible medium, or stored in an electronic or other medium which is retrievable in perceivable form; and
- (c) except for its Charter, preserved for a period of at least 7 years from the date on which it was made.

### **38. Publication**

(1) Every Foundation shall have—

- (a) —

- (b) the particulars specified in subsection (2) mentioned in legible characters in all—
  - (i) documents issued by the Foundation, including notices, business letters, advertisements and other official publications of the Foundation;
  - (ii) 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
  - (iii) invoices, receipts and letters of credit of the Foundation.
- (2) The particulars referred to in subsection (1) (b) shall be—
  - (a) the name of the Foundation;
  - (b) its place of registration;
  - (c) the address of its registered office; and
  - (d) such other particulars as may be required by the Registrar.

[S. 38 amended by s. 7 (c) of Act 4 of 2017 w.e.f. 20 May 2017.]

## **PART VIII – REMOVAL FROM AND RESTORATION TO REGISTER**

### **39. Removal from register**

(1) Where the Registrar has reasonable cause to believe that a Foundation no longer satisfies the requirements of section 3, the Registrar shall, by notice in writing, inform the Foundation that—

- (a) it no longer satisfies such requirements; and
- (b) he proposes to remove the name of the Foundation from the register.

(2) The Registrar shall, unless the Foundation makes satisfactory representations within 21 days from the date of issue of a notice under subsection (1), remove the name of the Foundation from the register.

(3) Where a Foundation has failed to pay any fee due under this Act, the Registrar shall, by notice in writing, inform the Foundation that its name shall be removed from the register if it fails to pay the fee within 30 days from the date of the notice.

(4) Where a Foundation fails to pay the fee within the period specified in subsection (3), the Registrar shall remove the name of the Foundation from the register.

(5) (a) A Foundation of which the name has been removed from the register under this section shall remain liable for all claims, debts, liabilities and obligations of the Foundation.

(b) The removal of the name of the Foundation from the register shall not affect the liability of a member of the Council or an officer.

#### **40. Effect of removal from register**

(1) Where the name of a Foundation has been removed from the register, the Foundation, its officers, its Council and a protector or committee of protectors shall not—

- (a) carry on any business or in any way deal with the assets of the Foundation;
- (b) commence or defend any legal proceedings, make any claim or claim any right for, or in the name of, the Foundation; or
- (c) in any way act with respect to the affairs of the Foundation.

(2) Notwithstanding subsection (1), where the name of a Foundation has been removed from the register, the Foundation or a creditor or liquidator may—

- (a) continue to defend proceedings which were commenced against the Foundation before the date of the removal; and
- (b) continue with any legal proceedings which were instituted on behalf of the Foundation before the date of the removal.

(3) Notwithstanding the fact that the name of a Foundation has been removed from the register—

- (a) the Foundation shall not be precluded from incurring liabilities;
- (b) a creditor shall not be precluded from making a claim against the Foundation and pursuing the claim up to judgment or execution; and
- (c) the Court may appoint a liquidator for the Foundation.

#### **41. Restoration to register and effect of removal**

(1) Where the name of a Foundation has been removed from the register under section 39 (2), the Foundation, a creditor or a liquidator may apply to the Court to have the name of the Foundation restored to the register.

(2) Where, on an application made 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 of section 3; and
- (b) it would be fair and reasonable for the name of the Foundation to be restored to the register,

the Court may order that the name of the Foundation be restored to the register on payment of the fee specified in the Schedule.

(3) Where the name of a Foundation has been removed from the register under section 39 (4), the Foundation, a creditor or a liquidator may, within the 5 years following the date of the removal, apply to the Registrar to have the name of the Foundation restored to the register.



(4) The Registrar shall, on payment of any outstanding fee, restore the name of the Foundation to the register.

(5) Where the name of a Foundation is restored to the register under this section, the name of the Foundation shall be considered to have never been removed from the register.

## PART IX – WINDING-UP

### 42. Voluntary winding-up

(1) Subject to subsection (2), a Foundation shall be wound up voluntarily—

- (a) on the occurrence of an event specified in its charter;
- (b) on the expiry of the period for which it was established;
- (c) on a unanimous resolution of its Council to that effect; or
- (d) where the Foundation is unable to pay its debts.

(2) A Foundation shall not be wound up pursuant to subsection (1) unless a notice of liquidation signed by a member of the Council is delivered to the Registrar and published in 2 daily newspapers and the Gazette.

(3) Where a notice is delivered to the Registrar under subsection (2), the Registrar shall remove the Foundation from the register.

[S. 42 amended by s. 19 (b) of Act 9 of 2015 w.e.f. 14 May 2015.]

### 43. Winding-up by Court

(1) A Foundation may—

- (a) whether or not it is being wound up voluntarily; and
- (b) on a petition made in accordance with this section,

be wound up by an order of the Court.

(2) A petition under subsection (1) may be presented by—

- (a) the Foundation;
- (b) a beneficiary;
- (c) a creditor, including a contingent or prospective creditor, of the Foundation;
- (d) a liquidator;
- (e) the Registrar; or
- (f) the Commission.

(3) A petition under subsection (1) may be presented where—

- (a) the Foundation has, by unanimous resolution of its Council, resolved that it be wound up by the Court;
- (b) the Foundation is unable to pay its debts;
- (c) the members of the Council have acted in the affairs of the Foundation in their own interests, rather than in the interests of the beneficiaries as a whole, or in any other manner which is unfair or unjust to any beneficiary;
- (d) the Court is of opinion that it is just and equitable to do so; or

- (e) the Foundation is a licensee of the Commission and has carried on business in Mauritius in contravention of the Financial Services Act, Securities Act or Insurance Act.

(4) Where an order under subsection (1) for the winding-up of a Foundation is made, the Court may make such other order as it thinks fit, in relation to the winding-up, including an order for the appointment of a liquidator to wind up the affairs of the Foundation and distribute its assets.

#### **44. Distribution of assets on winding-up**

(1) Subject to subsection (2), the assets of a Foundation remaining after completion of a winding-up shall be the property of any remaining beneficiary, and that property shall be transferred to that beneficiary.

(2) In the event that—

- (a) there is no remaining beneficiary; or
- (b) the remaining beneficiary refuses to accept the transfer of the remaining assets; and
- (c) provision is made in the charter for the distribution of assets on winding-up,

the remaining assets shall be vested in the Curator of Vacant Estates.

(3) Where there are more than one remaining beneficiary willing to accept the transfer of the remaining assets, the remaining assets shall be divided equally among those remaining beneficiaries unless the charter or the Articles, if any, provides or provide otherwise.

(4) The liquidator shall file with the Registrar within 7 days of the completion of the winding-up—

- (a) a notice stating that the winding-up has been completed; and
- (b) in the case of a winding-up by the Court, an order to that effect.

(5) Where a notice or an order is filed with the Registrar under subsection (4), the Registrar shall remove the Foundation from the register.

[S. 44 amended by s. 19 (c) of Act 9 of 2015 w.e.f. 14 May 2015.]

### **PART X – MISCELLANEOUS**

#### **45. Certificate of current standing**

(1) The Registrar shall, at the request of the secretary of a Foundation or the Commission, issue a certificate of current standing, stating that a Foundation is of current standing, where he is satisfied that—

- (a) the name of the Foundation is on the register; and
- (b) the Foundation has paid all fees due and payable for the current year.

(2) A certificate of current standing under subsection (1) shall contain a statement specifying whether—

- (a) the Foundation is in the process of being wound up; or
- (b) any proceedings to remove the Foundation from the register have been instituted.

#### **46. Confidentiality**

(1) Any person who has acquired information in his capacity as an officer, a protector or a member of a Council shall—

- (a) treat the information as confidential; and
- (b) not make use of or disclose the information otherwise than as permitted in accordance with subsection (2).

(2) A person referred to in subsection (1) shall not disclose any confidential information to any person, or make use of or act upon such information, except—

- (a) for the purposes of the Foundation;
- (b) as required by law;
- (c) where authorised by the charter or Articles, if any;
- (d) with the express approval of the Council and on such terms and conditions as the Council may determine; or
- (e) where he is required to do so by the Court.

#### **47. Redomiciliation**

(1) A Foundation established under the law of another State may, in accordance with this section, make an application to redomicile in Mauritius as a Foundation established and registered under this Act.

(2) An application under subsection (1) shall be made to the Registrar and shall be—

- (a) signed by the members of the governing body of the Foundation;
- (b) accompanied by—
  - (i) a statement containing the particulars required under section 23;
  - (ii) satisfactory evidence that the Foundation is in current standing; and
  - (iii) the fee specified in the Schedule.

(3) On receipt of an application under subsection (1), and on being satisfied that the requirements of subsection (2) have been complied with, the Registrar may issue a certificate of registration in accordance with section 24.

(4) A Foundation shall, as from the time of issue of a certificate under subsection (3), be capable of exercising all powers of a Foundation under this Act.

(5) The redomiciliation and registration of a Foundation under this Act shall not affect any—

- (a) assets vested in the Foundation;
- (b) right, privilege, obligation or liability acquired, accrued or incurred by the Foundation;
- (c) penalty, forfeiture or conviction incurred by the Foundation or any member of its governing body; or
- (d) proceedings, whether civil or criminal, which may be pending by or against the Foundation or against any member of the governing body, and such proceedings may be enforced, prosecuted, settled or compromised by or against the Foundation or against that member.

(6) Subject to any limitations in its charter or Articles, if any, a Foundation registered under this Act may redomicile and register under the law of another State.

(7) A Foundation which redomiciles in accordance with subsection (6) shall not cease to be a Foundation registered under this Act except where, on redomiciliation and registration under the law of another State—

- (a) the Foundation submits to the Registrar a certified copy of the certificate of registration issued by the competent authority of that State; and
- (b) the Registrar, on receipt of the certified copy of the certificate, strikes the name of the Foundation off the register and certifies that the Foundation has ceased to be a Foundation registered under this Act.

(8) The fact that a Foundation has ceased to be a Foundation registered under this Act under subsection (7) shall not affect any—

- (a) right, privilege, obligation or liability acquired, accrued or incurred by the Foundation;
- (b) penalty, forfeiture or conviction incurred by the Foundation or any member of the Council; or
- (c) proceedings, whether civil or criminal, which may be pending by or against the Foundation or against any member of the Council, and such proceedings may be enforced, prosecuted, settled or compromised by or against the Foundation or against that member.

#### **48. Remedy**

(1) Where—

- (a) a Foundation;
- (b) the Council or any of its members; or

(c) an officer,

contravenes this Act, any person aggrieved by that contravention may apply to the Court for such remedy as may be appropriate in the circumstances.

(2) The Court may, on an application under subsection (1), grant the remedy sought or may make such other order on such terms and conditions as it may determine.

#### **49. Service of documents on Foundation**

(1) A document in any legal proceedings may be served on a Foundation—

- (a) by delivery to a person named in the register as secretary of the Foundation or member of its Council;
- (b) by leaving it at the registered office or address of the Foundation for service;
- (c) by serving it in accordance with any directions as to service given by the Court having jurisdiction in the proceedings; or
- (d) in accordance with any agreement made with the Foundation.

(2) A document, other than a document in any legal proceedings, may be served on a Foundation—

- (a) by any of the methods specified in subsection (1) (a), (b) or (d);
- (b) by posting it to the Foundation's registered office or address for service or delivering it to a post office box used by the Foundation at the time; or
- (c) by sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the Foundation's registered office or address for service, or its head office or principal place of business.

[S. 49 amended by s. 19 (d) of Act 9 of 2015 w.e.f. 14 May 2015.]

#### **50. Offences committed by Foundation**

(1) (a) Where a Foundation contravenes—

- (i) any provision of this Act; or
- (ii) any regulations made under this Act,

it shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees and imprisonment for a term not exceeding 5 years.

(b) Every person who, at the time of the commission of the offence, was concerned in the management of the Foundation or was purporting to act in that capacity, shall also commit the like offence, unless he proves that the offence was committed without his knowledge or consent and that he took all reasonable steps to prevent the commission of the offence.

(2) (a) Where a Foundation is charged with an offence under subsection (1), a representative may appear before the appropriate Court and enter a plea of guilty or not guilty on behalf of the Foundation.

(b) In this subsection—

“representative” means the secretary or any other person duly authorised by the Foundation to represent it.

#### **50A. Compounding of Offences**

(1) (a) Notwithstanding section 50, the Registrar may, with the consent of the Director of Public Prosecutions, compound an offence committed by a person under this Act where the person agrees in writing to pay an amount acceptable to the Registrar not exceeding the maximum penalty imposable under this Act for that offence.

(b) For the purpose of paragraph (a), the Registrar shall chair a committee which shall include 2 other senior officers from his staff designated by him.

(2) Every agreement to compound shall be in writing and signed by the Registrar and the person referred to in subsection (1) (a), and witnessed by an officer, and a copy shall be delivered to such person.

(3) Every agreement to compound shall be final and conclusive.

(4) Where the Registrar compounds an offence in accordance with this section, no further proceedings shall be taken in respect of the offence so compounded against the person.

[S. 50A inserted by s. 19 (e) of Act 9 of 2015 w.e.f. 14 May 2015.]

**51.** —

#### **52. Regulations**

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide—

(a) for amendment of the Schedule;

(b) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

**53.** —

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**SCHEDULE**

[Sections 9, 23, 29, 41 and 47]

1. There shall be paid to the Registrar—
  - (a) in respect of the matters set out in the second column of Part I of this Schedule, the fee specified in the third or fourth column of the Schedule, as the case may be;
  - (b) in respect of the matters set out in the second column of Part II of this Schedule, the fee specified in the third column of the Schedule.
2. (1) The fee payable in respect of every subsequent year, as specified in Part I of this Schedule, shall be paid—
  - (a) not later than 20 January in that year; and
  - (b) so long as the Foundation remains registered with the Registrar.
 (2) For the purpose of paragraph (1)—
 

“year” includes part of a year.

**PART I – FEES**

Item	Matters in respect of which a fee shall be payable	Fees payable (Rs)	
		on or before due date	after due date
1.	(a) at the time of its registration;	9,000	—
	(b) in respect of every subsequent year	9,000	13,000
2.	In the case of a redomiciliation—		
	(a) at the time of its registration;	9,000	—
	(b) in respect of every subsequent year	9,000	13,000

**PART II**

Item	Matters in respect of which a fee shall be payable	Fees payable (Rs)
1.	For any certificate issued by the Registrar except for the issue of certificate of registration in respect of a registration online	100
2.	For any amendment of the charter	1,000
3.	For certifying any copy or extract of any document in the custody of the Registrar	100
4.	For a copy or extract of any document in the custody of the Registrar per page	20
5.	For inspection of register in respect of any Foundation	100

