



REPUBLIC OF VANUATU

FOUNDATION ACT NO. 38 of 2009

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REPUBLIC OF VANUATU

Assent: 22/01/2010
Commencement: 28/04/2010

FOUNDATION ACT NO. 38 OF 2009

An Act to provide for the establishment, operation and regulation of foundations in Vanuatu.

Be it enacted by the President and Parliament as follows-

PART 1 INTERPRETATION

1 Purpose of this Act

The purpose of this Act is to provide for the establishment, operation and regulation of foundations in Vanuatu.

2 Definitions

In this Act, unless the contrary intention appears:

approved bank means a bank approved by the Commission;

auditor means a person who is experienced in auditing companies and is:

- (a) a member of the Institute of Chartered Accountants in Australia or New Zealand, the Institute of Chartered Accountants in England & Wales or the Australian Society of Certified Practising Accountants, or a Certified Public Accountant in the United States of America; or
- (b) a member in any country of a similar body recognised by the Commission who has qualifications similar to those set out in paragraph (a); or
- (c) authorised by the Commission to be appointed as an auditor because he or she has similar qualifications obtained elsewhere;

beneficiary means a person designated as a beneficiary under the charter or by-laws of a foundation;

CTSP licence means a company and trust service provider licence under the Company and Trust Service Providers Act 2009;

charter means the charter of a foundation;

Commission means the Vanuatu Financial Services Commission;

councillor means a person appointed as councillor of a foundation in accordance with section 13;

Court means the Supreme Court;

foundation has the meaning given by section 3;

founder has the meaning given by section 4;

guardian means a person appointed as guardian of a foundation as set out in sections 21 and 22;

initial assets mean assets irrevocably transferred by the founder within 6 months of the date on which the foundation is established;

overseas foundation means a foundation established in another jurisdiction;

private foundation means a foundation established for a private purpose;

public foundation means a foundation established solely for a public charitable or philanthropic purpose;

Register means the Register of Foundations established by the Commissioner under section 46;

registered office, for a foundation, means the office in Vanuatu to which all communications and notices may be addressed;

secretary means the person appointed to be secretary of a foundation under section 15;

3 Meaning of foundation

- (1) A foundation is a separate legal entity, incorporated under this Act, into which property is transferred by a founder for a specific purpose.
- (2) A foundation may be a private foundation or a public foundation.
- (3) A foundation may be established under Part 2 or continued in Vanuatu under Part 8.

4 Meaning of founder

- (1) A founder, for a foundation, means the individual or body corporate who:
 - (a) subscribes to the charter establishing the foundation; and
 - (b) irrevocably transfers, or agrees to transfer, the initial assets, if any, to the foundation.
- (2) A foundation may have more than one founder.

PART 2 - ESTABLISHMENT OF A FOUNDATION

5 Establishment and incorporation of a foundation.

- (1) A foundation is established and incorporated by registering the charter of the foundation.
- (2) A foundation may be established for any purpose that is lawful under the laws of Vanuatu.
- (3) The establishment of a foundation is not completed until the Commission:
 - (a) registers the charter of the foundation under subsection 7(1); and
 - (b) issues a certificate of establishment and incorporation under paragraph 7(3)(b).
- (4) On registration of a foundation, the foundation is incorporated and is a separate legal entity in its own right, capable of suing and being sued in its own name.

6 Application for registration

- (1) A founder or a person acting on behalf of the founder may apply to have a foundation registered.
- (2) An application for registration must:
 - (a) be in writing, in the prescribed form; and
 - (b) have with it the original charter of the foundation; and
 - (c) state whether the foundation is to be a private or public foundation; and
 - (d) set out:
 - (i) the foundation's name; and
 - (ii) details of the initial assets to be transferred to the foundation; and
 - (iii) the name and address of the person who is to be the secretary of the foundation; and

- (iv) the address of the foundation's registered office in Vanuatu; and
 - (e) be signed by or on behalf of the founder; and
 - (f) have with it the prescribed fee.
- (3) A person who acts for a founder or a foundation must hold a CTSP licence.
- (4) The charter must:
 - (a) be in the English or French language; and
 - (b) comply with the requirements of section 48.

7 Registration and incorporation of a foundation

- (1) The Commission must register a foundation if the application for registration and the foundation's charter comply with this Act.
- (2) The foundation is incorporated on registration.
- (3) On registering the foundation, the Commission must:
 - (a) allocate a registration number to the foundation; and
 - (b) issue a certificate of establishment of the foundation stating:
 - (i) the name of the foundation; and
 - (ii) its registration number; and
 - (iii) the date on which it was registered.
- (4) A certificate of establishment of a foundation is conclusive evidence that the foundation has been established and incorporated.

8 Management of foundation's assets

- (1) A foundation must manage its assets in accordance with its charter, its by-laws and this Act for the benefit of its beneficiaries and for the attainment of its purposes or objects.
- (2) A foundation has the power to do all things that are necessary for the proper administration of its assets, including but not limited to:
 - (a) buying and selling assets; and

- (b) engaging in any other lawful acts or activities, if the acts and activities are ancillary or incidental to its main purposes or objects.
- (3) A private foundation may engage in a commercial operation only if the operation is ancillary to the foundation's function of preserving and distributing assets.

9 Capacity of a foundation

- (1) A foundation has the capacity, rights, powers, and privileges of a natural person.
- (2) Subsection (1) does not authorise a foundation to carry on an activity:
 - (a) in breach of a law:
 - (i) that prohibits the activity; or
 - (ii) that requires a licence, permit or other permission to carry on the activity; or
 - (b) in a manner that is contrary to its charter or by-laws; or
 - (c) if the activity is prohibited by its charter or by-laws.
- (3) An activity carried on by a foundation, including a transfer of property, is not invalid only because the activity is contrary to its charter or by-laws.

10 Capacity of councillors

- (1) A person dealing with a foundation in good faith is entitled to assume that the foundation's councillors have power to bind the foundation or to authorise others to do so.
- (2) The councillors of a foundation must observe any limitations on their powers in the charter of the foundation.
- (3) Any action by the councillors that, but for section 10, would be beyond the powers of the foundation may only be ratified by the foundation by resolution of the founder or guardian.

11 Name of foundation

- (1) The name of a foundation must end with the word "Foundation".
- (2) The Commissioner may refuse to register:
 - (a) a foundation; or

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

if the name to be registered, or the new name, is, in the Commissioner's opinion, misleading or otherwise undesirable.

(3) A person must not use the word "foundation" in connection with a body or an organisation unless:

(a) the body or organisation is a foundation registered or continued under this Act; or

(b) the person has the Commission's approval.

(4) A person who contravenes subsection (3) is guilty of an offence punishable, on conviction:

(a) for an individual, by a fine not exceeding VT 100,000; and

(b) for a body corporate, by a fine not exceeding VT 500,000.

12 Change of name

(1) A foundation may change its name by resolution of its councillors.

(2) If, in the opinion of the Commission, the name by which a foundation is registered is misleading or otherwise undesirable, the Commission may direct the foundation to change its name.

(3) The foundation must comply with the direction within 3 months of the date of the direction.

(4) Where a foundation changes its name under this section:

(a) the foundation must file a copy of the resolution with the Commission; and

(b) the Commission must:

(i) enter the new name on the Register in place of the former name; and

(ii) issue a replacement certificate of establishment showing the foundation's new name.

(5) The change of name has effect from the date on which the replacement certificate is issued.

- (6) A change of name by a foundation does not affect any rights or obligations of the foundation or any legal proceedings by or against it, and any legal proceedings that have been commenced by or against it in its former name may be continued by or against it in its new name.
- (7) A foundation may appeal to the Court against a direction under subsection (2).
- (8) A foundation that fails to comply with a direction under this section is guilty of an offence punishable, on conviction, by a fine not exceeding VT1,000,000, and VT 1,000 for each day during which the offence continues.

PART 3 - COUNCILLORS AND SECRETARY

13 Councillors

- (1) The business and affairs of a foundation are to be managed by a board of councillors consisting of one or more persons.
- (2) A councillor may be an individual or a body corporate.
- (3) The first councillors of a foundation may be appointed:
 - (a) in the charter of the foundation, to take effect on the establishment of the foundation; or
 - (b) in any other manner provided by the charter or by-laws.
- (4) Subject to subsection (2), councillors must be appointed and removed in accordance with the charter and by-laws of the foundation.
- (5) The remuneration of councillors must be fixed in accordance with the charter and by-laws of the foundation.

14 Qualifications of councillors

- (1) A person is not eligible to be appointed as a councillor of a public or private foundation:
 - (a) for a natural person, if the person is a minor; or
 - (b) for a body corporate, if the person is subject to any legal proceeding that may result in the entity being wound up or otherwise dissolved; or
 - (c) if the person is a guardian of the foundation.
- (2) A person is not eligible to be appointed as a councillor of a public foundation if:
 - (a) the person is an undischarged bankrupt; or
 - (b) the person's membership of a professional body is cancelled on the grounds of professional misconduct; or
 - (c) the person is convicted of an offence of fraud or dishonesty.

15 Secretary

- (1) The councillors of a foundation must appoint a secretary.
- (2) The secretary of a foundation may be a natural person or a body corporate.
- (3) A person is not qualified to be appointed as secretary of a foundation:
 - (a) for a natural person, if the person is the sole councillor of the foundation; or
 - (b) for a body corporate, if the body corporate is a councillor of the foundation.
- (4) The secretary is responsible for the administration of the foundation and has any other duties set out in the foundation's charter and by-laws.
- (5) Subject to this Act, the secretary holds office for the period, at the remuneration, and on the conditions that the councillors determine.
- (6) A secretary may be removed by resolution of the councillors at any time.
- (7) If the secretary's office is vacant or for any other reason the secretary is unable to act, anything required or authorised to be done by or to the secretary may be done by or to a councillor authorised generally or specially by the other councillors.

16 Duties of councillors

- (1) A councillor must, in exercising his or her powers and discharging his or her duties:
 - (a) act honestly and in good faith with a view to the interests of the foundation; and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- (2) The duties of a councillor imposed by this section are owed to the foundation alone.

17 Confidentiality

- (1) A councillor of a foundation must not disclose information about the nature or amount of the foundation's assets or their administration unless the disclosure is required:
 - (a) by this Act or another law of Vanuatu; or

- (b) for the proper administration of the foundation; or
 - (c) by the Court.
- (2) A councillor of a foundation must give full and accurate information about the nature and amount of the foundation's assets and their administration:
- (a) to an inspector appointed under section 30; and
 - (b) subject to the foundation's charter and by-laws, to:
 - (i) the founder; and
 - (ii) the guardian; and
 - (iii) beneficiaries; and
 - (c) to a person to whom the Court orders the councillor to give the information.
- (3) The councillor must give the information within a reasonable time of being asked in writing to do so.
- (4) Subject to subsections (1) and (2) and to the foundation's charter and by-laws, a councillor is not required to produce or make available to a person any document that:
- (a) discloses the councillors' deliberations about the way in which they have exercised or not exercised a power or discretion, or performed a duty; or
 - (b) discloses the reason for, or relates to:
 - (i) a particular exercise or non-exercise of a power or discretion; or
 - (ii) the performance or non-performance of a duty; or
 - (iii) the material on which the reason was or might have been based.

18 Indemnity

- (1) Subject to its charter and by-laws, a foundation may indemnify a person who is or was a councillor against all actions and proceedings arising out of that person's conduct as a councillor if the person acted honestly and in good faith with a view to the interests of the foundation.

- (2) A foundation may take out insurance against liability in relation to any person who:
- (a) is or was a councillor, guardian or secretary of the foundation; or
 - (b) at the request of the foundation is or was serving as a councillor, guardian or secretary of, or in any other capacity is or was acting for, another foundation.

19 Register of councillors

- (1) A foundation must keep a register of its councillors, guardian and secretary at its registered office.
- (2) The register must contain the following information:
- (a) for a natural person, the person's:
 - (i) full name and any former names; and
 - (ii) business or usual residential address; and
 - (iii) nationality; and
 - (iv) business occupation, and
 - (v) date of birth; and
 - (b) for a body corporate:
 - (i) its name and any former names; and
 - (ii) the address of its registered office.
- (3) The foundation must ensure that the register is available for inspection during business hours by the Commissioner, founder, councillors, guardian and secretary of the foundation.
- (4) A foundation and each councillor of the foundation that contravenes subsection (1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding VT1 million, together with VT1,000 for each day during which the offence continues.

20 Meetings of councillors

- (1) The councillors of the foundation must meet at the times and places, within or outside Vanuatu, as the charter or by-laws require or, if there is no requirement, as the councillors determine.
- (2) A councillor of the foundation is taken to be present at a meeting of councillors if he or she participates by telephone or other electronic means, and all the councillors participating in the meeting are able to hear each other.
- (3) The Schedule has effect with regard to meetings of the councillors of a foundation.

PART 4 - THE GUARDIAN

21 Appointment of guardian

- (1) A foundation must have a guardian.
- (2) An individual or a body corporate may be appointed as guardian of a foundation.
- (3) If more than one person is appointed as guardian, the guardians must act unanimously unless the charter or bylaws of the foundation provide otherwise.
- (4) The first guardian of a foundation may be appointed by the founder in the charter of the foundation, and the appointment has effect from the date of registration of the charter.
- (5) A guardian appointed after the foundation is registered may be appointed by the founder or another person authorised by the charter or by-laws of the foundation.

22 Qualifications of guardian

- (1) A councillor of a foundation may be appointed as guardian, but a sole councillor may not be appointed as guardian.
- (2) A person is not eligible to be appointed as a guardian of a public or private foundation if:
 - (a) the person is the sole councillor of the foundation; or
 - (b) for an individual, the person is incapacitated or an undischarged bankrupt; or
 - (c) for a body corporate, it is wound up or dissolved.
- (3) In addition, a person is not eligible to be appointed as a guardian of a public foundation if:
 - (a) the person's membership of a professional body is cancelled on the grounds of professional misconduct; or
 - (b) the person is convicted of an offence of fraud or dishonesty.
- (4) A guardian ceases to be a guardian if:

- (a) the guardian resigns; or
- (b) the guardian is removed, in accordance with the foundation's charter or by-laws; or
- (c) the foundation is dissolved; or
- (d) if the guardian is an individual, the guardian dies or becomes incapacitated or bankrupt; or
- (e) the guardian ceases to be eligible to be appointed as guardian; or
- (f) the guardian becomes the sole councillor of the foundation.

23 Court may appoint guardian

- (1) The founder, a councillor or a guardian may apply to the Court for the appointment of a guardian if:
 - (a) the foundation does not have a guardian; or
 - (b) the number of guardians is less than that required by the charter or by-laws and there is no provision in the charter or by-laws for the appointment of a new or additional guardian.
- (2) If the Court is satisfied that one of the circumstances set out in paragraph (1)(a) or (b) applies, the Court may appoint one or more persons who satisfy the requirements of section 21 as guardian of the foundation.

24 Functions and powers of guardian

- (1) The guardian of a foundation has the following functions:
 - (a) to do whatever the guardian considers necessary to ensure the foundation and its councillors comply with the charter and by-laws of the foundation, and this Act; and
 - (b) generally to supervise the management and conduct of the foundation by the councillors; and
 - (c) any other functions set out in the charter and by-laws.
- (2) A guardian has all the powers necessary to perform his or her functions.
- (3) A guardian has full right of access to the books, records and accounts of the foundation.

- (4) The guardian of a foundation has the right:
- (a) to be given notice of the time and place of all meetings of the councillors; and
 - (b) to table business to be considered at meetings; and
 - (c) to attend and be heard at councillors' meetings, but not to vote; and
 - (d) if any business of a foundation is conducted by:
 - (i) the circulation of documents, to be included in the circulation of documents at the time that they are circulated to the councillors; or
 - (ii) the delegation of powers to a councillor or an agent, to be informed of the terms and any exercise of the delegation.
- (5) Subject to its charter and by-laws, a foundation may indemnify a person who is or was a guardian against all actions and proceedings arising out of that person's conduct as a guardian if the person acted honestly and in good faith with a view to the interests of the foundation.

PART 5 - ACCOUNTS AND AUDIT

25 Accounts

- (1) A foundation must keep proper accounts showing:
 - (a) all sums of money received, expended and distributed by the foundation and the purposes of the receipt, expenditure and distribution; and
 - (b) all sales and purchases by the foundation; and
 - (c) the assets and liabilities of the foundation.
- (2) The accounts of a foundation:
 - (a) must be kept at the registered office of the foundation or at another place in Vanuatu agreed by the councillors; and
 - (b) must at all times be available for inspection by the councillors, the guardian and the auditor; and
 - (c) may be kept in electronic form; and
 - (d) must be retained for 7 years from the date on which they are made.
- (3) A councillor of a foundation who fails to take all reasonable steps to ensure the foundation complies with this section, or has by his or her own wilful act been the cause of a failure by the foundation to comply, is guilty of an offence punishable on conviction by a fine not exceeding VT1 million.

26 Audit

- (1) The accounts of a public foundation must be audited by an auditor appointed by the councillors.
- (2) The accounts of a private foundation need not be audited unless this is required by the charter or by-laws.

PART 6 FOREIGN LAW, RESTRICTION ON ALIENATION AND FORFEITURE OF BENEFITS.

27 Foreign laws

- (1) An act of a foundation, or a transfer of property to a foundation, that is valid under the laws of Vanuatu is not void, voidable, liable to be set aside or defective in any way only because of the law of a foreign jurisdiction.
- (2) The capacity of a founder of a foundation, or of another person who transfers property to a foundation, is not to be questioned, nor is a beneficiary or other person to be subjected to a liability or deprived of a right, only because:
 - (a) the laws of a foreign jurisdiction prohibit or do not recognise the concept of a foundation; or
 - (b) the transfer of property to the foundation, or a provision of its charter or by-laws:
 - (i) avoids or defeats a right, claim or interest conferred by foreign law on a person because of a personal relationship to the founder or subsequent transferor or by way of inheritance rights; or
 - (ii) contravenes a rule of foreign law or a foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to that right, claim or interest.

28 Restriction against alienation

- (1) In spite of any law to the contrary, the charter or by-laws of a foundation, or a disposition by the councillors or guardian of the foundation, may provide that any assets of the foundation available for distribution to a beneficiary:
 - (a) are not to be alienated or pass by bankruptcy, insolvency or liquidation; or
 - (b) are not liable to be seized, sold, attached, or taken in execution.
- (2) If any assets of the foundation are subject to a restriction mentioned in subsection (1), a beneficiary's right to derive income from the assets, and any income derived from that asset:
 - (a) does not pass by bankruptcy, insolvency or liquidation; and

- (b) is not liable to be seized, attached or taken in execution.
- (3) If any assets of the foundation are subject to a restriction against alienation, the right to derive income from the assets is not alienable while that restriction remains in force.
- (4) A restriction imposed under this section may at any time be removed in accordance with any provisions for its removal:
 - (a) in the foundation's charter or by-laws; or
 - (b) in the disposition by the councillors or guardian.
- (5) Neither the founder nor another person transferring property to a foundation may benefit from the provisions of this section.

29 Loss of benefits

The charter or by-laws of a foundation may provide that a beneficiary loses his or her benefits, rights or potential interest if he or she challenges in a court the creation of the foundation, the transfer of any assets to the foundation, the charter or by-laws or a decision of the councillors or the guardian.

PART 7 INVESTIGATIONS INTO FOUNDATIONS

30 Appointment of inspectors

- (1) The Commission may appoint an inspector to investigate and report on the affairs of a public foundation if the Commission has reasonable grounds for believing that:
 - (a) the foundation was created or is to be dissolved for an unlawful or fraudulent purpose; or
 - (b) the transactions or affairs of the foundation are being or have been conducted unlawfully or with intent to defraud any person; or
 - (c) persons concerned with the establishment, transactions or affairs of the foundation have acted fraudulently or dishonestly in connection with its establishment, transactions or affairs; or
 - (d) it is in the public interest that the foundation be investigated.
- (2) A councillor, guardian, beneficiary, creditor or liquidator of a public foundation may apply to the Commission for an inspector to be appointed.
- (3) The Commission may require the applicant to give security, up to an amount not exceeding VT5, 000,000, for payment of the costs of the investigation.
- (4) The Commission may appoint an inspector whether or not the foundation is being dissolved.
- (5) The Commission must tell the foundation in writing that the inspector has been appointed.
- (6) In spite of subsection (5), the Commission need not tell the foundation that the inspector has been appointed if the Commission reasonably believes that to do so would prejudice the investigation.
- (7) An inspector is subject to the same confidentiality and code of conduct requirements as the staff of the Commission.
- (8) An inspector must produce evidence of his or her appointment as inspector if asked to do so.

31 Powers of inspectors

- (1) Except as set out in subsection 30(6), an inspector may not investigate a public foundation until the Commission has told the foundation in writing about the proposed investigation.
- (2) A guardian or councillor of a foundation being investigated, and a person who has been a guardian or councillor, must:
 - (a) produce to an inspector, when and where the inspector requires, all documents in the person's custody or control relating to the foundation and its activities; and
 - (b) attend before the inspector, when and where the inspector requires, and answer the questions the inspector asks about the foundation and its activities; and
 - (c) give the inspector all other assistance in connection with the investigation that the person is reasonably able to give.
- (3) A person required to attend before an inspector is entitled to be legally represented at the interview.
- (4) The inspector may take copies of or extracts from any documents produced to him or her.
- (5) A person who, without reasonable excuse, obstructs, fails to comply with a requirement of, or fails to give all reasonable assistance to, an inspector exercising a right under this section is guilty of an offence punishable, on conviction, by a fine not exceeding VT1,000,000, or imprisonment for a term not exceeding 1 year, or both.
- (6) A statement by a person in answer to a question by an inspector under this section may not be used in evidence against the person in criminal proceedings other than in proceedings for making a false statement.
- (7) An inspector must tell the Commission as soon as the inspector becomes aware during an inspection of a matter that, in the inspector's opinion, shows that an offence has been committed.

32 Search warrants

- (1) An inspector may apply to the Court for a warrant authorising the inspector:
 - (a) to enter premises belonging to, or in the possession or control of, a foundation or a guardian or councillor of a foundation, or any other premises that the officer has reasonable grounds for believing

contain documents relating to the foundation or relevant to an investigation; and

- (b) to search the premises and take copies of, or remove, any document from the premises.
- (2) The Court may grant the application if:
- (a) the Court is satisfied that:
 - (i) failure to obtain the warrant would prejudice the investigation; or
 - (ii) there is a reasonable likelihood that the documents sought could be altered, destroyed or removed; and
 - (b) it is reasonably likely that the documents are on the premises.
- (3) If an inspector removes a document from premises under a warrant, the inspector must leave a copy of the document at the premises.
- (4) In this section, “premises” includes any place and, in particular, includes:
- (a) a vehicle, vessel, aircraft or hovercraft; and
 - (b) an offshore installation; and
 - (c) a tent or movable structure.
- (5) A person who wilfully obstructs an inspector acting in the execution of a warrant issued under this section is guilty of an offence punishable, on conviction, by imprisonment for a term not exceeding one year or a fine not exceeding VT1,000,000, or both.

33 Inspector’s report

- (1) An inspector must give his or her report to the Commission.
- (2) The Commission may:
- (a) forward a copy of the report to the foundation’s registered office; and
 - (b) give a copy to:
 - (i) a councillor of the foundation the subject of the report; and

- (ii) the guardian of the foundation; and
- (iii) a person whose conduct is referred to in the report; and
- (iv) the auditors of the foundation; and
- (v) the applicant for the investigation; and
- (vi) any other person whose financial interests appear to the Commission to be affected by the report, whether as a creditor of the foundation, or otherwise.

34 Privileged information

Nothing in section 31 requires a person to disclose to an inspector information or a document that is the subject of legal professional privilege.

PART 8 CONTINUATION OF FOUNDATIONS

35 Continuation of overseas foundation

- (1) An overseas foundation may apply to the Commissioner for a certificate of continuance under this Act if:
 - (a) the foundation would be able to be established as a foundation under this Act; and
 - (b) the application is not prohibited under the laws of the foundation's jurisdiction.

- (2) The application must:
 - (a) be in writing, in the prescribed form; and
 - (b) have with it the charter of continuance of the foundation, signed by the councillors; and
 - (c) state whether the foundation is a private or public foundation; and
 - (d) set out:
 - (i) the foundation's name; and
 - (ii) the jurisdiction in which it was established; and
 - (iii) the date on which it was established; and
 - (iv) the name and address of the person who is to be the secretary of the foundation;
 - (v) the address of the foundation's registered office in Vanuatu; and;
 - (e) have with it a certificate by the responsible authority in the foundation's jurisdiction stating that:
 - (i) the foundation is of good standing; and
 - (ii) the authority is not aware of any actions against the foundation that may lead to the foundation being wound up or dissolved; and

- (f) be signed by the councillors; and
 - (g) have with it the prescribed fee.
- (3) A person who acts for a foundation must hold a CTSP licence.
- (4) The charter must:
- (a) be in the English or French language; and
 - (b) comply with the requirements of section 48.

36 Charter of continuance

- (1) If the charter of continuance is in a language other than English or French:
- (a) it must have with it an English translation and a statement by the translator that the translation is a true copy; and
 - (b) the statement must be attested by a notary public.
- (2) The charter of continuance may, without so stating in the charter, change the organisational instruments of the overseas foundation if the change:
- (a) is authorised under the law applicable to the overseas foundation; and
 - (b) is a change that the foundation is entitled to make under this Act.

37 Certificate of continuance

- (1) The Commission must issue a certificate of continuance for an overseas foundation if the foundation complies with sections 35 and 36.
- (2) On the date shown in the certificate of continuance:
- (a) the overseas foundation becomes a foundation to which this Act applies as if the foundation had been established and incorporated under this Act; and
 - (b) the charter of continuance becomes the charter of the continued foundation; and
 - (c) the certificate of continuance is the certificate of establishment and incorporation of the continued foundation.

38 Preservation of foundation

If an overseas foundation is continued as a foundation under this Act:

- (a) the property of the overseas foundation becomes the property of the foundation; and
- (b) the foundation continues to be liable for the obligations of the overseas foundation; and
- (c) all existing actions, claims and liabilities by or against the overseas foundation may be continued by or against the foundation; and
- (d) a conviction, ruling, order or judgment against, or in favour of, the overseas foundation may be enforced by or against the foundation.

39 Foundation leaving Vanuatu

A Vanuatu foundation may apply in another jurisdiction to be continued as a foundation (however described) in the other jurisdiction as if it had been established under the laws of the other jurisdiction if:

- (a) a unanimous resolution of its councillors authorises it to apply; and
- (b) the Vanuatu foundation's proposed continuance in the other jurisdiction will not adversely affect the foundation's creditors; and
- (c) the laws of the other jurisdiction that deal with continued foundations provide that:
 - (i) the property of the Vanuatu foundation continues to be the property of the continued foundation; and
 - (ii) the continued foundation continues to be liable for the obligations of the Vanuatu foundation; and
 - (iii) all existing actions, claims and liabilities by or against the Vanuatu foundation may be continued by or against the continued foundation; and
 - (iv) a conviction, ruling, order or judgment against, or in favour of, the Vanuatu foundation may be enforced by or against the continued foundation.

40 Discontinuance of foundation

- (1) A foundation that has been continued as a foundation in another jurisdiction must notify the Commission in writing.

- (2) After the Commission has received a notice that a foundation has been continued, the Commission must:
- (a) file the notice in the Register; and
 - (b) issue a certificate of discontinuance; and
 - (c) remove the foundation's name from the Register.

PART 9 - DISSOLUTION OF FOUNDATIONS

41 Dissolution

- (1) A foundation is dissolved if:
 - (a) the foundation is established for a definite period and that period expires; or
 - (b) the purpose of the foundation is fulfilled or becomes incapable of fulfillment, and the councillors, by unanimous decision, resolve that the foundation is to be dissolved; or
 - (c) the charter of the foundation require that the foundation be dissolved; or
 - (d) the Court orders that the foundation be dissolved.
- (2) If a foundation is dissolved, the councillors, or any other person authorised by the charter of the foundation to supervise the dissolution of the foundation, must:
 - (a) do all things that are necessary for the orderly supervision of the foundation; and
 - (b) collect the assets of the foundation; and
 - (c) discharge, or make adequate provision for the discharge of, the obligations of the foundation; and
 - (d) distribute the remaining assets as set out in section 43.

42 Dissolution by Court

- (1) A foundation, or a councillor, guardian or creditor of a foundation, may apply to the Court for an order that the foundation be dissolved.
- (2) The Court may order that the foundation be dissolved if:
 - (a) the foundation, or its guardian or a councillor, has been convicted of fraud or an offence against the Financial Transactions Reporting Act [CAP 268]; or
 - (b) the Court is satisfied that it is just and equitable that the foundation be dissolved.

- (3) If the Court orders that a foundation be dissolved, the Court may, by order:
 - (a) appoint a person to supervise the dissolution; and
 - (b) make any other order that it considers appropriate.

43 Dissolution by Commissioner

- (1) Subject to subsections (2) and (3), the Commissioner may dissolve a foundation if the foundation fails to:
 - (a) file its annual return; or
 - (b) pay the prescribed annual fees within the time specified by this Act; or
 - (c) comply with any other provision of this Act.
- (2) Before dissolving a foundation, the Commissioner must give the foundation written notice of the proposed dissolution, stating that:
 - (a) the Commissioner proposes to dissolve the foundation at the end of 90 days after the date of the notice; and
 - (b) the reasons for the proposed dissolution; and
 - (c) the foundation may within 30 days of receiving the notice, give the Commission written reasons why the foundation should not be dissolved.
- (3) The Commission must consider any written reasons given by the foundation and may dissolve the foundation if it is of the opinion that the foundation has failed to show good cause why the foundation should not be dissolved.

44 Distribution of assets

- (1) Any assets remaining after a foundation has been dissolved become the property of the person who is entitled under the charter or by-laws to receive them.
- (2) The Court may order that the remaining assets be distributed to the persons the Court determines.
- (3) However, the remaining assets become the property of the Government of Vanuatu if:

- (a) there is no person entitled to receive the remaining assets of the foundation under the charter or by-laws; or
- (b) the person entitled to receive the assets refuses to accept them; or
- (c) the charter or by-laws of the foundation do not contain a provision about the remaining assets on dissolution; or
- (d) the Court makes no order about the disposition of the assets.

45 Revival of foundation

- (1) A guardian, councillor or beneficiary of a foundation that has been dissolved may apply to the Commission for the foundation to be revived.
- (2) The Commission may approve the application for the revival of the foundation unless the Commissioner is of the opinion that it is not appropriate in the circumstances to do so.
- (3) If the applicant files a copy of the foundation's charter and pays any outstanding fees and penalties owing to the Commission, the Commission must:
 - (a) re-register the foundation; and
 - (b) issue a certificate of registration, in the prescribed form, to the applicant.

PART 10 MISCELLANEOUS

46 Establishment of Register

- (1) The Commission must keep a Register of foundations.
- (2) The Register must contain:
 - (a) the name and registered office of the foundation; and
 - (b) the date the foundation was:
 - (i) established under section 5; or
 - (ii) continued under section 37; or
 - (iii) revived under section 45; and
 - (c) a statement whether the foundation is a private or public foundation; and
 - (d) it's a copy of the foundation's charter; and
 - (e) the names of the foundation's councillors and secretary.
- (3) The Commission must make the Register available for inspection by the public during the Commission's business hours.
- (4) Documents filed by a foundation are not open to inspection except as set out in subsection (5).
- (5) The guardian or a councillor of a foundation, or a person authorised in writing by the guardian or a councillor, may:
 - (a) inspect and obtain copies of documents filed with the Commission by the foundation; and
 - (b) obtain a copy of the certificate of establishment, continuance or revival of the foundation.

47 Certificate as to registration of foundation

- (1) A person may apply to the Commission for a certificate of the registration of a foundation.
- (2) The Commission may issue a certificate that:

- (a) a foundation is registered under this Act: and
- (b) the foundation has filed 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.

48 Charter

- (1) The charter of a foundation must state:
 - (a) the name of the foundation; and
 - (b) the name and address of the founder; and
 - (c) if the founder is a body corporate, details of that body corporate's incorporation; and
 - (d) the foundation's registered office; and
 - (e) the purposes and objects of the foundation; and
 - (f) the nature and total amount of initial assets of the foundation; and
 - (g) the manner of designation of the beneficiaries or the manner in which the beneficiaries are to be ascertained; and
 - (h) whether the foundation is established for a definite or indefinite period and, where it is established for a definite period, that period; and
 - (i) the name and address in Vanuatu of the secretary to the foundation; and
 - (j) whether the foundation is a private or a public foundation.
- (2) Subject to this Act, the charter of a foundation may include provisions:
 - (a) that reserve rights or powers to the founder; and
 - (b) about the appointment, removal, number, period of office and functions of the foundation's councillors; and
 - (c) for the appointment, removal and period of office of the auditor, if any, of the foundation; and

- (d) for the appointment and removal of a guardian and the guardian's functions and remuneration; and
 - (e) for the appointment of persons to carry out particular duties on behalf of the foundation; and
 - (f) about amending the charter; and
 - (g) about making by-laws; and
 - (h) about transferring assets to the foundation, in addition to the initial assets; and
 - (i) for the addition or removal of beneficiaries.
- (3) The charter of a foundation must be in the form of a deed and must:
- (a) if the founder is a natural person, be executed by the founder in the presence of a notary public or the secretary named in the charter; or
 - (b) if the founder is a body corporate, be executed on behalf of the founder by the person authorised for that purpose in the presence of a notary public or the secretary named in the charter.

49 Amendment of charter

- (1) If the charter of a foundation makes provision for the amendment of the charter after registration:
- (a) the amendment must be considered at a meeting of the founder, councillors and guardian called to consider the amendment; and
 - (b) the amendment must be adopted unanimously.
- (2) If the founder is no longer living or in existence, or no provision was made in the foundation's charter for amendment of the charter after registration, the councillors of the foundation:
- (a) may resolve on any amendments that in their opinion are necessary in the circumstances to maintain the objects of the foundation; and
 - (b) must apply to the Court for its approval of the proposed amendments.
- (3) The Court may:
- (a) by order confirm or refuse the amendments, wholly or in part; and

- (b) make any other orders that it thinks appropriate.
- (4) Within 14 days of the amendment taking effect, the foundation must:
 - (a) file with the Commission a notice, signed by the secretary, containing details of the amendment; and
 - (b) pay the prescribed fee.

50 By-laws

- (1) If the charter of a foundation provides that by-laws may be adopted, the by-laws may include provisions:
 - (a) about distribution of assets by the councillors of the foundation; and
 - (b) more specifically identifying any beneficiary, or additional beneficiaries, of the foundation; and
 - (c) about identifying the remaining beneficiary on the dissolution of the foundation; and
 - (d) setting out the proceedings of the councillors of the foundation.
- (2) The by-laws must be signed by the foundation's councillors or guardian.
- (3) The by-laws may be amended or replaced by the foundation's councillors or guardian, unless the charter provide otherwise.

51 Taxes and stamp duties

- (1) In this section:

resident in Vanuatu means a person (other than a beneficiary) who ordinarily resides in Vanuatu or carries on business from an office or other fixed place within Vanuatu.

- (2) In spite of any other law of Vanuatu, a public foundation is not liable to any tax in Vanuatu other than:
 - (a) value added tax payable under the Value Added Tax Act [CAP 247]; or
 - (b) stamp duty payable under the Stamp Duties Act [CAP 68].

- (3) The beneficiaries of a public foundation are exempt from all taxes that may arise out of their interest in the foundation so long as the foundation effects transactions exclusively with persons who are not resident in Vanuatu.
- (4) A foundation and its beneficiaries do not lose their exemption under this section only because the foundation:
 - (a) enters into transactions with, or buys or sells or otherwise deals in any securities issued or created by, a person resident in Vanuatu who is exempt from all income, capital gains and withholding taxes under any law of Vanuatu; or
 - (b) enters into or concludes in Vanuatu contracts or arrangements, including contracts or arrangements with a person resident in Vanuatu for employment with, or of the supply of goods and services to, the foundation, and exercises in Vanuatu the other powers that are necessary for their proper performance; or
 - (c) carries on any part of its administration within Vanuatu, and holds meetings in Vanuatu; or
 - (d) owns or leases property in Vanuatu for the carrying on of any part of its administration or as a residence for its councillors, guardian or beneficiaries; or
 - (e) transacts banking business with a person resident in Vanuatu who is authorised to carry on banking business under a law of Vanuatu.
- (5) In spite of the Stamp Duties Act [CAP 68], no stamp duties are payable by a person on a transaction in securities issued or created by, or relating to transfer of property to or from, a public foundation.

52 Annual return

- (1) A foundation must file an annual return with the Commissioner.
- (2) The annual return must:
 - (a) be filed before the end of the month after the month in which the anniversary of the foundation's registration took place; and
 - (b) be signed by the foundation's secretary; and
 - (c) contain the following information:
 - (i) the foundation's name and registered address; and

- (ii) the full name and address of each councillor who is an individual; and
 - (iii) for a councillor that is a body corporate, its full name, the place where it is incorporated and the address of its registered office; and
 - (d) for a public foundation, have with it the audited accounts for the previous financial year; and
 - (e) contain a statement that the information contained in the return is current as at the date of the return; and
 - (f) have with it the prescribed fee.
- (3) The foundation must file a copy of the return in the foundation's register kept under section 19.

53 Foundation's assets

Assets irrevocably transferred to a foundation:

- (a) become the assets of the foundation; and
- (b) cease to be the assets of the founder; and
- (c) are not assets of a beneficiary until the assets are distributed to the beneficiary in accordance with the foundation's charter or bylaws or this Act.

54 Records

- (1) The records that a foundation is required by this Act to keep may be kept in electronic form.
- (2) A foundation must take reasonable steps to ensure that its records:
 - (a) are maintained safely and in good condition; and
 - (b) are accurate.

55 Fees

- (1) The fees prescribed in the Regulations are payable to the Commission.
- (2) A person who fails to pay a fee by the due date is liable to a penalty of VT1, 000 for every day during which the failure continues, up to a maximum of VT100, 000.

- (3) An unpaid fee and penalty is a debt due to the Commission and can be recovered by the Commission in a court.

56 Regulations

- (1) The Minister may on the advice of the Commission make Regulations prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) that are necessary or convenient to be prescribed for the carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the Regulations may:
- (a) prescribe forms to be used under this Act; and
 - (b) set out a model form of charter; and
 - (c) prescribe the fees payable under this Act.

57 Transitional

- (1) In this section:

commencement date means the date on which this Act commences;

existing foundation means a foundation registered under the Charitable Associations (Incorporation) Act [CAP 140] or the International Companies Act [CAP 222].

- (2) An existing foundation that proposes to continue in Vanuatu must apply for registration under this Act within 6 months of the commencement date.
- (3) An existing foundation that is not registered 12 months after the commencement date is not entitled to operate as a foundation in Vanuatu.

58 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

MEETINGS OF COUNCILLORS

Section 20

1 Annual meeting of councillors

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

2 Request for meeting of councillors

- (1) The councillors of a foundation must call a meeting of the councillors if requested to do so by the founder or the guardian.
- (2) The request must:
 - (a) state the objects of the meeting; and
 - (b) be signed by the person requesting the meeting; and
 - (c) be deposited at the registered address of the foundation.
- (3) If the councillors do not call the meeting within 21 days from the date of the request, the person requesting the meeting may convene the meeting.
- (4) A meeting convened by the person requesting the meeting must:
 - (a) be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the councillors; and
 - (b) be held within 60 days from the date of the request.

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- (5) All reasonable expenses incurred by the person requesting the meeting because of the failure of the councillors to convene the meeting:
- (a) are to be repaid to the person by the foundation; and
 - (b) may be retained by the foundation out of any sums due or to become due from the foundation by way of fees or other remuneration to the councillors that were in default.

3 Quorum for meetings of councillors

If the charter or by-laws of the foundation do not fix a quorum, a meeting of councillors is properly constituted for all purposes if at the commencement of the meeting one half of the total number of councillors are present in person or by alternate.

3A Voting at meetings

- (1) The councillors present at a meeting must elect a person to preside at the meeting.
- (2) A matter before the meeting is to be decided by the majority of the councillors present.
- (3) The person presiding has a deliberative vote and, if the votes are equal, also has a deciding vote.

4 Consents of councillors

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

5 Alternates for councillors

- (1) Subject to the charter or by-laws, a councillor may in writing appoint an alternate who need not be a councillor.
- (2) An alternate for a councillor is entitled to attend meetings in the absence of the councillor who appointed him or her and to vote or consent in the place of the councillor.

6 Agents

- (1) At a meeting, the councillors may, by resolution, appoint any person, including a person who is a councillor, to be an agent of the foundation.

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- (2) Subject to paragraph (3) and the charter or by-laws, an agent has the powers and authority of the councillors that are set out in the charter, the by-laws or in the resolution of councillors appointing the agent.
 - (3) An agent does not have any power or authority to deal with matters that require a resolution of councillors under this Act.
 - (4) The resolution of councillors appointing an agent of the foundation may authorise the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent by the foundation.

7 Minutes of meetings

- (1) A foundation must keep minutes of all proceedings at meetings of councillors.
 - (2) The minutes are evidence of the proceedings if they are signed by the Chairman of the meeting at which the proceedings took place or by the Chairman of the next meeting.
 - (3) If minutes of a meeting are kept in accordance with this paragraph, the meeting is taken to have been duly held and convened and all proceedings which took place at that meeting are taken to have duly taken place.
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