

# Foundations Guidelines



*FINANCIAL SERVICES AUTHORITY*

Bois De Rose Avenue  
P.O. Box 991  
Victoria  
Mahé  
Seychelles

Tel: +248 4380800  
Fax: +248 4380888  
Website: [www.fsaseychelles.sc](http://www.fsaseychelles.sc)  
Email: [enquiries@fsaseychelles.sc](mailto:enquiries@fsaseychelles.sc)

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## **1. Introduction**

This Guide for Registration under the Foundations Act, 2009 (the Act) has been prepared to ensure that information about the foundations requirements and procedures is readily available to those interested. It provides a summary of the Act and it outlines the procedures involved to process foundations. The Act is administered and regulated by FSA, described in the Act as the Registrar of Foundations. Please direct any queries to:

The Chief Executive Office  
Financial Services Authority  
P.O. Box 991  
Bois De Rose Avenue, Mahé  
Republic of Seychelles

Attention: Registry Director

Tel: +248 380 800  
Fax: +248 380 888  
Email: [enquiries@fsaseychelles.sc](mailto:enquiries@fsaseychelles.sc)

## **2. Background on Foundations**

Like a company (but unlike a trust), a foundation is a separate legal entity. Once assets have been transferred to a foundation, they become the assets of that foundation with full legal and beneficial title. That is, the foundation assets do not belong to the founder (i.e. the person who establishes a foundation by transferring the initial assets to it) and, therefore, do not form part of the founder's personal estate on death. As foundation assets are not the property of the founder, this makes a foundation a highly useful structure for tax planning, asset protection and "outside estate" succession planning.

The main constitutional document of a foundation is its charter. A foundation may also issue regulations, which are different from Regulations as may be made by the Minister under Section 118. While "optional", regulations are normally issued – these usually contain particulars of the beneficiaries and beneficiary entitlements. Foundations are managed by one or more councillors, which comprise the foundation council.

A foundation has "beneficiaries". However, in contrast to shareholders of a company or beneficiaries of a trust, foundation beneficiaries have no legal or beneficial interest in foundation assets. That is, foundation assets do not become the assets of a beneficiary unless distributed in accordance with the foundation's charter or regulations.

It is permissible for a foundation to appoint a protector. A protector's role is to oversee the administration of a foundation by the foundation council. A protector's prior approval may be required before the foundation council do certain things (for example, adding or excluding a beneficiary).

## **3. Guidance to the Foundations Act, 2009**

### **3.1 Establishment of Foundation**

According to the Act, a Foundation is established in Seychelles,

- a. by a charter made in writing and signed by one or more founders and submitted to the Registrar; and
- b. on the issuance of the certificate of registration by the Registrar pursuant to section 22(1)(b).

### **3.2 Charter of a Foundation**

Section 4 of the Act specifies the requirements for a foundation's charter (constitutional document). The charter may be written in English or French language. If it is written in another language, it should be accompanied by an English or French translation.

The charter of a foundation must contain:

- a. the name of the foundation
- b. the name and address of the founder(s)
- c. the object for which the foundation has been established
- d. the initial assets of the foundation
- e. where the Foundation has been established to carry on a specified purpose, the details of the specified purpose
- f. the establishment of a council
- g. the name and address of the foundation's registered agent in Seychelles
- h. the address of the Foundation's registered office in Seychelles
- i. that –
  - (i) the Foundation is to be wound up and dissolved upon the happening of an event or the expiration of a fixed period of time including details of the event or period; or
  - (ii) the period of time for which the Foundation has been established is indefinite.
- j. the manner in which a beneficiary of a Foundation is appointed

Subject to the Act, the charter may, in addition to above:

- a. provide for the Foundation to be endowed with supplementary assets
- b. provide for the name and address of each of the initial councillors
- c. provide for the appointment and removal of a councillor
- d. establish the manner in which decisions of the council are to be made
- e. provide for –
  - (i) the designation of any initial beneficiaries or any beneficiaries to be designated at a later date
  - (ii) the names and addresses of any beneficiaries; and
  - (iii) the identification of any remaining beneficiary upon the winding up of the Foundation
- f. provide for the addition or removal of a beneficiary
- g. provide for –
  - (i) the appointment of one or more persons to act as protector or protectors respectively
  - (ii) the duties, powers, functions and rights, including the rights to remuneration, of a protector; and

- (iii) the removal of a protector
- h. provide for the making of regulations
- i. provide for the appointment of a person by power of attorney or otherwise, to carry out particular duties on behalf of the Foundation
- j. provide for the appointment, term of office and removal of an auditor, if any, of the Foundation
- k. provide for the procedure by which the charter or regulations may be amended
- l. provide for —
  - (i) the circumstances, if any, in which the Foundation may be continued in or outside Seychelles; and
  - (ii) the conditions to be satisfied in respect of such continuation in or outside Seychelles;
- m. provide for the reservation of rights or powers to its founder or founders, as the case may be
- n. provide for the appointment, term of office and removal of any other supervisory person to the Foundation; and
- o. provide for any other lawful matter in respect of the Foundation.

### **3.3 Amendment of Charter**

Section 6 of the Act provides for amendments of the charter. Upon the amendment, the Foundation shall submit for registration a certified extract of the amendment to the Registrar within 14 days accompanied by the applicable fee (i.e. US\$100 + 5% Tax). The Foundation may also, within 14 days of filing the extract, file an amended replacement charter.

### **3.4 Objects of a Foundation**

Section 7 of the Act states that the objects of a foundation may include —

- a. may be charitable, non-charitable or both
- b. shall include the management of its assets and income, and the distribution thereof, as the council may by a resolution of councillors determine pursuant to the charter or regulations —
  - (i) to the beneficiaries of the Foundation
  - (ii) in the case of a Foundation established to carry on a specified purpose, in the fulfilment of that purpose, or both (i) and (ii); and
- c. may include any other objects that do not contravene section 7(2).

The objects of a Foundation shall not include —

- a. the carrying on of any activity which is unlawful, immoral or contrary to any public policy of Seychelles
- b. the carrying on in or from within Seychelles of any activity in respect of which a licence or authorisation under any written law is required, and no such licence or authorisation has been granted to the Foundation; or

- c. the carrying on of business in Seychelles, except so far as may be necessary for the carrying on of the Foundation's business outside of Seychelles, and for the purposes of this paragraph, a Foundation shall not be treated as carrying on business in Seychelles by reason only that —
- (i) it opens and maintains an account with a bank licensed under the Financial Institutions Act, 2004
  - (ii) it engages the services of or otherwise deals with counsel and attorneys, accountants, bookkeepers, international corporate service providers, Foundation service providers, mutual fund administrators or managers, securities' dealers, investment advisers or other similar persons carrying on business in Seychelles
  - (iii) it prepares or maintains its books and records in Seychelles
  - (iv) it holds, in Seychelles, meetings of its councillors or supervisory persons; or
  - (v) it holds a lease of immovable property in accordance with section 11(2), for use only as an office from which to communicate with councillors, supervisory persons or beneficiaries, or where its books and records are prepared or maintained.

### 3.5 Assets of Foundations

The initial assets of a foundation shall be of a value of not less than one United States dollar (US\$1) or the equivalent thereof in any freely convertible currency.

The assets of a Foundation may originate from any lawful source and consist of present or future assets of any nature.

The assets of a Foundation —

- a. may include —
- (i) any interest or entitlement as a beneficiary of another Foundation registered under this Act
  - (ii) any shares, debentures or other interests in a company incorporated under the International Business Companies Act
  - (iii) any shares, debentures or other interests in a company licensed under the Companies (Special Licences) Act
  - (iv) any shares, debentures or other interests in a company incorporated under the Protected Cell Companies Act
  - (v) any interest in a partnership registered under the Limited Partnerships Act
  - (vi) any interest or entitlement as a beneficiary under a trust registered under the International Trusts Act
  - (vii) any company, trust or other entity licensed as a mutual fund under the Mutual Fund and Hedge Fund Act; or
  - (viii) any funds in an account with a bank licensed under the Financial Institutions Act; and
- b. shall not include immovable properties or other properties in Seychelles, including shares, debentures or other interests in a legal person incorporated or registered, in Seychelles.

However, a Foundation may, subject to the written laws, lease immovable properties in Seychelles, only for any of the purposes mentioned in section 7(2)(c)(v).

### **3.6 Management of assets of Foundation**

The assets of a Foundation shall be exclusively managed, including being realised, applied, administered, invested and disbursed in accordance with the charter, regulations and this Act, for the attainment of the objects specified in the charter and authorised by this Act.

A Foundation may, in the course of the management and administration of its assets exercise such powers and perform such functions as are necessary for the proper management and administration of its assets, including the selling of its assets and engaging in any other acts or activities that are not prohibited under any written law, but such acts or activities shall be ancillary or incidental to its main objects.

### **3.7 Regulations of a Foundation**

Section 13 provides that any regulations issued by a foundation must comply with the Act. Subject to its charter, a foundation may have regulations that comply with the Act. The regulations may —

- (i) provide for the distribution of assets made, or to be made, by the councillors
- (ii) provide for the determination of the minimum level of assets of the Foundation in the absence of which no distribution of such assets shall be made to a beneficiary
- (iii) provide for the particulars relating to beneficiaries referred to in section 4(3)(e)
- (iv) provide for —
  - a. the name and address of each of the initial councillors;
  - b. the appointment and removal of a councillor; and
  - c. the manner in which decisions of the council are to be made
- (v) set out the functions of the council, and if, they may or shall be delegated to or performed in conjunction with, any other person, the extent to which this may or shall be done; and
- (vi) provide for any other matter in respect of the Foundation, in addition to the matters required to be set out in the regulations by this Act.

The regulations shall be in writing and shall be signed and executed by each founder or each councillor, if there is no surviving founder.

Unless otherwise provided in the charter or regulations, in the event of an inconsistency between a term in the charter and regulations, the term in the charter shall prevail to the extent of the inconsistency.

Subject to the terms of the charter or regulations, the council may amend or replace the regulations by a unanimous resolution of councillors.

### **3.8 Registration of Foundations**

The registered agent shall submit the charter, accompanied by the registration fee set out (i.e. US\$200 + 15% Tax) to the Registrar who shall retain and register it, if it is satisfied that all the requirements of the Act have been complied with and its objects are lawful. The Registrar shall allocate a registration number to the foundation and issue a certificate of registration,

On and from the date of registration stated in the certificate of registration, the foundation shall be separate legal entity, by the name contained in the charter and specified in the certificate of registration, immediately capable of exercising all the powers and functions of a foundation.

### **3.9 Annual Renewal Fees**

Section 24 on the Act provides that an annual registration fee (i.e. US\$200 + 7.5% Tax) shall be due and payable on the annual anniversary date of the foundation's registration. Penalty fees shall be incurred by the foundation if the annual registration fee is not paid on or before the due date in each year

### **3.10 Founder of Foundations**

The powers and obligations of the founder are provided by section 25 of the Act. Section 26 and 27 provides for the assignment of rights by founder and reservation of rights to founder or other person respectively.

### **3.11 Registered Agent of Foundations**

Section 28 of the Act requires a foundation to have a registered agent in Seychelles at all times. A registered agent is a company licensed under the International Corporate Service Providers Act, 2003 to conduct Foundation Services. Unless provided otherwise in the Act, all applications made and all documents required to be delivered to the Registrar by a foundation must be signed and submitted to the Registrar, by its registered agent.

A registered agent may resign as follows —

- a. by giving written notice in accordance with its contractual obligations or in the absence thereof, not less than 30 days written notice of its intention to resign as registered agent on the date specified in the notice.
- b. by giving, together with the written notice referred to in paragraph (a), a list of all approved registered agents in Seychelles with their names and addresses; and
- c. by filing with the Registrar a copy of the notice before the expiration of the period referred to in paragraph (a) above.

The notice referred to above shall be served on any councillor or, if the registered agent is not aware of the identity or current address of any councillor, on the person that last gave it instructions, in respect of the Foundation.

In the event that a Foundation appoints a new registered agent within the 30 days mentioned above, the resignation of the outgoing registered agent shall take effect as from the date of appointment of the new registered agent.

A registered agent that contravenes section 30(1) or 30(2) is liable to a penalty of US\$50 for each day or part thereof in respect of which the contravention continues.

### **3.12 Registered Office of Foundations**

A Foundation shall have a registered office situated in Seychelles and the address of its registered office shall be the same as that of its registered agent. Documents may be served on a Foundation by service of such documents on its registered agent at the registered office of the Foundation.

### **3.13 Council of Foundations**



A foundation must have a council (board of councillors) to manage the business and affairs of the foundation (Section 32 of the Act). The council shall consist of one or more persons (either legal or natural persons) known as a councillor(s). The appointment of a person as a councillor is personal to that person and may not be assigned. A founder may be a councillor, provided that the founder is not the “sole” councillor. A protector may be a councillor, provided that the protector is not the “sole” councillor.

Notice of the appointment, cessation and change of name or address of a councillor must be filed by the foundation to its registered agent in Seychelles within 14 days of the appointment, cessation or change. In cases where the names and addresses of councillors are specified in the charter upon registration, the Foundation must file with the Registrar the relevant notice containing the full name and address of that councillor.

Section 37 deals with duties of care of councillors and section 42 imposes confidentiality obligations on them. Section 45 deals with meetings of councillors which may be held in or outside Seychelles, subject to any limitations in the charter or regulations. Meetings may also be held via telephone or other electronic means as long as the councillors can hear each other.

Section 46 requires the Foundation to keep minutes of all meetings of councillors and copies of all written resolutions consented to by the councillors. The minutes and other records must be kept at the registered office of the Foundation or in such other place as the councillors consider fit and, the councillors must inform the registered agent of the address of that other place. The minutes and other records must be preserved for a period of not less than 7 years after the end of the period to which they relate.

Section 48 allows resolutions to be passed by written consent. Failure to keep and preserve minutes for the minimum required duration is an offence and liable on conviction to a fine of US\$25,000.

### **3.14 Protectors of Foundations**

A natural or legal person may be appointed as a protector if so provided for by the charter or regulations. Appointments may be made by the founder in the charter or regulations, or any other person empowered to do so in the charter or regulations. More than one person may be appointed as protector. A founder, beneficiary or councillor of a foundation may be appointed as a protector, but a sole councillor or a sole beneficiary shall not act as protector. The appointment of a person as a protector is personal to that person and shall not be assigned or delegated, except that where the protector is a legal person, it may act through its duly authorised officers or agents. Section 55 provides for the powers of protectors.

### **3.15 Beneficiaries of Foundations**

Part V of the Act deals with beneficiaries of foundations. A beneficiary shall, by reference to the charter or regulations, be –

- a. identifiable by name; or
- b. ascertainable by reference to –
  - (i) a class; or
  - (ii) a relationship to another person, whether or not living at the time of the establishment of a Foundation or at the time by reference to which, under the terms of the charter or regulations, members of a class are to be determined.

A founder may be a beneficiary, but not the sole beneficiary. Clause 61 provides for the right of a beneficiary to information.

### 3.16 Property and protection Foundations

Assets transferred to or otherwise vested in a foundation shall –

- a. be the assets of the foundation with full legal and beneficial title
- b. cease to be the assets of the founder or founders, once transferred to or otherwise vested in the Foundation by or on behalf of the founder or founders; and
- c. in the case of a Foundation with one or more beneficiaries, not become the assets of a beneficiary unless distributed to such beneficiary in accordance with the charter or regulations and this Act.

Section 72 makes provision Anti-forced heirship; No foundation registered under the Act, and no transfer or other disposition of property to a foundation, shall be void, voidable, liable to be set aside or otherwise defective in any manner by reference to a foreign rule of forced heirship or any other written law of a foreign jurisdiction.

Section 73 provides that no foundation or transfer of property to a foundation shall be void among other things by reason of the founder's bankruptcy, except where it is proved that the founder was insolvent or intended to defraud a creditor, at the time when the founder transferred the property to the foundation. An action or claim against a foundation may be made within two years from the date of the transfer as the foundation shall be barred absolutely after two years.

### 3.17 Accounts and Register

Section 75 of the Act requires a foundation to keep or cause to be kept proper accounting records at its registered office or at such other place as the councillors think fit. The foundation must inform its registered agent of the address of such other place. The accounting records shall not be open to public inspection but shall at all times be open to inspection by the councillors, the founder, any supervisory person or the auditor of the foundation. The books of account should reflect the financial position of the foundation, with respect to:

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

Every record required to be kept above shall be preserved for a period of not less than 7 years after the end of the period to which it relates. Failure to comply is an offence and is liable upon conviction to a fine not exceeding US\$25000.

Section 77 of the Act requires each foundation to keep, at its registered office, a register of its councillors, registered agent, any supervisory persons, any person having the power of attorney granted by the foundation, beneficiaries and founders. The register shall contain the following particulars –

- a. in the case of a natural person:
  - (i) his or her name
  - (ii) his or her business or usual residential address
  - (iii) his or her nationality
  - (iv) his or her date of birth
- b. in the case of a legal person

- (i) its name;
  - (ii) its registered or principal address;
- c. The date on which a person is appointed or otherwise became a councillor, registered agent, beneficiary, founder, supervisory person, agent or attorney;
- d. the date on which the persons appointed under paragraph (c) are removed from his or her appointment; and
- e. such other particulars as the Registrar may require.

The register shall, during business hours be open to inspection by a founder, councillor, any supervisory person and the registered agent, and shall be open for inspection for a period of not less than two hours in each business day. The register shall be kept in such a form as the councillors think fit. Failure to keep such register is an offence and is liable upon conviction to a fine of US\$25,000.

### 3.18 Continuation of Foundations

Section 78 provides for an overseas foundation which wishes to continue in Seychelles as a foundation to lodge the following documents with the Registrar –

- a. the articles of continuation
- b. a certified true copy of its certificate of registration or equivalent document and its charter or equivalent constitutional document, written in the English or French language or, if they are written in any other language, accompanied by a certified translation in the English or French language
- c. documentary evidence, satisfactory to the Registrar, that the overseas foundation is in good legal standing; and
- d. not less than 3 copies of its proposed charter under the Act

The above documents must be accompanied by the applicable fee (i.e. US\$200 + 15% Tax):

The articles of continuation must be approved –

- a. by a majority of its councillors or other persons charged with exercising the powers of the overseas foundation; or
- b. in such other manner as may be established by the overseas foundation, in accordance with its constitutional documents and the written law where it is registered, for exercising the powers of the overseas foundation.

The articles of continuation must –

- a. state the name of the overseas foundation and the name under which it is being continued
- b. state the jurisdiction in which the overseas foundation is registered
- c. state the date on which the overseas foundation was established
- d. state that the overseas foundation shall adopt a charter compliant with the Act, with effect from its continuation under the Act
- e. state that the overseas foundation wishes to be continued in Seychelles as a foundation registered under the Act
- f. be signed by or on behalf of the overseas foundation

Upon registration of the articles of continuation, the Registrar will issue a certificate of continuation if he is satisfied that all requirements of Part IX of the Act have been complied with.

Subject to any limitations in its charter, a Seychelles' foundation may, by a resolution of councillors, continue as a foundation outside Seychelles in the manner provided under those written laws. A foundation wishing to continue outside Seychelles does not cease to be a foundation registered under this Act unless –

- a. it has paid all its fees and any penalty required to be paid under this Act; and
- b. the written laws of the jurisdiction outside Seychelles permit the continuation and the foundation has complied with those written laws.

Where a Foundation continues under the written laws of a jurisdiction outside Seychelles, the Registrar shall strike off the name of the Foundation from the Register and publish a notice of the striking off in the Gazette

### **3.19 Consolidation or Merger of Foundations**

Section 86 to 91 of the Act provide for two or more existing foundations wishing to consolidate into a new foundation and an existing foundation wishing to merge into another existing foundation. The Registrar will strike off the Register a constituent foundation that is not the surviving entity in a merger and a constituent foundation that participates in a consolidation.

### **3.20 Dissolution of Foundations**

Sections 92 to 98 of the Act provides for dissolution of foundations, including for appointment of liquidators. A foundation shall be dissolved where –

- (i) it is established for a definite period of time and that period expires
- (ii) its object is fulfilled or becomes incapable of fulfilment as determined by a resolution of councillors and, if so required under the charter or regulations, with the consent of the Foundation's supervisory person, if any
- (iii) any term of its charter or regulations so requires
- (iv) it is unable to pay its debts as they fall due
- (v) this Act provides that it shall be dissolved; or
- (vi) the court orders that it be dissolved

A liquidator must be appointed where a foundation is dissolved. The registered agent shall give the Registrar written notice in the approved form stating –

- a. that the foundation is in dissolution;
- b. the date of commencement of the dissolution; and
- c. the name and address of the liquidator.

Upon the completion of a dissolution and winding up of the foundation's affairs, the liquidator shall give the registered agent, a written statement confirming that the winding up and dissolution of the foundation has been completed and the registered agent shall file with the Registrar a certified copy of the liquidator's statement accompanied by the applicable fee (i.e. US\$100 + 5% Tax).

The Registrar shall then strike the foundation off the Register and issue a certificate of dissolution. Following the issue of the certificate the Registrar shall cause to be published in the Gazette, a notice that the foundation has been dissolved and has been struck off the Register.

### **3.21 Surplus Assets**

Section 97 deals with surplus assets of a foundation. The surplus assets shall be the assets of any remaining beneficiary or in the case of a Foundation established to carry on a specified purpose, the purpose to which, according to the charter or regulations, any surplus assets shall be applied.

If there is more than one remaining beneficiary, the surplus assets shall be distributed as provided for in the charter or regulations. In the event that the charter or regulations do not specify the proportions or entitlements applicable to the remaining beneficiaries, the surplus assets shall be divided equally among the remaining beneficiaries.

In the event that —

- (i) there is no remaining beneficiaries entitled to receive the surplus assets;
- (ii) the remaining beneficiaries refuse to accept the transfer of the surplus assets;
- (iii) there is no relevant term in the charter or regulations providing for the person who in such circumstances shall be entitled to receive the surplus assets; or
- (iv) the charter or regulations do not specify the purpose to which the surplus assets shall be applied,

the surplus assets shall vest in the Republic of Seychelles and be dealt with accordingly.

### **3.22 Compliance Inspection**

Section 77A of the Foundations Act empowers the Registrar for the sole purpose of monitoring and assessing compliance with this Act may during business hours and after giving reasonable notice to the Foundation —

- (a) access the registered office of the Foundation;
- (b) inspect the documents to be kept by the Foundation;
- (c) during or after a compliance inspection request for explanation from the directors of the Foundation's registered agent.

### **3.23 Striking Off**

Section 98 of the Act makes provision for the Registrar to strike off the name of the foundation from the register if it no longer satisfies all the requirements of the act or conducts activities which are likely to be contrary to the written laws of Seychelles or detrimental to the reputation of Seychelles.

Section 99 of the Act makes provision for striking off the name of a foundation if it fails to pay any annual renewal fee. If a foundation fails to pay the annual renewal fee within 180 days of such amount becoming due, the Registrar shall publish in the Gazette and serve on the foundation a notice that the name of the foundation will be struck off the Register, if the foundation fails to pay such annual renewal fee and all penalty fees due, within 90 days of the date of such notice.

Section 101 and 102 of the Act provide for the application to the Court and the Registrar respectively, for restoration of name of a foundation to the Register. A foundation whose name has been struck off the Register for non-payment of annual renewal fees, may within 10 years following the date of the

striking off apply to the Registrar to restore its name to the Register, upon payment of all outstanding fees and penalties. If it remains struck off continuously for a period of 10 years, then the foundation shall be deemed to have been dissolved.

Where the name of a Foundation has been struck off the Register under section 98(4) of the Act and remains struck off continuously for a period of 3 years, the Foundation shall be deemed to have been dissolved.

### **3.24 Registrar of Foundations**

Part XII of the Act provides for the Registrar of Foundations (FSA). It outlines the Registrar's duties and powers. The Registrar is required to keep a Register of all foundations which will be open to the public during ordinary office hours. The Register shall contain, in respect to each foundation –

- a. its name and registration number
- b. the address of its registered office in Seychelles
- c. the name and address of its registered agent in Seychelles
- d. the name and address of each councillor if applicable
- e. the date of its establishment under this Act
- f. its status, with reference to whether or not all fees payable by it to the Registrar have been paid; and
- g. particulars of any striking off or dissolution of the Foundation

The Registrar is also responsible for issuing the Certificate of Official Search and Certificate of Good Standing, upon payment of the relevant fees.

Section 109 imposes confidentiality obligations on the Registrar, subject to permitted disclosures, such as, where required by any Court in Seychelles, required disclosure under the Mutual Assistance in Criminal Matters Act or the Anti-Money Laundering Act, 2006 or the International Corporate Services Providers Act, 2003.

### **3.25 Exemptions and Concessions**

Section 110 and Schedule 2 of the Act provide for fiscal exemptions and concessions, including exemption from Seychelles Business Tax Act and Social Security Act. The exemptions and concessions will remain in force and be irrevocable for a period of 20 years from the date of registration of a foundation.

### **3.26 Offences and Related Matters**

Part XIV provide for offences and other related matters. A person which makes a statement in any document which is required to be submitted, lodged or delivered to the Registrar, which, at the time and in the light of circumstances under which it is made, is false or misleading with respect to any material fact or omits to state any material fact, the omission of which makes the statement false or misleading, commits an offence and is liable on conviction to a fine not exceeding US\$25,000.

It shall be a defence for a person accused of committing an offence to prove that the person did not know that the statement was false or misleading, or could not reasonably have known that the statement was false or misleading.

Section 118 provides the Minister to make Regulations for the purpose of carrying out and giving effect to the provisions of the Act. These include the provision for further procedure to be followed by a person making an application under section 102, to amend the Schedules, the provision for fees and levying of charges and penalties.

## **Guidance on Procedures**

### **4.1 Serving of documents**

The Act requires the registered agent of a foundation to be a person licensed to provide Foundation Services under the International Corporate Service Providers Act, 2003. Documents may be served on a Foundation by service of such documents on its registered agent at the registered office of the Foundation.

Therefore, unless provided otherwise in the Act, all applications, requests or correspondences made and all documents required to be delivered to the Registrar by a foundation must be signed and submitted by its registered agent (on the letterhead of the registered agent or such other format as may be approved by the Registrar). All applications, requests or correspondences must TYPED in the English or French language and may be sent by either fax or email.

### **4.2 Certification of translated documents**

All documents submitted to the Registrar which are not in the English or French language must be accompanied by a certified translation in the English or French language.

The registered agent must not give a certification under sections 5(2), 14(b), 17(3), 17(4), 80(1) or 81(1)(b) unless it has obtained or confirmed such translation from a qualified translator or such other person as may be acceptable to the Registrar.

### **4.3 Business tax payable by registered agent**

Schedule 2, section 1(e) of the International Corporate Service Providers Act, 2003 requires the registered agent to pay business tax on fees paid in respect of specified entities as follows:

Incorporation / Registration Fee – 15%

Annual Renewal Fee – 7.5%

Other Fees – 5%

The registered agent must ensure that, when payments are made to the Registrar in respect of any fees under the Act, the right level of tax has been included, as the Registrar will not proceed with the request until the right amount is submitted for payment.

Note: The taxes mentioned under sections 4.13, 4.14 and 4.15 are only payable by companies licensed under the International Corporate Service Providers Act, 2003.

### **4.4 Name Reservation**

Before a foundation can be registered, the registered agent must make a formal request to the Registrar for the reservation of a proposed name in accordance with section 17 of the Act.

The Registrar will not charge a fee for reserving a name for the first 30 days. However, a fee of US\$75 + 5% Tax will be charged thereafter for each subsequent 30 day period during which the name is

reserved, as per Part 2 of Schedule 1. In the event that a reserved name exceeds its reservation period, that name will be available to any registered agent on a 'first come first served' basis.

The proposed name of a foundation must end with the word "Foundation" and must not –

- a. include the words limited, company, partnership or any abbreviations or translations thereof
- b. be the same or similar to the name of an existing Seychelles' foundation
- c. be misleading, offensive or otherwise objectionable
- d. contain the words "Assurance", "Bank", "Building Society", "Chamber of Commerce", "Chartered", "Cooperative", "Insurance", "Municipal", "Trust", "Stock Exchange", "Securities", "Royal", "Fund" or a word conveying a similar meaning; or
- e. include any other word that, in the opinion of the Registrar, suggests or is calculated to suggest the patronage or any connection with the Government of Seychelles or the Government of any other country.

Where the name of a foundation is not in the English or French language the registered agent must submit either a certified direct translation of the name in English or French. If a direct translation of the name does not accurately reflect the meaning of the name, the registered agent must submit a representation of the name in English or French, certified as true and accurate.

The Registrar will include the name and a translation or representation of it in the English or French language on the certificate of registration.

#### **4.5 Change of name**

A Foundation may change its name if permitted to do so by its charter or as otherwise provided for in section 6 of the Act. Where a foundation changes its name, the Registrar will enter the new name in the Register in the place of the former name, and issue a Certificate of Registration on Change of Name. Section 17 of the Act will apply to the proposed new name of the foundation.

The Registrar may in writing, direct a Foundation to change its name (Section 19 of the Act) in the event that it has been registered by a name which –

- a. is the same as or, in the opinion of the Registrar, so nearly resembles a name appearing at the time of registration in the Register; or
- b. in the opinion of the Registrar is misleading, offensive or otherwise objectionable,

Also, the Registrar may direct a Foundation to change its name if it appears to it that –

- a. misleading information has been given for the purpose of the registration of a proposed Foundation with a particular name; or
- b. undertakings or assurances have been given for such registration and have not been fulfilled.

#### **4.6 Registration of Foundations**

Once the proposed name of the foundation has been approved by the Registrar, the registered agent may submit a formal request for registration under the Foundations Act, 2009 by submitting the following documents:

- a. At least 3 identical copies of the charter



- b. The registration fee (i.e. US\$200 + 15% Tax)

If the Registrar is satisfied that the charter has fulfilled the requirements of the Act and its objects are lawful, it will register the charter and issue a Certificate of Registration. The Registrar will retain an original copy of the registered charter and the remaining registered charters will be forwarded to the registered agent, together with the Certificate of Registration and a confirmation of payment of the registration fee.

Should the Registrar be not satisfied that a charter has fulfilled the requirements of the Act and/or its objects are unlawful, it will inform the registered agent in writing, within one month after receipt of the charter, and stating its reasons.

Note: A registered agent may submit a charter that is to be adopted as the standard charter for its foundations. This charter will initially be vetted and approved by the Registrar. If the standard charter is to be varied or new ones adopted for a particular foundation, the registered agent must notify the Registrar prior to registration. Given that the revised charter will have to be vetted and approved before registration, more time will be required for these foundations to be registered.

#### **4.7 Continuation of Foundations**

If the Foundation is being continued in Seychelles, the registered agent will have to submit the following documents:

- Not less than 3 copies of its proposed charter
- The articles of continuation
- A certified copy of the overseas foundation's Certificate of Registration (or equivalent document) and its charter (or equivalent constitutional document)
- Documentary evidence, satisfactory to the Registrar, that the overseas foundation is in good legal standing
- The continuation fee (i.e. US\$200 + 15% Tax)

#### **4.8 Renewal of Foundations**

A foundation must pay an annual registration fee of US\$200 + 7.5% Tax on the annual anniversary date of the foundation's registration.

If the annual renewal fee is not paid in the manner set out above, the Foundation will incur an additional fee equal to 10 percent of the annual renewal fee for each month or part thereof during which the annual renewal fee and any additional fee imposed by section 24 remains unpaid.

Note: "month", as referred to above, means each successive period of 30 days commencing from the date of the annual renewal fee falling due.

#### **4.9 Change of Registered Agent**

The councillors may change the registered agent by a resolution of councillors, notwithstanding any provision contrary in the charter or regulations. The foundation must submit a certified extract of the resolution for registration to the Registrar within 14 days after the resolution is passed. The foundation may choose from either of the following two methods.

##### Method 1: Filing done by the outgoing registered agent

The outgoing registered agent notifies the Registrar of the change by submitting the following documents:

- A consent letter from the outgoing registered agent
- A certified extract of the resolution effecting the amendment
- A declaration of acceptance from the incoming registered agent
- The applicable fee (i.e. US\$100 + 5% Tax)

#### Method 2: Filing done by the incoming registered agent

The incoming registered agent notifies the Registrar of the change by submitting the following documents:

- Covering letter from the incoming registered agent
- A consent letter from the outgoing registered agent (also clarifying the settlement of fees)
- A certified extract of the resolution effecting the amendment
- The applicable fee (i.e. US\$100 + 5% Tax)

The Registrar will register these extracts and retain a copy. Late submissions will attract a penalty fee of US\$50 + 5% Tax for each day for each day or part thereof in respect of which the contravention continues.

#### **4.10 Change of Registered Office**

The councillors may change the situation of the registered office of a Foundation by a resolution of councillors, notwithstanding any provision contrary in the charter or regulations. Upon amending its charter to effect such change, the foundation must submit a certified extract of the resolution for registration to the Registrar within 14 days after the resolution is passed. The foundation may choose from either of the two methods mention in above section.

The Registrar will register these extracts and retain a copy. Late submissions will attract a penalty fee of US\$50 + 5% Tax for each day for each day or part thereof in respect of which the contravention continues.

#### **4.11 Change in particulars of councillors**

Notice of the appointment, cessation and change of name or address of a councillor must be filed by the foundation to its registered agent in Seychelles within 14 days of the appointment, cessation or change. Late notification to its registered agent will attract a penalty fee of US\$50 + 5% Tax for each day or part thereof in respect of which the contravention continues.

In cases where the names and addresses of councillors are specified in the charter upon registration of the foundation, the Foundation may file with the Registrar any notice of:

- appointment of office of a councillor
- cessation of office of a councillor
- change of name or change of address of a councillor

within 14 days of the event happening, accompanied by the relevant fee (i.e. US\$25 + 5% Tax). The notice must contain the full name and address of that councillor.

#### **4.12 Registration upon consolidation or merger**

In order to apply for a certificate of registration upon consolidation or merger, the registered agent will have to file the following documents with the Registrar:

- Covering letter

- a declaration of consolidation or merger by or on behalf of the proposed council of the surviving entity, with respect of the position upon the completion of the proposed consolidation or merger:
  - i. containing or annexing a copy of the plan of consolidation or merger referred to in section 40(1) of the Act
  - ii. containing or annexing, in the case of a consolidation, the proposed charter of the surviving entity
  - iii. containing or annexing, where, in the case of a merger, it is proposed to replace or otherwise amend the charter of the surviving entity, the proposed charter of the surviving entity
  - iv. stating the manner in which, in relation to each constituent foundation, the merger or consolidation was authorised and approved in accordance with its charter or regulations
- a statement by each constituent foundation, other than the surviving entity:
  - i. annexing a copy of the declaration of consolidation or merger referred to under paragraph (a); and
  - ii. stating that it consents to the proposed consolidation or merger proceeding as set out in the declaration of consolidation or merger, as the case may be.
- The applicable fee (i.e. US\$200 + 5% Tax)

If the Registrar is satisfied that all the requirements of the Act have been complied with, it will register the surviving entity and in substitution for any prior registration, if applicable.

Upon registration of a surviving entity as a foundation, the Registrar will allocate a registration number to the foundation and issue a certificate of registration upon consolidation or merger.

The Registrar will strike off the Register a constituent foundation that is not the surviving entity in a merger and a constituent foundation that participates in a consolidation.

#### **4.13 Request for Certificate of Official Search**

Any person, upon payment of the relevant fee (i.e. US\$75 + 5% Tax), may request the Registrar for a Certificate of Official Search in respect of any foundation containing:

- d. its name and registration number
- e. the address of its registered office in Seychelles
- f. the name and address of its registered agent in Seychelles
- g. the name and address of each councillor if applicable
- h. the date of its establishment under this Act
- i. its status, with reference to whether or not all fees payable by it to the Registrar have been paid; and
- j. particulars of any striking off or dissolution of the Foundation

#### **4.14 Request for Certificate of Good Standing**

Any person, upon payment of the applicable fee (i.e. US\$75 + 5% Tax) may request the Registrar to issue a Certificate of Good Standing, certifying that a foundation registered under the Act is in Good Standing. The Registrar will issue the certificate if he is satisfied that the name of the foundation is on the Register and the foundation has paid all fees and penalties due and payable under the Act.

The certificate of good standing will include a statement as to whether:

- a. there is any pending application that has been submitted to the Registrar for a certificate of consolidation or merger;
- b. the Foundation is in the process of being wound-up and dissolved; or
- c. any proceeding to strike the name of the Foundation off the Register have been commenced.

In the event that the foundation is not in good standing as at the date of the request, the Registrar will issue a Certificate of Official Search.

#### **4.15 Public Inspection of Foundation Register**

Any person may contact the Registrar, at least 2 hours in advance, to schedule an appointment with the Registrar in order to inspect any foundation on the Register. The Register is open to the public during office hours. An inspection fee of US\$75 + 5% Tax is payable for each foundation inspected and the fee payable per page for obtaining a copy of any document available on inspection is US\$5 + 5% Tax.

Only the following documents pertaining to a foundation will be available for inspection at the Registrar —

- the certificate of registration
- certificate of registration on change of name
- certificate of continuation
- certificate of registration upon consolidation or merger, as the case may be
- the charter or amended charter
- the certificate of dissolution

#### **4.16 Other Services**

Contact the Registrar directly for any other services for which no procedures have been detailed herewith.