ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER A62

ANGUILLA FOUNDATION ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 10/2008, in force 12 December 2008
Act 18/2009, in force 17 July 2009
Act 3/2014, in force 2 May 2014

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ANGUILLA FOUNDATION ACT

PART 1

PRELIMINARY

Interpretation

1. In this Act, unless the context otherwise requires—

"beneficiary" means a person designated as such pursuant to the provisions of the declaration of establishment or by-laws of a foundation or by any amendment thereto;

"by-laws" means the by-laws of the foundation adopted in accordance with the provisions of section 8;

"Commission" means the Financial Services Commission established under section 2 of the Financial Services Commission Act;

"declaration of establishment" means—

(a) in relation to a foundation established in Anguilla, a declaration of establishment or a testamentary declaration of establishment in accordance with the provisions of section 3(2) and any amendments to any such declaration; or

(b) in relation to an overseas foundation continuing in Anguilla, its articles of continuance and any amendments to such articles;

"deposited foundation" means a foundation in respect of which the relevant documents have been deposited pursuant to section 14;

"foundation" means a foundation established under this Act or continued into Anguilla under Part 7;

"Foundation Council", in relation to a foundation, means the person or the body of persons having the responsibility pursuant to the declaration of establishment of the foundation or section 20 of carrying out the objectives and purposes of the foundation;

"Foundation Council member", in relation to a foundation, means a person who is a member of the Foundation Council of the foundation;

"founder" means—

(a) any person who signs the declaration of establishment establishing a foundation, acting either for himself or on behalf of another; or

(b) in the case of an overseas foundation continued into Anguilla, the person who signed the declaration of establishment, articles or any document equivalent to the declaration of establishment or articles in the jurisdiction of the overseas foundation, acting either for himself or on behalf of another;

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"guardian", in relation to a foundation, means the person or persons appointed as the guardian of the foundation pursuant to section 31;

"inspector" means an inspector appointed by an order made under section 64(2);

"legal entity" means a foundation, corporation, limited partnership, business, trust, limited liability company or any other juridical person;

"official seal" means an official seal prepared pursuant to section 57;

"overseas foundation" means a foundation established in a jurisdiction other than Anguilla;

"property endowment", in relation to a foundation, means the assets for the time being of the foundation;

"Register" means the Register of Foundations kept by the Registrar in compliance with section 13(1);

"registered address", in relation to a registered agent, means the address of the registered agent;

"registered agent", in relation to a foundation, means the registered agent of the foundation for the time being holding such office pursuant to sections 17 and 18;

"registered foundation" means a foundation registered under section 13;

"Registrar" means the Registrar of Foundations declared pursuant to section 56;

"regulated person" means a person holding a relevant licence;

"relevant licence" means a licence issued under—

(a) the Company Management Act; or

(b) the Trust Companies and Offshore Banking Act;

"residuary assets", in relation to a foundation, means the assets of the foundation remaining after its dissolution;

"Secretary" means the person appointed to be the secretary of a foundation pursuant to section 29.

Applicable law

2. Every foundation shall be governed by the provisions of this Act as well as the declaration of establishment of that foundation and its by-laws.

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PART 2

ESTABLISHMENT OF A FOUNDATION

Establishment of foundation

3. (1) One or more natural or legal persons may establish a foundation in accordance with the provisions of this Act.

(2) A foundation may be established by—

(a) a declaration of establishment made in writing and signed by one or more founders during their lifetime; or

(b) a testamentary declaration of establishment made by a single founder, comprised in a will as defined in the Wills Act and complying with all formalities required by that Act and probated in the High Court.

(3) An initial property endowment, expressed in any currency of legal tender, not being of less value than $10,000, shall—

(a) be placed under the control of the intended registered agent on or before the date of registration of the foundation pursuant to section 13 or the deposit of the foundation's documents pursuant to section 14; and

(b) become the property of the foundation upon such registration or, as the case may be, such deposit.

(4) For the purposes of this section, there shall be no requirement for separate articles of a foundation but, subject to section 4 and to the terms of the declaration of establishment of the foundation, provision not required by this Act to be included in the declaration of establishment may be included in separate articles of the foundation.

(5) Where a foundation established pursuant to paragraph (2)(b) cannot be registered or its documents deposited within a reasonable period of time after the death of the testator, any interested person may apply to the High Court for the appointment of a temporary receiver of the initial property endowment referred to in subsection (3), who shall be responsible—

(a) for applying to the Registrar for the entry of the foundation on the Register, pursuant to section 13, or depositing the declaration of establishment with the Registrar pursuant to section 14, when probate of the will has been granted;

(b) for carrying out the declaration of establishment and administering the property endowment until the Foundation Council is appointed; and

(c) if necessary, for appointing the Foundation Council.

(6) The temporary receiver—

(a) shall be entitled to reimbursement for his proper charges and expenses, which shall be determined by the High Court; and

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(b) may be removed by the High Court as soon as the foundation acquires legal personality.

(7) In subsection (3), "$" means a dollar in the currency of the United States of America.

Requirements of declaration of establishment

4. (1) A declaration of establishment shall include the particulars specified in subsection (2).

(2) The particulars referred to in subsection (1) are as follows—

(a) the name of the foundation;

(b) the initial property endowment referred to in section 3(3) accompanied by a certified confirmation, by the person designated as the registered agent of the foundation, that such initial endowment of property is readily available to the foundation and will be vested in or under its legal control immediately upon the foundation's acquisition of legal personality pursuant to section 15;

(c) the name and address of the founder or founders, but, if at any time the founder's rights are assigned, any assignee of the founder's rights shall be deemed to be a founder for the purposes of section 16;

(d) the full names and addresses of the Foundation Council members;

(e) the name and address of the registered agent;

(f) the name and address of the Secretary, if any;

(g) the name and address of the guardian, if any;

(h) the purposes of the foundation;

(i) provisions, if any, for the designation of beneficiaries;

(j) the names and addresses of any designated beneficiaries;

(k) provisions, if any, for the exercise of powers otherwise than by the Foundation Council;

(l) the method of appointing and changing Foundation Council members;

(m) provisions concerning the making of by-laws and their amendment;

(n) provisions concerning any power to amend the declaration of establishment of the foundation;

(o) provisions concerning the application of the foundation's property endowment in the event of the dissolution of the foundation;

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(p) provisions concerning the term of the foundation and whether such term shall be for a definite or indefinite period of time.

(3) Subject to the provisions of this Act, the declaration of establishment of a foundation may, in addition to the particulars specified in subsection (2)—

(a) provide for the appointment, removal and term of office of the auditor, if any;

(b) provide for the appointment and removal of its guardian for the maintenance of the objectives and purposes of the foundation;

(c) specify the duties, functions, powers and rights (including rights to remuneration) of its guardian, if appointed;

(d) provide for the appointment of persons to act by power of attorney or otherwise to carry out particular duties on behalf of the foundation;

(e) provide for the transfer to the foundation of supplementary assets in addition to the initial assets;

(f) specify any named beneficiary; and

(g) make any other lawful provision that the founder or founders may deem appropriate.

Purposes of foundation

5. (1) Subject to subsection (2) and the terms of its declaration of establishment, a foundation may be established for any purposes which are capable of fulfilment and are not unlawful, immoral or contrary to public policy.

(2) The purposes for which a foundation may be formed shall not include—

(a) the carrying out of any activity prohibited from being carried on, in or from within Anguilla; and

(b) any financial services business, unless and until such licence as may be required to conduct such financial services business has been granted.

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

(4) In this section, the expression "financial services business" shall have the meaning assigned to it in the Financial Services Commission Act.

Language of declaration of establishment

6. The declaration of establishment of a foundation and any amendment thereto may be written in any language but, where such declaration is not written in the English language, it must include a certified translation into the English language.

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Amendment of declaration of establishment

7. (1) Any amendment to the declaration of establishment of a foundation, when permitted, shall be made in accordance with the provisions of subsection (2).

(2) The declaration of establishment of a foundation established pursuant to section 3(2)(a) may, subject to the terms of that declaration of establishment, be amended or revoked in writing—

(a) in the case of a foundation established by one founder, by the founder during his lifetime; or

(b) in the case of a foundation established by 2 or more founders, by the founders jointly during their joint lifetimes;

if such right is personal to the founder or the founders as the case may be, and is non-assignable.

By-laws

8. (1) A foundation established under this Act may adopt by-laws, and such by-laws may include regulations—

(a) concerning distributions or applications of property endowment;

(b) naming beneficiaries, defining classes of beneficiaries or providing for additional beneficiaries of the foundation;

(c) providing for the identification of the residual beneficiary on a dissolution of the foundation;

(d) providing guidelines, policies and procedures for the Foundation Council; or

(e) providing for any other lawful matter compatible with the purposes of the foundation.

(2) Any such by-laws shall be in writing and shall be signed by at least one Foundation Council member.

(3) The Foundation Council of a foundation may, subject to the terms of the declaration of establishment of the foundation, amend or replace the by-laws of the foundation.

Foundation name

9. (1) The name of a foundation—

(a) must end with—

(i) the word “Foundation” or its abbreviation “Fdn.”, or

(ii) the foreign language equivalent of the word “Foundation” or its recognised abbreviation in that language;

(b) may contain the name of a founder or Foundation Council member;

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(c) must not be the same as or similar to the name of any other legal entity registered or deposited under the laws of Anguilla or reserved under this or any other Act, unless such other legal entity consents in writing to the use of that name; and

(d) must not be a name prohibited by regulations made under this Act or by any other law in force in Anguilla.

(2) Notwithstanding subsection (1) and subject to the approval by the Registrar, one or more words, or an abbreviation thereof that, in the opinion of the Registrar, denote in a jurisdiction other than Anguilla the existence of an entity having the characteristics of a foundation, may be used in place of the word or words or abbreviation specified in that subsection.

(3) Where any word or its abbreviation approved by the Registrar under subsection (2) is used in the name of a foundation, such word or abbreviation shall be placed in such position within the name of the foundation as the Registrar may direct.

Reservation of name

10. (1) The exclusive right to the use of a name may be reserved by—

(a) any person intending to establish a foundation under that name;

(b) any foundation that proposes to change its name to that name; or

(c) any overseas foundation, by whatever name called, intending to continue under this Act as a foundation having that name.

(2) The reservation of a specified name shall be made by filing with the Registrar an application executed by the applicant in the prescribed form specifying the name to be reserved.

(3) If the Registrar approves the name and determines that it is available for use by such foundation, the Registrar shall reserve the name for the exclusive use of the applicant for a period of 120 days.

(4) A name reserved under subsection (3) may, by application made under subsection (2), be reserved for successive periods of 120 days.

(5) The prescribed fee shall be paid—

(a) upon the filing of an application to reserve a name under subsection (2); and

(b) upon the filing of each application to renew the reservation of a name under subsection (4).

Change of name

11. (1) Subject to the terms of its declaration of establishment and to the provisions of section 9, a foundation may, by resolution of its Foundation Council, amend its declaration of establishment to change its name at any time.

(2) Where a foundation is established or continued, or changes its name to a name that—

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(a) is reserved for another entity under section 10;

(b) does not comply with section 9; or

(c) is, in the opinion of the Registrar, for any other reason objectionable;

the Registrar may, by serving a written notice on the foundation, direct it to change its name within such period of time as he may stipulate.

(3) If a foundation which has been served a notice pursuant to subsection (2) does not change its name to a name that complies with section 9 within such time as the Registrar specifies in that notice, the Registrar—

(a) may assign a new name to the foundation; and

(b) shall enter such assigned name in the Register or, as the case may be, in the schedule of deposited foundations maintained under this Act.

(4) Where the name of a foundation has been changed, pursuant to this section, the Registrar must—

(a) in the case of a registered foundation, issue a certificate of registration on change of name to the foundation; and

(b) in the case of a deposited foundation, issue a certificate of deposit on change of name to the foundation;

specifying the new name and the reason for the change of name.

(5) After the issue to a foundation of a certificate of registration on change of name under paragraph (4)(a) or a certificate of deposit on change of name under paragraph (4)(b), any other foundation (except one already registered under the former name) that uses the former name of the foundation commits an offence and is liable to such penalty as may be prescribed by regulations.

Assets

12. Where a person contributes assets as property endowment of a foundation, such assets shall—

(a) irrevocably become assets of the foundation upon the vesting of such assets in the foundation; and

(b) cease to be assets of the contributor.

Registration of foundation

13. (1) The Registrar shall maintain a Register of Foundations.

(2) Unless section 14(1) applies to a foundation, the registered agent of the foundation shall apply to the Registrar to enter the name of the foundation on the Register.

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(3) For the purpose of registering a foundation under this Act, the declaration of establishment of the foundation shall be delivered to the Registrar together with the prescribed fees.

(4) 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 on the Register the declaration of establishment delivered to him.

(5) Upon the registration of the declaration of establishment, the Registrar shall—

(a) allocate to the foundation a registration number in accordance with section 58(1);

(b) issue to the registered agent a certificate of registration in respect of the foundation stating—

(i) the date of registration of the foundation,

(ii) the name of the foundation, and

(iii) the registration number of the foundation; and

(c) issue to the registered agent an extract of the declaration of establishment of the foundation stating—

(i) the full names and addresses of the Foundation Council members,

(ii) the name and address of that registered agent,

(iii) the purposes of the foundation, and

(iv) the initial property endowment of the foundation.

(6) Each certificate of registration shall be signed and sealed by the Registrar.

(7) The certificate of registration shall be conclusive evidence of the registration of the foundation.

Deposit of foundation documents

14. (1) The Foundation Council may decide not to register a foundation, not being a foundation that has a commercial purpose, and in any such case the declaration of establishment of the foundation must be deposited by the registered agent with the Registrar together with the prescribed fees, and the Registrar shall record such declaration of establishment in a schedule of deposited foundations.

(2) If, upon such deposit, the Registrar is satisfied that all the requirements of this Act in respect of the deposit of the declaration of establishment of the foundation have been complied with, the Registrar shall—

(a) allocate to the foundation a deposit number in accordance with section 58(1); and

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(b) issue to the registered agent a certificate of deposit stating—

(i) the date of deposit of the declaration of establishment of the foundation,

(ii) the name and deposit number of the foundation, and

(iii) the name and address of the registered agent.

(3) In such case, the Registrar shall only disclose information on the foundation—

(a) as provided for in section 61;

(b) upon an order of the High Court; or

(c) upon a written request from the Commission or any other body duly authorised under any other enactment.

(4) For the avoidance of doubt, any foundation to which subsection (1) does not apply, including any foundation that has a commercial purpose, must be registered pursuant to section 13(2).

Acquisition of legal personality of foundation

15. (1) A foundation shall, from the date of its registration pursuant to section 13 or, as the case may be, the date of acceptance of its deposit pursuant to section 14, have the status of a separate and independent legal person in its own right.

(2) A foundation shall be invalid and unenforceable—

(a) if it is not registered pursuant to section 13 or deposited pursuant to section 14;

(b) in the case of a registered foundation, if it has been struck off the Register; or

(c) in the case of a deposited foundation, if it has been struck off the schedule of deposited foundations pursuant to section 48 or 51.

Notice of change of registered or deposited particulars

16. (1) Where the declaration of establishment of a foundation is amended or a change occurs in any of the particulars specified in section 4(2)—

(a) the foundation shall, within 14 days of the amendment or occurrence of such change or within 14 days of becoming aware of such amendment or occurrence, file or deposit with the Registrar a notice, signed by the registered agent, containing details of the amendment or change, together with the prescribed fees; and

(b) the Registrar shall—

(i) in the case of a registered foundation, retain such notice and file it in the Register, and

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(ii) in the case of a deposited foundation, retain such notice, cancel the certificate of deposit and issue to the registered agent a new certificate of deposit indicating such amendment or change.

(2) Where such amendment constitutes a change of name of a registered foundation, the Registrar must issue a new certificate of registration indicating the change of name.

(3) Any amendment of the declaration of establishment of a foundation and any change in the particulars specified in section 4(2) shall come into effect—

(a) in the case of a registered foundation, from the date when notice of such amendment or change has been filed in the Register; and

(b) in the case of a deposited foundation, from the date on which the Registrar issues to the registered agent the new certificate of deposit indicating such amendment or change.

(4) Any interested person or the Registrar may apply to the High Court for an order to require a foundation to comply with subsection (1), and the High Court may so order and make any further order it thinks fit.

PART 3

THE BODIES OF A FOUNDATION

Registered agent

17. (1) Every foundation shall, at all times, have a registered agent in Anguilla.

(2) The registered agent must be a regulated person.

(3) The first registered agent of every foundation shall be as specified in the declaration of establishment of that foundation.

(4) A foundation may change its registered agent by filing a notice for that purpose in the prescribed form with the Registrar.

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

(6) If the registered agent ceases to be a regulated person, the foundation shall, within 14 days of becoming aware of that fact, change its registered agent to a person who is a regulated person.

(7) If, pursuant to a notice given under section 18, a person ceases to act as the registered agent of a foundation, the foundation shall appoint a new registered agent immediately upon the effective date of the first mentioned registered agent ceasing to so act.

(8) If a person ceases to act as the registered agent of a foundation for any other reason, the foundation shall, within 14 days of becoming aware that the person concerned has ceased to act as its registered agent, change that registered agent to another person who is a regulated person.

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(9) A foundation that contravenes subsections (6), (7) or (8) commits an offence and is liable to such penalty as may be prescribed by regulations.

(10) Subject to subsection (11), a person who, not being a regulated person, acts as the registered agent of a foundation, commits an offence and is liable to such penalty as may be prescribed by regulations.

(11) If a person who acts as the registered agent of a foundation ceases to hold a relevant licence, he does not commit an offence under subsection (10) if, upon ceasing to hold such licence, he forthwith notifies the foundation that he is no longer a regulated person and that the foundation must change its registered agent in accordance with subsection (6).

Registered agent ceasing to act for foundation

18. (1) If the registered agent of a foundation intends to cease to act as its registered agent, he must give not less than 30 days written notice of his intention to do so in accordance with subsection (2).

(2) A notice given under subsection (1) must be sent to any Foundation Council member at the address of the Foundation Council member last known to the registered agent.

Foundation Council

19. (1) A foundation shall, at all times, have a Foundation Council, whose duties and responsibilities shall be set out in the declaration of establishment of the foundation or in its by-laws.

(2) The Foundation Council may comprise one or more persons, whether corporate entities or individuals.

(3) No person shall be a Foundation Council member of a foundation if the person is—

(a) a minor; or

(b) an incompetent; or

(c) the guardian of the foundation; or

(d) disqualified from being—

(i) a Foundation Council member of a foundation under this Act, or

(ii) a director of a company under any law of Anguilla.

(4) In subsection (3)—

"incompetent" means a person in respect of whom a custodian or curator has been appointed by any court having jurisdiction, whether in Anguilla or elsewhere, in matters concerning mental disorder;

"minor" means an individual who is less than 18 years of age.

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Duties and obligations of Foundation Council

20. (1) The Foundation Council of a foundation shall have the responsibility of carrying out the objectives and purposes of the foundation.

(2) Subject to the terms of the declaration of establishment of the foundation or its by-laws and without prejudice to the generality of subsection (1), the Foundation Council shall have the following general obligations and duties—

(a) to direct the administration of the assets of the foundation;

(b) to exercise the powers of the foundation, directly or indirectly, through the employees and agents of the foundation;

(c) to enter into any transactions, contracts or lawful business that may be suitable or necessary to fulfil the purposes of the foundation;

(d) to provide information relating to the property endowment to the beneficiaries of the foundation and the guardian, if any;

(e) to make distributions or applications of all or any part of the property endowment or the income of the foundation; and

(f) to do all such other acts as may be provided for by this Act.

Duty of care of Foundation Council members

21. (1) A Foundation Council member shall, in the exercise and discharge of his powers and duties—

(a) act honestly and in good faith with a view to the interests of the foundation, its beneficiaries or its purposes; and

(b) exercise the care, diligence and skill which a reasonably prudent person would exercise in comparable circumstances.

(2) Subject to the provisions of this Act and notwithstanding any provision to the contrary in the declaration of establishment or by-laws of a foundation or in any agreement entered into by the foundation, a Foundation Council member who commits or concurs in committing a breach of the duties imposed by subsection (1) (hereafter referred to in this section and in sections 22 and 23 as a "breach") is liable for—

(a) any loss or depreciation in value of the property endowment resulting from the breach; and

(b) any profit that would have accrued to the property endowment had there been no breach.

(3) A Foundation Council member may not set off a profit accruing from one breach against a loss or depreciation in value resulting from another breach.

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(4) A Foundation Council member is not liable for a breach committed by another person prior to his appointment or for a breach committed by another Foundation Council member unless—

(a) he becomes or ought to have become aware of such breach; and

(b) he actively concurs in or conceals such breach, or fails within a reasonable time to take proper steps to protect or restore the property endowment or to prevent the continuance of the breach.

(5) Where 2 or more Foundation Council members are liable for a breach, they are liable jointly and severally.

(6) A Foundation Council member who becomes aware of a breach shall take all reasonable steps to remedy the breach or cause the breach to be remedied.

Indemnification

22. (1) Subject to subsection (2) and to the terms of its declaration of establishment or its 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, any person who—

(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 Foundation Council member or guardian of the foundation; or

(b) is or was, at the request of the foundation, serving as a Foundation Council member, guardian 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 conduct was unlawful.

(3) The decision of the Foundation Council, with the written concurrence of the guardian, if any, as to whether the person—

(a) acted honestly and in good faith and with a view to the interests of the foundation; or

(b) 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) The termination of any proceedings by any judgment, order, settlement, conviction or the entering of a *nolle prosequi* does not, of itself, create a presumption that a person—

(a) did not act honestly and in good faith with a view to the interests of the foundation; or

(b) had reasonable cause to believe that his conduct was unlawful.

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(5) If any person referred to in subsection (1) has been successful in defence of any proceedings referred to in that subsection, the foundation shall indemnify such person in respect of such proceedings as therein mentioned.

(6) The High Court may relieve a Foundation Council member of liability, in whole or in part, for a breach where it appears to the High Court that the Foundation Council member has acted honestly and reasonably and ought fairly to be excused for the breach or for omitting to obtain the directions of the High Court in the matter in which the breach arose.

Limitation of liability

23. (1) The declaration of establishment of a foundation or its by-laws may provide that the Foundation Council or the Foundation Council members of the foundation may only exercise certain powers by obtaining prior authorisation of its guardian, if any.

(2) Where such authorisation for the exercise of a power has been duly obtained from the guardian of the foundation, a Foundation Council member of that foundation is not liable for—

(a) any loss or depreciation of the property of the foundation; or

(b) any damages or prejudice caused to the foundation;

resulting from the exercise of the power, unless the exercise of that power is a breach within the meaning of section 21(2).

Capacity of Foundation Council to bind foundation

24. (1) Any person dealing with a foundation in good faith may assume that the Foundation Council of the foundation has the power to bind the foundation or to authorise others to do so.

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

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

Information concerning foundation

25. (1) The Foundation Council of a foundation shall, so far as is reasonable and within a reasonable time from the date of receipt of 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) subject to the terms of the declaration of establishment of the foundation and its by-laws—

(i) to the founder of the foundation,

(ii) to the guardian of the foundation, if any, and

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(iii) to any beneficiary of the foundation; or

(b) pursuant to an order of the High Court.

(2) Subject to the provisions of this Act, the terms of the declaration of establishment of a foundation and its by-laws and any order of the High Court, neither the Foundation Council nor the guardian of the foundation shall 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 have not exercised a power or discretion or performed a duty conferred or imposed on them or on the guardian; or

(b) relates to, or discloses the reason for, 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.

Meetings of Foundation Council

26. (1) Subject to the terms of the declaration of establishment or by-laws of a foundation, the Foundation Council of the foundation shall meet at such times and in such manner and places within or outside Anguilla as it may determine.

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

(3) Decisions of the Foundation Council may be taken by way of written resolutions signed by all the Foundation Council members.

Removal and appointment of Foundation Council members

27. The removal and appointment of new or additional Foundation Council members of a foundation shall be effected in accordance with the terms of the declaration of establishment and by-laws of the foundation, but the full names and address of any Foundation Council member appointed shall be notified to the registered agent within 14 days of his appointment and every Foundation Council member shall have a duty to notify the registered agent of any change of his address within 14 days of the occurrence of such change and the provisions of section 16 shall apply.

Judicial removal of Foundation Council members

28. (1) Where the declaration of establishment of a foundation or its by-laws do not provide for the right to remove members of the Foundation Council of the foundation and the causes for such removal, the founder, any beneficiary, the guardian, or any Foundation Council member of the foundation may apply to the High Court for the removal of one or more Foundation Council members, for any of the following causes—

(a) when the interest of any such Foundation Council member is incompatible with the interests of the beneficiaries of the foundation or the founder or with the objectives and purposes of the foundation;

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(b) if the administration of the assets of the foundation lacks the diligence of a reasonably prudent person;

(c) if any such Foundation Council member is charged with and convicted of an indictable offence;

(d) for incapacity or inability to carry out the objectives of the foundation, from the time such cause arises; or

(e) for the insolvency of, or in the event of bankruptcy proceedings against, any Foundation Council member.

(2) Without prejudice to paragraph (1)(c), where a Foundation Council member of a foundation is charged with an indictable offence, the High Court may, while the criminal proceedings in respect of that offence are in progress, suspend such Foundation Council member.

(3) Subject to the provisions of this Act, the High Court may appoint a person to replace the Foundation Council member suspended or removed.

Secretary

29. (1) Every foundation shall, unless its Foundation Council includes at least one person who is permanently resident in Anguilla and is a regulated person, have a Secretary who—

(a) must be a person residing in Anguilla;

(b) must be a regulated person; and

(c) may be the registered agent of the foundation.

(2) No foundation shall have as its Secretary a person who is the sole Foundation Council member.

(3) The Secretary of a foundation shall be responsible to the Foundation Council of the foundation for the implementation of the decisions and policies of the Foundation Council in compliance with the laws of Anguilla and for due compliance with the provisions of this Act.

Register of Foundation Council and Secretary

30. Each foundation shall keep, at its registered address, a register in which shall be recorded and maintained the identification particulars of its Foundation Council members and of its Secretary, if any.

PART 4

THE GUARDIAN

Appointment of guardian

31. (1) The declaration of establishment of a foundation may provide for the appointment of a

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person to be the guardian of the foundation.

(2) Where more than one person is appointed as the guardian of a foundation, such persons shall act jointly unless the declaration of establishment or by-laws of the foundation provide otherwise.

(3) Subject to the terms of the declaration of establishment or by-laws of a foundation, the guardian of the foundation shall be appointed in the following manner—

(a) if appointed on the establishment of the foundation, by the founder;

(b) if appointed after the establishment of the foundation, by the founder or such other person as may be empowered by the founder in the declaration of establishment or by-laws;

(c) by an outgoing guardian on his resignation; or

(d) if any case other than a case specified in paragraph (a), (b) or (c), by the Foundation Council.

(4) A guardian of a foundation duly appointed under the terms of the declaration of establishment or the by-laws of the foundation and this section shall cease to be a guardian in the event of—

(a) his or its resignation;

(b) his or its removal in accordance with the terms of such declaration of establishment or by-laws;

(c) if the guardian is an individual, his death, incapacity or bankruptcy;

(d) if the guardian is a legal entity, its winding up or dissolution; or

(e) the dissolution of the foundation.

Duties and powers of guardian

32. The guardian of a foundation shall have such powers, rights and duties as may be specified in the declaration of establishment and by-laws of the foundation and in this Act.

PART 5

DISPUTED RIGHTS

Exclusion of foreign law

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

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(2) The capacity of a founder of a foundation or 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 recognise the concept of a foundation; or

(b) the transfer of property to the foundation, or any terms of its declaration of establishment or its by-laws—

(i) avoids or defeats rights, claims or interests conferred by any law of a foreign jurisdiction on any person by reason of a personal relationship to the founder or a subsequent transfer or by way of heirship rights, or

(ii) contravenes any rule of law or judicial or administrative order or action of a foreign jurisdiction intended to recognise, protect, enforce or give effect to any rights, claims or interests referred to in subparagraph (i).

Restriction against alienation

34. (1) Notwithstanding any rule of law or equity to the contrary, no beneficiary, object or purpose of a foundation shall have any right *in specie* against the property endowment of the foundation irrespective of the nature of any right to enforce the due administration of the foundation, and, subject to the terms of its declaration of establishment or by-laws, any assets of the foundation available for distribution to a beneficiary shall not be—

(a) capable of being alienated or passed by bankruptcy, insolvency or liquidation; or

(b) liable to be seized, sold, attached, or otherwise taken in execution by process of law.

(2) Where any of the assets of the foundation is subjected to a restriction against alienation, the right to derive income from that property shall not be alienable for as long as that restriction remains in force.

(3) Any restriction applicable pursuant to this section may at any time be removed in accordance with any provisions in the declaration of establishment or by-laws for such removal.

Enforcement of terms

35. (1) Notwithstanding the provisions of section 34(1), any beneficiary of a foundation may enforce the due administration of the foundation in accordance with the terms of its declaration of establishment and by-laws, and any claim for such purpose shall constitute a claim *in personam*.

(2) For the avoidance of doubt, a claim referred to in subsection (1) shall not constitute a claim *in rem.*

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Forfeiture of benefits

36. The declaration of establishment or by-laws of a foundation may provide that any beneficiary of the foundation shall forfeit any benefit or right under it in the event that he challenges—

(a) the establishment of the foundation;

(b) the transfer of any assets to the foundation; or

(c) its declaration of establishment or by-laws or any provision of such declaration or by-laws.

PART 6

ACCOUNTS AND RECORDS

Definitions

37. In this Part—

"accounts" includes: books, deeds, contracts, vouchers and receipts;

"records" includes: minutes, resolutions, copy documents and any register.

Maintenance of proper account and records

38. (1) A foundation shall keep proper accounts and records for—

(a) all sums of money received and expended by the foundation and the matters for which the receipt and expenditure takes place;

(b) all sales and purchases of goods and services and other related transactions for the foundation; and

(c) the assets and liabilities of the foundation.

(2) The accounts and records shall be sufficient to explain all monetary transactions by the foundation and shall—

(a) contain sufficient details to enable a transaction to be understood;

(b) disclose with reasonable accuracy the financial position of the foundation at any time; and

(c) be in a format that allows financial statements to be prepared and audited.

(3) A foundation that contravenes this section commits an offence and is liable to such penalty as may be prescribed by regulations.

(Act 3/2014 s. 6)

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Accounts and records

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

(a) a copy of its declaration of establishment and by-laws and any amendment or change to its declaration of establishment or by-laws;

(b) minutes of all meetings of its Foundation Council and copies of all resolutions consented to by its Foundation Council.

(2) The Secretary of the foundation or, if there is no Secretary, its registered agent, shall keep or cause to be kept a register in which is recorded the identification particulars of the Foundation Council members, guardian and beneficiaries and auditors, where applicable, and any persons having power of attorney granted by the foundation.

(3) The accounts and records shall—

(a) be kept at the registered address of the foundation or, subject to subsection (4), at such other place as the Foundation Council of the foundation may designate; and

(b) at all reasonable times, be open to inspection by the registered agent and the Foundation Council members of the foundation and, where applicable, its Secretary, guardian or auditor.

(Act 3/2014 s. 6)

(4) If the accounts and records are kept at a place other than the registered address, whether within or outside Anguilla, the registered agent of the foundation shall—

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

(b) upon request, be furnished with such accounts and records or, as the case may be, notarially certified copies of such accounts and records, within a reasonable time for the purpose of inspection by the registered agent and the Foundation Council members of the foundation and, where applicable, its Secretary, guardian or auditor.

(Act 3/2014 s. 6)

(5) Where the accounting records of a foundation are kept outside Anguilla, the foundation must ensure that it keeps at its registered address—

(a) accounts and returns adequate to enable the Foundation Council members to ascertain, on a quarterly basis, the financial position of the foundation with reasonable accuracy; and

(b) without prejudice to subsection (4), a written record of the place or places outside Anguilla where its accounting records are kept.

(6) Every record required to be kept under this section shall be preserved for a period of not less than 6 years after the end of the period to which it relates.

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(7) A foundation that contravenes subsection (5) or (6) commits an offence and is liable to such penalty as may be prescribed by regulations.

PART 7

CONTINUANCE OF FOUNDATIONS

Continuance in Anguilla

40. (1) An overseas foundation may apply to the Registrar for a certificate of continuance under this Act.

(2) An application under subsection (1) must be made in the prescribed form as specified by the Registrar.

(3) Articles of continuance may, without so stating, effect any amendment to the organisational instruments of an overseas foundation which 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 established under this Act is entitled to make.

Articles of continuance

41. (1) Articles of continuance of an overseas foundation and any amendment thereto may be written in any language but, where such articles or amendment is not written in the English language, they must be accompanied by a certified translation into the English language.

(2) Articles of continuance of an overseas foundation shall—

(a) declare the intention of the overseas foundation, pursuant to a resolution in writing of its governing body, to continue its legal existence in Anguilla as a foundation;

(b) state the name of the overseas foundation and the name under which it is being continued;

(c) state the jurisdiction in which the overseas foundation is established and, if different, the jurisdiction in which it was originally formed;

(d) state the date on which the overseas foundation was formed;

(e) state whether the overseas foundation will be registered or its documents deposited;

(f) state such other provisions as are required to be included in the declaration of establishment of a foundation under this Act; and

(g) be duly signed by all the members of the governing body or Foundation Council of the overseas foundation.

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Certificate of continuance

42. (1) Upon receipt of the application and articles of continuance, the Registrar shall issue a certificate of continuance if he is satisfied that the application and articles of continuance are in compliance with the requirements of sections 40 and 41.

(2) On the date shown in the certificate of continuance—

(a) the overseas foundation becomes a foundation to which this Act applies as if that foundation had been established under this Act; and

(b) the articles of continuance shall be deemed to be the declaration of establishment of the foundation which is continued under this Act.

Preservation of foundation

43. When an overseas foundation is continued as a foundation under this Act—

(a) the property of the overseas foundation continues to be the property of the foundation;

(b) the foundation continues to be liable for the obligations of the overseas foundation;

(c) any existing cause of action, claim or liability to prosecute is unaffected;

(d) any civil, criminal or administrative action or proceedings pending by or against the overseas foundation may be continued by or against the foundation; and

(e) any conviction against, or any ruling, order or judgment against or in favour of, the overseas foundation is enforceable by or against the foundation.

Continuance in foreign jurisdiction

44. (1) Subject to its declaration of establishment and by-laws, a foundation may, pursuant to a resolution of its Foundation Council or as otherwise provided, apply to the appropriate official or public body of a foreign jurisdiction to be continued as an entity in the foreign jurisdiction as if it had been established under the laws of that foreign jurisdiction, in the manner provided by such laws.

(2) Subject to the provisions of this Act, a foundation that continues as an entity under the laws of a foreign jurisdiction does not cease to be a foundation unless the laws of the foreign jurisdiction permit such continuation and the foundation has complied with such laws.

Conditions applicable to continuance in foreign jurisdiction

45. Where a foundation is continued as an entity under the laws of a foreign jurisdiction—

(a) the property of the foundation continues to be the property of such entity;

(b) such entity continues to be liable for the obligations of the foundation;

(c) any existing cause of action, claim or liability to prosecution in respect of the foundation is unaffected;

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(d) any civil, criminal or administrative action or proceeding pending by or against the foundation can be continued by or against such entity; and

(e) any conviction against or ruling, order or judgment against, or in favour of, the foundation is enforceable by or against such entity.

Discontinuance and effect

46. (1) Every foundation departing Anguilla must file a certificate of departure containing the prescribed information in the prescribed form with the Registrar.

(2) A foundation which—

(a) has filed a certificate of departure under subsection (1); and

(b) has been continued under the law of a foreign jurisdiction;

may apply to the Registrar for a certificate of discontinuance.

(3) An application under subsection (2) must be accompanied by evidence, acceptable to the Registrar, that the foundation has been continued under the laws of a foreign jurisdiction.

(4) If the Registrar is satisfied that—

(a) all fees payable under this Act have been paid;

(b) all returns and notices required to be filed under this Act or regulations made under this Act have been filed; and

(c) the requirements of this section have been complied with;

the Registrar must issue to the foundation a certificate of discontinuance in the prescribed form and strike it off the Register or, as the case may be, the schedule of deposited foundations.

(5) The Registrar must, in the case of a registered foundation, publish a notice of the discontinuance and striking off in the *Gazette*.

(6) Subject to section 44(2), from the date of the certificate of discontinuance, the foundation ceases to be a foundation domiciled in Anguilla.

PART 8

IRREVOCABILITY AND DISSOLUTION

Foundation to be irrevocable

47. Subject to section 7(2), a foundation established under this Act or continued in Anguilla shall be irrevocable and any transfer of assets made to a foundation under this Act as an addition to its property endowment shall be irrevocable by whosoever made such transfer.

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Dissolution

48. (1) A foundation shall be dissolved where—

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

(b) any term of its declaration of establishment or by-laws or of this Act so requires;

(c) its Foundation Council has so resolved; or

(d) the High Court orders its dissolution.

(2) The Registrar shall, immediately after the completion of the dissolution of a foundation pursuant to this section—

(a) strike the foundation off the Register or, as the case may be, the schedule of deposited foundations; and

(b) in the case of a registered foundation, publish a notice of the striking off and dissolution in the *Gazette*.

Voluntary dissolution

49. (1) Before a foundation is dissolved pursuant to section 48(1)(a), (b) or (c), a statement of intent to dissolve the foundation must be filed with the Registrar in the prescribed form.

(2) If the Registrar is satisfied that the relevant requirements of this Part have been complied with, the Registrar shall, upon receipt of a statement of intent to dissolve the foundation, issue a certificate of intent to dissolve the foundation.

(3) When a certificate of intent to dissolve the foundation is issued by the Registrar, the foundation shall cease transacting business except to the extent necessary for its dissolution, but its legal personality continues until the Registrar issues a certificate of dissolution of the foundation.

(4) After the issue of a certificate of intent to dissolve a foundation, the foundation shall—

(a) immediately cause notice of its intent to dissolve to be sent to each of its known creditors;

(b) proceed to—

(i) collect its property,

(ii) dispose of its properties that are not to be distributed in kind,

(iii) discharge all its obligations, and

(iv) do all other acts required to liquidate its assets; and

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(c) after giving the notice required under paragraph (a) and adequately providing for the payment or discharge of all its obligations, distribute any residuary assets in accordance with section 54.

Dissolution by High Court

50. (1) The High Court may order the dissolution of a foundation upon the application of the Registrar or the guardian, a beneficiary, a Foundation Council member or a creditor of the foundation if the High Court is satisfied that—

(a) the declaration of establishment or any by-law of the foundation or any term of this Act entitles the applicant to demand dissolution of the foundation after the occurrence of a specified event and that event has occurred;

(b) the objectives of the foundation have been fulfilled or have become incapable of being fulfilled and it is just and equitable that the foundation be dissolved;

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

(d) it is in the public interest to order the dissolution of the foundation.

(2) Where the High Court orders the dissolution of a foundation under this section, the High Court shall 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.

(3) Where a foundation is dissolved pursuant to the provisions of subsection (1), its residuary assets, if any, shall be distributed in accordance with section 54.

Striking off

51. (1) If a foundation fails—

(a) to pay the prescribed annual fees within the time specified by this Act;

(b) to maintain a registered agent pursuant to section 17; or

(c) to file with the Registrar any return, notice or document required to be filed under this Act or regulations made under this Act;

the Registrar may strike it off the Register or, as the case may be, the schedule of deposited foundations.

(2) Where the Registrar intends to strike—

(a) a registered foundation off the Register; or

(b) a deposited foundation off the schedule of deposited foundations;

the Registrar shall give the foundation notice of his intention and a reasonable opportunity to show cause why the foundation should not be struck off the Register or, as the case may be, the schedule of deposited foundations.

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(3) After the expiration of time mentioned in the notice, being not less than 90 days, the Registrar may, unless the foundation shows cause to the contrary, strike the foundation off the Register or, as the case may be, the schedule of deposited foundations.

(4) Without prejudice to sections 48, 49 and 50, a foundation is dissolved when it is struck off the Register or the schedule of deposited foundations under subsection (3) and the Registrar shall publish a notice of its striking off and dissolution in the *Gazette,* but the striking off and dissolution of the foundation shall take effect from the date of publication of the notice in the *Gazette*.

(5) Where a foundation is struck off the Register or the schedule of deposited foundations under this section, the provisions of sections 50(2) and 50(3) shall apply as if the High Court had ordered the dissolution of the foundation.

Appeal

52. (1) Any person who is aggrieved by the striking or proposed striking of a foundation off the Register or the schedule of deposited foundations under section 51 may, within 90 days from the date of publication of the notice in the *Gazette*, appeal to the High Court against the decision of the Registrar.

(2) Notice of an appeal to the High Court under subsection (1) must be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

(3) Where any person who is aggrieved by the striking or proposed striking of a foundation off the Register or the schedule of deposited foundations files an appeal under subsection (1), the Registrar may suspend the operation of the striking off, upon such terms as he considers appropriate, pending the determination of the appeal.

Restoration of name to Register or to schedule of deposited foundations

53. (1) Where a foundation has been struck off the Register or the schedule of deposited foundations, the Registrar may, upon receipt of an application in the prescribed form to restore a foundation to the Register or the schedule of deposited foundations and upon receipt of payment of the prescribed fee and any outstanding fees, restore the foundation to the Register or the schedule of deposited foundations, as the case may be, and issue a certificate in a form adapted to the circumstances.

(2) An application to restore a foundation to the Register or the schedule of deposited foundations under subsection (1) must be made within 20 years of the date of publication of the notice in the *Gazette* under section 51(4).

(3) The foundation or a creditor, beneficiary or liquidator of the foundation may, within 90 days from the date of the refusal of the Registrar to restore the foundation to the Register or the schedule of deposited foundations, appeal to the High Court against that refusal and, the High Court may, if it is satisfied that it is just for the foundation to be restored to the Register or, as the case may be, the schedule of deposited foundations, direct the Registrar to do so upon such terms and conditions as the High Court may consider appropriate.

(4) Notice of an appeal to the High Court under subsection (3) must be served on the Registrar who shall be entitled to appear and be heard at the hearing of the appeal.

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Distribution of residuary assets

54. (1) Subject to subsection (2), the residuary assets of a foundation shall be the property of the person who, according to the declaration of establishment or by-laws of the foundation, is entitled to receive the residuary assets.

(2) Where—

(a) there is no person entitled to receive the residuary assets as provided in subsection (1); or

(b) the person entitled to receive such assets refuses to accept its transfer;

and there is no relevant provision in the declaration of establishment or by-laws respecting the distribution of such assets, the residuary assets shall vest in the Crown.

PART 9

EXEMPTION FROM TAXES

Exemption from taxes

55. (1) For the purposes of this Act, a foundation shall be entitled to the exemptions specified in subsection (2) if—

(a) the founder or any person who has contributed assets to the foundation otherwise than for full consideration is not resident in Anguilla;

(b) none of the beneficiaries of the foundation is resident in Anguilla; and

(c) the property endowment does not include any land situated in Anguilla or the shares of any company beneficially owning any land situated in Anguilla other than property—

(i) for use as an office for the purpose of the administration of the foundation, or

(ii) where books and records of the foundation are prepared or maintained.

(2) Subject to this Act, any foundation to which subsection (1) applies shall not be subject to any income tax, withholding tax, asset tax, gift tax, profits tax, capital gains tax, distributions tax, inheritance tax, estate duty or any other like tax based upon or measured by assets or income originating outside of Anguilla or in connection with matters of administration that may occur in Anguilla.

(3) Notwithstanding any provisions of the Stamp Act, but subject to subsection (4), an instrument relating to a transfer of property to or by a foundation to which subsection (1) applies is exempt from the payment of stamp duty.

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(4) Subsection (3) does not apply to an instrument relating to a transfer of property situated in Anguilla, including any interest in land in Anguilla or in shares in a company incorporated under the Companies Act*.

PART 10

REGISTRAR

Registrar and other officers

56. (1) The Registrar of Companies shall be the Registrar of Foundations.

(2) Any functions of the Registrar under this Act may, to the extent authorised by him, be exercised by any officer on his staff.

Official seal

57. The Registrar shall procure that an official seal be prepared for use by the Registrar in the authentication or other issue of documents required under this Act.

Official registration and deposit number

58. (1) The Registrar shall allocate—

(a) to every registered foundation a number, which shall be the registration number of that registered foundation; and

(b) to every deposited foundation a number, which shall be the deposit number of that deposited foundation.

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

(3) The deposit numbers of depo sited foundations shall be in such form, consisting of one or more sequences of figures or letters or any combination thereof, but distinct from the sequence or sequences applicable to registered foundations, as the Registrar may, from time to time, determine.

Form of documents to be delivered to the Registrar

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

(a) in the case of a document, it is delivered in a form which is acceptable to the Registrar and is accompanied by the prescribed fee; or

* Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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(b) in the case of information contained in a material other than a document, it is delivered in a manner acceptable to the Registrar and is accompanied by the prescribed fee.

(2) In this section, the reference to "a document or any information to be delivered" shall be construed to include any notice to be served or given.

Certificate of good standing in case of registered foundations

60. The Registrar shall, on request by the registered agent of a foundation and on receipt of payment of the prescribed fee, certify that the registered foundation is of good standing, if the Registrar is satisfied that—

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

(b) the foundation has filed with the Registrar all documents required by this Act to be filed; and

(c) the foundation has paid all fees and penalties required by this Act to be paid.

Official confirmation in case of deposited foundations

61. The Registrar shall, on request by the registered agent of a deposited foundation and on receipt of payment of the prescribed fee, certify that the details of a confirmation prepared by the registered agent and delivered to the Registrar are true and correct if the Registrar is satisfied that this is the case according to the deposited declaration of establishment of the foundation and any further evidence produced by the registered agent, if necessary.

Inspection of documents kept by the Registrar

62. (1) Subject to the provisions of this Act, no inspection or production of documents kept by the Registrar under this Act shall be permitted other than by the registered agent, except that any of the Foundation Council members of a foundation may, by notice in writing to the Registrar, authorise the person named in the notice—

(a) to inspect, or obtain a copy of, a document of the foundation delivered to the Registrar under this Act; or

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

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Enforcement of duty to deliver documents or notices to the Registrar

63. (1) Where a foundation—

(a) fails to comply with a requirement to deliver to the Registrar any document or to give notice to the Registrar of any matter; and

(b) does not make good such failure within 14 days after the service of a notice on the foundation requiring it so to do;

the High Court may, on an application made to it by a Foundation Council member or the 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 High Court may provide that all or any part of the costs of and incidental to the application shall be—

(a) borne by the foundation or by any Foundation Council member or members responsible for such failure; or

(b) apportioned between the foundation and any Foundation Council member or members so responsible.

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

PART 11

INVESTIGATION OF FOUNDATIONS

Investigation order

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

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

(a) the affairs of the foundation or any of its affiliates are being or have been carried on with intent to defraud any person;

(b) the foundation or any of its affiliates was established for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or

(c) persons concerned with the establishment, business or affairs of the foundation or any of its affiliates have in connection therewith acted fraudulently or dishonestly; or

(d) it is in the public interest that an investigation of the foundation or any of its affiliates be made;

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

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

Contents of order and copies of reports

65. (1) An order made under section 64(2) shall include an order to investigate and an order appointing an inspector, who may be the Registrar, and fixing his remuneration and may include an order—

(a) replacing the inspector;

(b) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

(c) an order authorising an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything, and to make copies of any documents or records, found on the premises;

(d) an order requiring any person to produce documents or records to the inspector;

(e) an order authorising an inspector to conduct a hearing, administer oaths or affirmations and examine any person upon oath or affirmation, and prescribing rules for the conduct of the hearing;

(f) an order requiring any person to attend a hearing conducted by an inspector and to give evidence upon oath or affirmation;

(g) an order giving directions to an inspector or any interested person on any matter arising in the investigation;

(h) an order requiring an inspector to make an interim or final report to the Court;

(i) an order determining whether a report of an inspector should be published, and, if so, ordering the Registrar to publish the report in whole or in part, or to send copies to any person the Court designates; and

(j) an order requiring an inspector to discontinue an investigation.

(2) An inspector shall file with the Registrar a copy of every report made by the inspector under this section.

(3) A report received by the Registrar under subsection (2) must not be disclosed to any person other than in accordance with an order of the Court made under paragraph (1)(i).

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Inspector's powers

66. An inspector—

(a) has the powers set out in the order appointing him; and

(b) shall upon request produce to an interested person a copy of the order.

Hearing *in camera*

67. (1) An application under this Part and any subsequent proceedings, including applications for directions in respect of any matter arising in the investigation, must be heard *in camera* unless the Court orders otherwise.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part may appear or be heard at the hearing.

(3) No person shall publish anything relating to any proceedings under this Part except with the authorisation of the Court.

Incriminating evidence

68. No person is excused from attending and giving evidence and producing documents and records to an inspector appointed by the Court under this Part by reason only that the evidence tends to incriminate that person or subject him to any proceeding or penalty, but the evidence may not be used or received against him in any proceeding thereafter instituted against him, other than a prosecution for perjury in giving the evidence.

Absolute privilege

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

PART 12

MISCELLANEOUS MATTERS

Compliance inspections

70. (1) The Commission may, for the purpose specified in subsection (2)—

(a) inspect the accounts and records of a relevant person, whether in or outside Anguilla, including the systems and controls of the relevant person;

(b) inspect the assets of a relevant person, including cash, belonging to or in the possession or control of the relevant person; and

(c) examine and make copies of documents belonging to or in the possession or control of a relevant person;

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

(2) A compliance inspection may be undertaken, in the case of a person specified in paragraphs (1)(a), (b) and (c), for the purpose of monitoring and assessing such person's compliance with his obligations under the Proceeds of Crime Act, the Anti-money Laundering and Terrorist Financing Regulations, the Anti-money Laundering and Terrorist Financing Code and any other Acts, Regulations, Guidelines or Codes relating to money laundering or the financing of terrorism.

(Am. in L.R. 15/12/2010)

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

(4) In subsection (1), the expression "relevant person", in relation to a foundation, means—

(a) the registered agent of the foundation;

(b) a former registered agent of the foundation;

(c) a subsidiary or holding company of the registered agent, or of a former registered agent, of the foundation;

(d) the Secretary of the foundation; or

(e) a Foundation Council member who is resident in Anguilla and is a regulated person.

Registration and annual fees

71. (1) Every foundation, whether registered or deposited, must pay a fee upon registration or deposit and the annual fee and any applicable penalties as may be prescribed by regulations.

(2) The Foundation Council members of a foundation shall be personally liable—

(a) to pay any outstanding fees in respect of the foundation; and

(b) to such penalties as may be prescribed by regulations in respect of any failure mentioned in section 51(1).

Legal professional privilege

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

Powers of the High Court

73. (1) Subject to the provisions of section 74, the High Court has jurisdiction in respect of any matters concerning any foundation established under this Act.

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(2) A Foundation Council member, guardian or registered agent of a foundation may apply to the High Court for directions as to how he should or might act in any of the affairs of the foundation, and the High Court may make such order as it thinks fit.

(3) If a person does not comply with an order of the High Court under this Act requiring him to do any thing, the High Court may, on such terms and conditions as it thinks fit, order that the thing be done by another person nominated for the purpose by the High Court at the expense of the person in default or otherwise, as the High Court directs, and a thing so done has effect in all respects as if done by the person in default.

(4) The High Court may order the costs and expenses of, and incidental to, an application to the High Court under this Act to be paid from the property endowment of the foundation or in such manner and by such persons as it thinks fit.

Arbitration tribunal

74. (1) The declaration of establishment or by-laws of a foundation may—

(a) provide that any controversy arising in respect of the foundation shall be resolved by arbitration;

(b) make provision for the arbitration procedure that should be followed; and

(c) stipulate that, to the extent specified, the arbitration tribunal shall interpret such declaration of establishment and by-laws according to their terms and to the principles of civil law, without regard to the principles of common law and equity otherwise applicable thereto.

(2) Subject to any specific provisions in the declaration of establishment or by-laws of a foundation, any reference in this Act to "High Court" shall be construed to include a reference to the arbitration tribunal within or outside Anguilla provided for in the declaration of establishment and by-laws of the foundation.

Service of process, etc. on foundation

75. (1) Any summons, notice, order, document, process, information or written statement required to be served on a foundation may be served—

(a) by leaving it, or by sending it by registered mail addressed to the foundation, at its registered address; or

(b) by leaving it with, or by sending it by registered mail to, the registered agent of the foundation.

(2) Service of any summons, notice, order, document, process, information or written statement to be served on a foundation may be proved by showing that the summons, notice, order, document, process, information or written statement—

(a) was mailed in sufficient time as to admit to it being delivered, in the normal course of delivery, within the period prescribed for service; and

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(b) was correctly addressed and the postage was prepaid.

Regulations

76. (1) The Governor in Council may, on the advice of the Commission, make regulations providing for any matter contemplated by this Act or as may be necessary or convenient for carrying out or giving effect to this Act and its administration.

(2) Without limiting the generality of subsection (1), the Governor in Council may, on the advice of the Commission, make regulations—

(a) prescribing anything required or permitted to be prescribed by this Act;

(b) exempting any person from any provision of this Act;

(c) prescribing annual returns to be made;

(d) prescribing forms to be used;

(e) prescribing the format for any filings to be made under this Act;

(f) prescribing or amending the fees payable under this Act;

(g) prescribing or amending the penalties for offences committed under this Act;

(h) prescribing standards of foundation governance to which foundations shall be subject.

Citation

77. This Act may be cited as the Anguilla Foundation Act, Revised Statutes of Anguilla, Chapter A62.

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