

FOUNDATIONS ACT 2011

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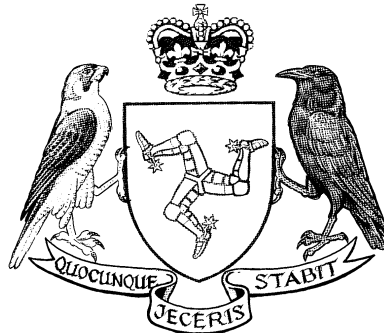
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Isle of Man } Signed in Tynwald: 12th July 2011
 in Wit } Received Royal Assent: 11th November 2011
 Announced to Tynwald: 15th November 2011

AN ACT

to provide for the establishment
 of foundations.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1

OPENING PROVISIONS

1. The short title of this Act is the Foundations Act 2011. Short title

2. This Act (other than this section and section 1) comes into operation on such days as the Treasury by order appoints and different days may be so appointed for different provisions and for different purposes. Commencement

3. In this Act, unless the context otherwise requires — Interpretation

“assets”, in respect of a foundation, means —

 - (a) any assets (including money, investments and other property) dedicated to the foundation;
 - (b) any capitalised income added to the assets so dedicated; and
 - (c) the money, investments and property from time to time representing those assets and capitalised income;

“assigned”, in respect of a right a person has in respect of a foundation or its assets, means assigned by that person or by a person to whom the right has been assigned;

“beneficiary”, in respect of a foundation that has the provision of a benefit to a person or to a class of persons as one of its objects, means a person (whether or not yet born or otherwise in existence) who is or who becomes a member of a class of persons that is —

- (a) specified in the foundation instrument; or
- (b) determined in accordance with —
 - (i) the foundation rules; or;
 - (ii) a direction of the High Court under section 54(2), for the purpose of that object or those objects;

“business address” means —

- (a) in respect of a foundation, the business address of its registered agent or, if there is no such registered agent, its last registered agent;
- (b) in respect of the registered agent of a foundation, the business address of the registered agent in the Island as it appears in the register;

[c.8]

“class 4 licenceholder” means a person who holds a licence issued under the Financial Services Act 2008 which permits that person to undertake the sub-class of regulated activity of acting as registered agent of a foundation as part of its permitted activities of providing corporate services;

“dedicate” means to pass, or covenant to pass, the title in property absolutely, with or without consideration, to a foundation so that the property is an asset of the foundation (and “to pass”, for the purposes of this definition, includes whatever act may be necessary in relation to that property to transfer title effectively) and “dedication” is to be construed accordingly;

“dedicator” means a person, other than the founder, who dedicates assets to the foundation;

“Department” means the Department of Economic Development;

“enforcer” means the person who is the enforcer of the foundation by virtue of section 14;

“financial statements” means written statements of the foundation which comply with section 42(2);

“foundation” means a foundation established under this Act;

“foundation instrument” includes any document, by whatever name called, which complies with the requirements of this Act relating to the foundation instrument of a foundation;

“foundation rules” includes any document, by whatever name called, which complies with the requirements of this Act relating to the foundation rules of a foundation;

“founder” means the person who instructed the class 4 licenceholder to apply for the establishment of the foundation;

“functions” includes powers and duties;

“person appointed under the foundation rules” means —

- (a) a member of the council of the foundation;
- (b) the registered agent of the foundation;
- (c) an enforcer of the foundation; and
- (d) any other person appointed under the foundation rules to carry out a function in respect of the foundation;

“person with sufficient interest”, in respect of a foundation, means —

- (a) the foundation;
- (b) a founder of the foundation;
- (c) a dedicator to the foundation;
- (d) if any rights a founder of a foundation had in respect of the foundation and its assets have been assigned to some other person, that other person;
- (e) a member of the council of the foundation;
- (f) an enforcer of the foundation;

- (g) the registered agent of the foundation;
- (h) a person appointed under the foundation rules;
- (i) a beneficiary of the foundation;
- (j) in respect of a specified object of the foundation which is charitable, the Attorney General;
- (k) a person who, in the view of the High Court, can reasonably claim to speak on behalf of an object or purpose of the foundation; or
- (l) a person who the High Court determines to be a person with sufficient interest under section 51(3);

“published” means published in a manner likely to bring it to the attention of those affected;

“register”, as a noun, means the register kept by the Registrar for the purposes of this Act under section 48(1);

“registered agent” means the class 4 licenceholder who is the registered agent of the foundation by virtue of section 28;

“the Registrar” means the person or body appointed as registrar of foundations under section 46.

PART 2

ESTABLISHMENT OF FOUNDATIONS

Application for establishment

Application
for the
establishment
of a
foundation

4. (1) Subject to subsection (2), an application may be made to the Registrar for the establishment of a foundation.

(2) The application must be made by the class 4 licenceholder named as the registered agent in the declaration referred to in subsection (5) and the Registrar must not accept an application made by any other person.

(3) The application must be made in a form and manner published by the Registrar and must contain the information required by the Registrar.

(4) It must be accompanied by —

- (a) a copy of the foundation instrument;

(b) the published fee.

(5) The application must also be accompanied by a declaration signed by the class 4 licenceholder making the application stating —

(a) that the class 4 licenceholder will become the registered agent of the foundation on its establishment;

(b) that the class 4 licenceholder is in possession of the foundation rules for the proposed foundation that have been approved by both the founder of the foundation and by the class 4 licenceholder; and

(c) that the address in the Island, specified in the declaration, is the business address in the Island of the class 4 licenceholder.

(6) The application and any document accompanying it must be authenticated in any manner determined by the Registrar.

The foundation instrument

5. (1) A foundation must have a foundation instrument that complies with the requirements of this Act.

Foundation must have a foundation instrument

(2) The foundation instrument must be in English.

6. (1) The foundation instrument must specify the name of the foundation.

The foundation instrument - name of foundation

(2) The name —

(a) must not be identical to the name under which another foundation is or has been established under this Act;

(b) must not be identical (ignoring the suffix) to the name under which a company is or has been established under —

(i) the Companies Acts 1931 to 2004;

(ii) the Companies Act 2006; or [c.13]

(iii) the Limited Liability Companies Act 1996; [c.19]

(c) must not be identical (ignoring the suffix) to the name of an institution which is a registered charity under the Charities Registration Act 1989; [c.11]

- (d) must not be so similar to the name of —
 - (i) another foundation, company or registered charity referred to in paragraph (a), (b) or (c); or
 - (ii) any other body of persons (corporate or unincorporate),

that the use of the name would, in the opinion of the Registrar, be likely to confuse or mislead;
- (e) must not, without the consent of the Registrar, contain a restricted word or phrase;
- (f) must not, in the opinion of the Registrar, be offensive, misleading or otherwise undesirable; and
- (g) must end with the word “Foundation”.

(3) For the purposes of subsection (2)(e), the Registrar may publish restricted words and phrases.

(4) The foundation instrument may prohibit the foundation from changing its name.

(5) If the foundation is not so prohibited, it must notify the Registrar of any change of name in accordance with section 45 (as the change of name entails an amendment to the foundation instrument).

(6) The new name must not contravene subsection (2).

(7) The Registrar may direct a foundation to change its name if it considers that the name does not comply with this section.

(8) The Registrar may assign a new name to a foundation which fails to comply with a direction under subsection (7) within 6 weeks from the date of the direction.

(9) Subsection (8) applies even where the foundation instrument does not allow the foundation to change its name.

(10) Where a foundation changes its name or a new name is assigned, the Registrar must enter in the register the new name of the foundation and date the entry.

7. (1) The foundation instrument must specify the objects for which the foundation is established.

- (2) The objects —
 - (a) must be certain, reasonable and possible; and
 - (b) must not be unlawful, contrary to public policy or immoral.
- (3) The objects may be charitable, non-charitable or both.
- (4) The objects may be —
 - (a) to benefit a person or a class of persons; or
 - (b) to carry out a specified purpose,

or to do both.

(5) It is sufficient, for the purpose of subsection (4)(a), for the foundation instrument to provide that the person or class of persons may be determined in accordance with the foundation rules.

(6) It is sufficient for the purpose of subsection (4)(b), for the foundation instrument to provide that the foundation is to hold assets selected in accordance with the foundation rules.

8. (1) The foundation instrument must specify the names and addresses of the members for the time being of the council of the foundation.

The foundation instrument - council members

(2) The foundation must notify the Registrar of any change to the composition of its council or to the names and addresses of its members in accordance with section 45 (as the change of these details entails an amendment to the foundation instrument).

9. (1) The foundation instrument must specify the name and address of the registered agent for the time being of the foundation.

The foundation instrument - registered agent

(2) The foundation must notify the Registrar of any change to the registered agent or to any change to the registered agent's name or addresses in accordance with section 45 (as the change of these details entails an amendment to the foundation instrument).

The foundation rules

10. (1) A foundation must have foundation rules that comply with this Act.

Foundation must have foundation rules

(2) The foundation rules may be in a language other than English.

(3) Where the foundation rules are not in English, the foundation must provide a copy of an accurate English translation of the rules to the registered agent.

(4) The registered agent must retain the translation.

(5) A foundation which fails to comply with subsection (3) commits an offence.

(6) A registered agent who fails to comply with subsection (4) commits an offence.

The
foundation
rules - objects

11. If a foundation has the provision of benefits to a person or to a class of persons as one of its objects, the foundation rules may provide for the manner in which that object may be amended —

- (a) to exclude a person or a class of persons;
- (b) to apply to a different person or to a different class of person; or
- (c) to include an additional person or an additional class of persons,

as the case may be.

The
foundation
rules - council

12. The foundation rules must —

- (a) establish a council to administer the foundation's assets and to carry out its objects;
- (b) provide for the appointment, retirement, removal and remuneration (if any) of the council's members;
- (c) set out how the decisions of the council are to be made and, if any decision requires the approval of any other person, specify the decisions and that person; and
- (d) set out the functions of the council, and, if they must or may be delegated or exercised in conjunction with any other person, the extent to which this must or may be done.

The
foundation
rules -
registered
agent

13. (1) The foundation rules must provide for the appointment, retirement, removal and remuneration (if any) of the registered agent of the foundation.

(2) In particular, the foundation rules must set out a procedure that ensures that a class 4 licenceholder is appointed to be the registered agent of the foundation as soon as reasonably practicable if its registered agent —

- (a) dies;
- (b) retires; or
- (c) otherwise ceases to act or to be able to act.

(3) Despite any provision of the foundation rules to the contrary, if the registered agent —

- (a) retires; or
- (b) is removed,

the retirement or removal does not take effect until immediately before the appointment of a new class 4 licenceholder to be the registered agent has taken effect.

14. (1) Subject to subsection (2), a foundation may have an enforcer. The foundation rules - enforcer

(2) If an object of a foundation is to carry out a specified non-charitable purpose, the foundation must have an enforcer in respect of that object.

(3) However, a foundation may, but need not, have an enforcer in respect of an object to benefit —

- (a) a person or class of persons, whether or not immediately ascertainable; or
- (b) some aggregate of persons ascertained by reference to some personal relationship.

(4) If it is to have one, the enforcer —

- (a) must be appointed in accordance with this Act; and
- (b) has, in respect of the foundation, the functions specified in this Act and in the foundation rules.

(5) If the foundation has an enforcer, the foundation rules must —

- (a) specify the name and address of the enforcer for the time being; and

- (b) provide for the enforcer's appointment.
- (6) Accordingly, the foundation rules must —
 - (a) provide how an enforcer may retire;
 - (b) provide how a new enforcer is to be appointed; and
 - (c) provide for the enforcer's remuneration (if any).
- (7) Apart from —
 - (a) a founder of a foundation; and
 - (b) a class 4 licenceholder who is a member of its council,a person may not be both a member of its council and its enforcer.
- (8) The enforcer must take reasonable steps to ensure that the council of the foundation carries out its functions.
- (9) Accordingly, the enforcer may require the council to account to the enforcer for the way in which it has —
 - (a) administered the foundation's assets; and
 - (b) acted to further the foundation's objects.
- (10) The foundation rules may give its enforcer the power to approve or disapprove any specified actions of its council.
- (11) Except to the extent that the foundation rules provide otherwise, the enforcer may sanction or authorise any action taken or to be taken by the council of the foundation that would not otherwise be permitted by the foundation rules if the enforcer considers that it is appropriate to do so.
- (12) However, the enforcer must not do so unless satisfied —
 - (a) that it is in the best interests of the foundation to do so; and
 - (b) that the council, in taking the action, acted or will be acting in good faith.
- (13) If the enforcer, acting under subsection (11), sanctions or authorises any action of the council of the foundation, the council, in taking that action, is to be taken for the purposes of third parties to have acted in good faith.
- (14) Nothing in subsection (11) is to be construed as permitting the enforcer to sanction or to authorise any action taken

or to be taken by the council of the foundation that would be inconsistent with this Act or any other enactment.

15. (1) A foundation need not have an initial dedication of assets.

The
foundation
rules -
dedication
of assets

(2) However, if it does have one, the details of the dedication must be specified in the foundation rules.

(3) Further assets may be dedicated to the foundation after its establishment, unless the foundation rules provide otherwise.

(4) If further assets are so dedicated, the details of the dedication must be specified in the foundation rules.

(5) The dedication of assets to a foundation by a person does not —

(a) make the person a founder; or

(b) vest in the person a right vested in a founder of the foundation.

16. (1) The foundation rules must specify what is to happen to any assets of the foundation that remain should the foundation be wound up and dissolved.

The foundation
rules - winding up

(2) If the remaining assets of the foundation are not disposed of for any reason, a person with sufficient interest may apply to the High Court under section 51 for a direction as to the disposal of those assets.

(3) Where the foundation is dissolved, all property and rights vested in or held on trust for the foundation immediately before its dissolution are to be treated as *bona vacantia* and consequently vest in the Treasury in trust for the Crown and may be dealt with in the same manner as other *bona vacantia* accruing to the Crown under the Companies Act 1931 (including the power to disclaim title or dispose of the property or right).

[XIII p.235]

17. (1) If a foundation is to be wound up and dissolved upon —

The foundation
rules - term

(a) the happening of some event; or

(b) the expiration of a fixed period of time,

details of the event or period must be specified in the foundation rules.

(2) If a person is to have the right to have a foundation wound up and dissolved, details of the right must be specified in the foundation rules.

(3) Subsection (2) is subject to any right arising under an enactment or rule of law.

The
foundation
rules - general

18. (1) The foundation rules may, in addition to the matters required to be set out in them by this Act, provide for any other matter in respect of the foundation.

(2) They may, in particular —

- (a) provide for the manner in which the foundation instrument or foundation rules may be amended;
- (b) restrict the provisions of the foundation instrument or foundation rules which may be amended; and
- (c) provide for the appointment, retirement, removal and remuneration (if any) of persons (other than the members of the council of the foundation, the registered agent of the foundation and its enforcer) to carry out functions in respect of the foundation.

(3) But where a foundation instrument specifies an exclusively charitable object, the foundation rules must not provide for the amendment of the foundation instrument so as to specify a non-charitable object in place of the charitable object.

The
foundation
rules - fees
and expenses

19. Unless the foundation rules provide otherwise, a person appointed under the foundation rules is entitled —

- (a) to receive payment from the foundation which has been agreed by the person and the foundation in respect of services provided by the person to the foundation;
- (b) to be reimbursed by the foundation for any reasonable fees or expenses incurred by the person in carrying out functions in respect of the foundation.

Power to
prescribe
model
foundation
rules

20. (1) Regulations made by the Treasury under section 61(1) may prescribe model foundation rules for foundations.

(2) Subsection (3) applies with effect from the date of a foundation's establishment.

(3) If the foundation rules —

- (a) make no provision for a matter for which provision is made by the relevant model foundation rules; and
- (b) do not expressly or by necessary implication exclude that provision of those model rules,

that provision is deemed to be included in those rules.

(4) In subsection (3), “the relevant model foundation rules” means the relevant model rules as in operation at the date of the foundation’s establishment.

(5) If model foundation rules are amended by regulations, the amendment does not affect the foundation rules of a foundation established before the amendment takes effect.

21. (1) Unless the foundation rules provide otherwise, a foundation need not supply a copy of the foundation rules to a person other than —

The foundation rules - supply of copies

- (a) a member of its council;
- (b) its registered agent;
- (c) its enforcer (if any); and
- (d) its founder.

(2) Subsection (1) does not affect any obligation of a foundation to supply a copy of the foundation rules imposed by an enactment or by an order of a court.

The council of a foundation

22. A foundation must have a council —

Foundation must have a council

- (a) to administer the assets of the foundation; and
- (b) to carry out its objects.

23. (1) The council of a foundation must have at least one member.

The council of a foundation - membership

(2) A member who is an individual must be at least 18 years old.

(3) A member must not be —

- [c. 3] (a) a person who is suffering from a mental disorder within the meaning of section 1 of the Mental Health Act 1998, or a corresponding provision of the law of a jurisdiction outside the Island;
- (b) a person who is disqualified from being a member of the council of a foundation or a director of a company under this or any other enactment; or
- [c. 4] (c) a person who is subject to a disqualification order or disqualification undertaking under the Company Officers (Disqualification) Act 2009.
- (4) The registered agent of a foundation is not precluded from also being a member of its council.

The council of a foundation - acts of members **24.** (1) The members of the council of a foundation must conduct the foundation's affairs in accordance with its foundation instrument, foundation rules, this Act and any other enactment.

(2) The members of the council of a foundation must —

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

(3) The duty under subsection (2)(a) is fiduciary in nature.

(4) An act of a member of the council of a foundation is valid despite any defect that may afterwards be found in —

- (a) the appointment of the member; or
- (b) the member's qualifications.

Decisions of the council **25.** (1) The exercise by the council of a power under this Act, the foundation instrument or foundation rules is to be sanctioned by —

- (a) a resolution at a meeting of the council; or
- (b) a written resolution under subsection (3).

(2) A resolution of the members of the council is passed at a meeting of the council if it is approved by a majority of the members of the council who are present at such meeting and (being

entitled to do so) vote on the matter (or such specified majority as the foundation rules provide).

(3) An action that may be taken by the council at a meeting may also be taken by a resolution of the council consented to in writing or electronic communication by all the members of the council (or such specified majority as the foundation rules provide).

(4) A resolution under subsection (3) may consist of several documents, including electronic communications, in like form each signed or assented to by one or more members of the council.

26. (1) This section applies to a person appointed under the foundation rules when acting or purporting to be acting in the course of that appointment.

The members
of the council
and others -
liability

(2) Nothing —

(a) in the foundation instrument or foundation rules; or

(b) in a contract between the foundation and a person to whom this section applies,

relieves, releases or excuses the member from any liability for the person's fraud, wilful misconduct or gross negligence.

(3) Any insurance purchased and maintained by the foundation in respect of a person to whom this section applies must not include insurance in respect of —

(a) any liability the person may incur —

(i) to the foundation; or

(ii) to pay a fine in respect of an offence; or

(b) any costs the person may incur —

(i) in defending criminal proceedings in which the person is convicted; or

(ii) in defending civil proceedings brought by the foundation in which judgment is given against the person.

27. (1) So far as is possible, the provisions of the Company Officers (Disqualification) Act 2009 apply to foundations with the necessary modifications, including the modifications specified in subsection (2).

Disqualification
from being a
member of
the council

[c.4]

- (2) In particular —
- (a) a foundation is to be treated as a company; and
 - (b) a member of the council of a foundation is to be treated as an officer of a company.

(3) Regulations made by the Financial Supervision Commission under section 61(2) may further modify the Company Officers (Disqualification) Act 2009 in its application to foundations.

The registered agent

Foundation must have a registered agent

- 28.** (1) A foundation must have a registered agent.
- (2) The registered agent of a foundation —
- (a) must be appointed in accordance with this Act; and
 - (b) has, in respect of the foundation, the functions specified in this Act and in the foundation rules.
- (3) On the establishment of a foundation the class 4 licenceholder named under section 4(5)(a) becomes the registered agent of the foundation.
- (4) Although the council of a foundation may include more than one class 4 licenceholder it may not have more than one registered agent at any one time.

The rights of persons under a foundation

Rights of the founder and others under the foundation rules

- 29.** (1) A founder of a foundation has such rights (if any) in respect of the foundation and its assets as are provided for in the foundation rules.
- (2) A person specified in the foundation rules (other than the founder, a member of the council, the registered agent and any enforcer) has such rights (if any) in respect of the foundation and its assets as are provided for in the foundation rules.
- (3) Any rights a person may have in respect of the foundation and its assets may be assigned to some other person if the foundation rules so provide.
- (4) If rights are assigned, the person assigning the rights must provide a copy of the assignment to the registered agent of the foundation.

(5) The registered agent must retain the copy.

(6) A person who fails to comply with subsection (4) commits an offence.

(7) A registered agent who fails to comply with subsection (5) commits an offence.

(8) Subsection (9) applies where —

(a) a founder or other person has rights in respect of the foundation and its assets; or

(b) a person has in writing been assigned any rights of a founder or other person in respect of a foundation and its assets,

and the founder or person dies or, in the case of a founder or a person that is not an individual, ceases to exist.

(9) Those rights vest in the council of the foundation unless the foundation rules provide otherwise.

30. (1) A beneficiary under a foundation has no interest in the foundation's assets. Rights of beneficiaries

(2) However, if —

(a) a beneficiary becomes entitled to a benefit under the foundation in accordance with the foundation instrument or the foundation rules; and

(b) the benefit is not provided,

the beneficiary, or a person acting on behalf of the beneficiary, may seek an order of the High Court ordering the foundation to provide the benefit.

(3) Except as provided by subsection (4), the beneficiary must seek the order within the period of 3 years from the time when the beneficiary became aware of the entitlement to the benefit.

(4) If the beneficiary has not attained the age of 18 years when he or she became aware of his or her entitlement to the benefit, the period referred to subsection (3) begins to run on the day on which the beneficiary attains that age.

31. (1) Subsection (2) applies where a written request is made by a person with sufficient interest in the foundation. Provision of information by foundations

(2) To the extent requested, the foundation must provide the person making the request with full and accurate information about any of the following —

- (a) the financial statements of the foundation;
- (b) the assets of the foundation;
- (c) the manner in which its assets are being administered;
- (d) the way in which it is carrying out its objects; and
- (e) the administration of the foundation.

(3) The information must be provided as soon as practicable after the foundation receives the request.

(4) Subsection (1) is subject to subsection (5).

(5) Subject to subsection (8), a foundation is not required to provide any person with information about the foundation where the provision of that information is prohibited under the foundation rules.

(6) If subsection (5) applies, the person making the request may apply to the High Court under section 51 for an order authorising or requiring the provision of the information.

(7) The person applying to the High Court must show that the provision of the information is necessary or expedient to enable the determination as to whether or not —

- (a) the foundation is carrying out its objects;
- (b) the council of the foundation is carrying out its functions;
- (c) the assets of the foundation are being properly administered; and
- (d) the foundation is being properly administered.

(8) Subsection (5) does not affect any other obligation of a foundation to supply information about the foundation imposed by an enactment or an order of a court.

The establishment of a foundation

The Registrar
may refuse
application
for
establishment

32. (1) The Registrar may refuse to accept an application for the establishment of a foundation if —

- (a) the Registrar considers that its proposed name contravenes section 6(2); or
- (b) a matter comes to the attention of the Registrar which leads the Registrar to consider that its proposed objects contravene section 7(2).

(2) If the Registrar does so refuse, the Registrar must inform the applicant of the refusal and the reason for the refusal.

(3) The applicant may, within 21 days of being informed of the refusal, appeal to the High Court.

(4) The High Court may order the Registrar to accept the application if it considers —

- (a) that the proposed name of the foundation does not contravene section 6(2); or
- (b) that the proposed objects of the foundation do not contravene section 7(2),

as the case may be, but must otherwise confirm the Registrar's decision to refuse to accept the application.

(5) This section also applies, with necessary amendments, to any application to register an amendment to the foundation instrument of a foundation that involves a change of its name or objects.

33. The Registrar must establish a foundation if —

Establishment

- (a) the Registrar accepts an application from a class 4 licenceholder for the establishment of the foundation on behalf of a person; and
- (b) the Registrar is satisfied that the requirements of this Act in respect of the establishment of the foundation have been complied with.

34. (1) To establish a foundation the Registrar must enter in the register —

Means of establishment

- (a) the name and business address of the foundation;
- (b) its objects;
- (c) the names and residential addresses of the members of its council; and

- (d) the name and business address in the Island of the registered agent of the foundation as shown in the declaration mentioned in section 4(5),

and date the entries.

(2) The Registrar must also issue the foundation with a registration number and a certificate of establishment.

(3) An entry in the register of the name of a foundation is conclusive evidence —

- (a) that, on the date mentioned in subsection (1), the foundation was established under this Act; and
- (b) that the requirements of this Act were complied with in respect of all matters precedent or incidental to the establishment of the foundation.

The effect of establishment

Nature of a foundation

35. A foundation —

- (a) is a legal person with the name specified in respect of it in the register;
- (b) is capable of suing and being sued and prosecuted in its own name; and
- (c) holds its assets for its objects.

Capacity of a foundation

36. (1) Except as provided by subsections (3) to (5), a foundation, acting through its council, is capable of exercising all the rights, powers and privileges of an individual.

(2) Accordingly, the capacity of a foundation is not limited by —

- (a) anything in the foundation rules; or
- (b) any act by a person appointed under the foundation rules.

(3) A foundation may not directly engage in commercial trading that is not incidental to the attainment of its objects.

(4) Regulations made by the Treasury under section 61(1) may further restrict the activities of foundations.

(5) Subsection (1) is subject to any restriction arising under an enactment or rule of law.

The application of laws to a foundation

37. (1) A question that arises in respect of —

- (a) a foundation; or
- (b) the dedication of assets to a foundation,

Manx law to
prevail in
respect of
foundations

must be determined in accordance with the law of the Island without reference to the law of a jurisdiction outside the Island.

(2) Without limiting subsection (1), the question may be a question as to —

- (a) the capacity of the founder of a foundation to seek the establishment of the foundation or the capacity of a dedicator to dedicate assets to it;
- (b) the validity, interpretation or effect of the foundation instrument or foundation rules or of an amendment of them;
- (c) the administration of the foundation, whether it is conducted in the Island or elsewhere, including questions as to the functions, appointment and removal of a person appointed under the foundation rules; or
- (d) the existence and extent of functions in respect of a foundation, including (but not limited to) powers of amendment, revocation and appointment, and the validity of the exercise of such a function.

(3) However, subsection (1) —

- (a) does not validate the dedication of assets to a foundation with property that is not —
 - (i) owned by a founder or dedicator; or
 - (ii) the subject of a power of disposition vested in a founder or dedicator;
- (b) does not affect the recognition of the law of a jurisdiction outside the Island in determining whether a founder or a dedicator is or was the owner of property or the holder of such a power;
- (c) is subject to an express provision to the contrary in the foundation instrument or foundation rules;

- (d) does not, as regards the capacity of a body corporate, affect the recognition of the law of its place of incorporation;
- (e) does not affect the recognition of the law of a jurisdiction outside the Island prescribing (without reference to the existence of the foundation or the terms of its foundation instrument and foundation rules) the formalities for the disposition of property;
- (f) does not validate a trust or disposition of immoveable property situate in a jurisdiction outside the Island that is invalid under the law of that jurisdiction; and
- (g) does not validate a testamentary disposition that is invalid under the law of the testator's last domicile.

Exclusion of
foreign law

38. (1) Neither of the following is void, voidable, liable to be set aside, invalid or subject to an implied condition because of a reason specified in subsection (3), (4) or (6) —

- (a) the establishment of a foundation; or
- (b) the dedication of assets to a foundation.

(2) None of the following is subject to an obligation or liability or deprived of a right, claim or interest arising from or under the foundation because of a reason specified in subsection (3), (4) or (6) —

- (a) a foundation;
- (b) a founder of a foundation;
- (c) an assignee of a right a founder of a foundation may have had in respect of the foundation or its assets;
- (d) a dedicator to the foundation;
- (e) a person appointed under the foundation rules;
- (f) a beneficiary under a foundation;
- (g) a third party.

(3) The first reason is that the law of a jurisdiction outside the Island —

- (a) prohibits or does not recognise foundations; or

(b) prohibits the dedication of assets to foundations.

(4) The second reason is that —

(a) the establishment of a foundation; or

(b) the dedication of assets to a foundation,

avoids or defeats or potentially avoids or defeats a right, claim, interest, obligation or liability conferred or imposed by the law of a jurisdiction outside the Island on a person as the result of a factor mentioned in subsection (5).

(5) The factors are —

(a) the existence of a personal relationship between a person referred to in subsection (4) and —

(i) a founder;

(ii) a dedicator;

(iii) an assignee of a right a founder of a foundation may have had in respect of the foundation or its assets; or

(iv) a beneficiary under the foundation; or

(b) the existence of foreign heirship rights.

(6) The third reason is that —

(a) the establishment of a foundation; or

(b) the dedication of assets to a foundation,

contravenes or potentially contravenes a rule of law or a judicial or administrative judgment, order or action of a jurisdiction outside the Island intended to recognise, protect, enforce or give effect to a right, claim, interest, obligation or liability mentioned in subsection (4).

(7) Despite any other enactment or rule of law, a judgment or order of a court of a jurisdiction outside the Island that concerns a question mentioned in section 37(1) is not —

(a) to be recognised, enforced or otherwise given effect to; or

(b) to give rise to a right, obligation or liability or raise any estoppel,

if the court in giving the judgment or making the order failed to take the operation of section 37 and this section into account.

PART 3

ADMINISTRATION OF FOUNDATIONS

Service of documents

39. A document required to be served on a foundation must be served on the foundation by leaving it at, or by sending it by post to, its business address.

Foundation to include name and address in its written communications

40. (1) A foundation must include its name, business address and registration number in its written communications, including those transmitted by electronic means.

(2) A foundation which contravenes subsection (1) commits an offence.

Documents to be kept at business address of foundation

41. (1) A foundation must keep the documents and records specified in subsection (2) at its business address or at such other place, within or outside the Island, as the council of the foundation determines.

(2) The documents and records referred to in subsection (1) are —

- (a) a copy of its foundation instrument and foundation rules as they are for the time being in force;
- (b) a register showing the names and addresses of the members of its council;
- (c) records sufficient to show and explain its transactions, including minutes of meetings of the council and resolutions of the council;
- (d) a record of the appointment of any enforcer of the foundation showing the date of his or her appointment and his or her name and address;
- (e) records that disclose, with reasonable accuracy, its financial position;
- (f) a register of the names and addresses of all dedicators to the foundation.

(3) Where documents and records are kept at a place other than at its business address, the foundation must provide the registered agent with a written record of the physical address of the place at which they are kept.

(4) Where the place at which they are kept is changed, the foundation must provide the registered agent with the physical

address of the new location of the documents and records within 14 days of the change of location.

- (5) The registered agent may —
 - (a) at any reasonable time specified by the registered agent inspect the documents and records of the foundation without charge and make copies of or take extracts from the records;
 - (b) require the foundation to provide originals or copies of the documents and records to the registered agent within 14 days.
- (6) The foundation must —
 - (a) allow an inspection under subsection (5)(a); and
 - (b) comply with a requirement under subsection (5)(b).
- (7) A foundation which contravenes this section commits an offence.

42. (1) A foundation must keep reliable accounting records which — Foundation
to keep
accounts

- (a) correctly explain the transactions of the foundation;
 - (b) enable the financial position of the foundation to be determined with reasonable accuracy at any time; and
 - (c) allow financial statements to be prepared.
- (2) When financial statements are prepared, they must —
- (a) be approved by the council of the foundation;
 - (b) include —
 - (i) a written statement recording the assets and liabilities of the foundation on a specific date;
 - (ii) a written statement recording the receipts, payments and other financial transactions undertaken by the foundation for the period ending on the date of the statements referred to in sub-paragraph (b)(i);
 - (iii) such notes as are necessary for a reasonable understanding of the statements referred to in sub-paragraphs (i) and (ii).

(3) The accounting records must be preserved for a period of 6 years from the end of the accounting period to which they relate or such longer period as the council determines.

(4) The accounting records must be kept at the business address of the foundation or at such other place as the council of the foundation thinks fit.

(5) Where the accounting records are not kept at the business address of the foundation, the foundation must provide to the registered agent a written record of the physical address of the place where the records are kept.

(6) Where the place at which the accounting records are kept is changed, the foundation must provide the registered agent with the physical address of the new location of the records within 14 days of the change of location.

(7) The registered agent may —

- (a) at any reasonable time specified by the registered agent inspect the accounting records of the foundation without charge and make copies of or take extracts from the records;
- (b) require the foundation to provide originals or copies of the accounting records to the registered agent within 14 days.

(8) The foundation must —

- (a) allow an inspection under subsection (7)(a); and
- (b) comply with a requirement under subsection (7)(b).

(9) A foundation which contravenes this section commits an offence.

Right to
require
financial
statements to
be prepared

43. (1) Subsection (2) applies if a foundation has not prepared financial statements for a continuous period of 18 months or more.

(2) A person with sufficient interest may demand that financial statements be prepared for the period —

(a) commencing at —

- (i) the end of the accounting period to which the preceding financial statements relate; or
- (ii) if there are no preceding financial statements, the date of establishment of the foundation; and

- (b) ending at the date specified in the demand, which must not be later than the date of demand.
- (3) A demand under subsection (2) must be in writing and deposited at the business address of the foundation.
- (4) The financial statements must be prepared by the foundation within 6 months of the date of deposit of the demand.
- (5) A foundation which fails to comply with subsection (4) commits an offence.

44. (1) A foundation must make an annual return to the Registrar.

Foundation
to make
annual return

(2) The annual return must be given in the form and manner published by the Registrar and must contain the information required by the Registrar.

(3) The annual return must be made up to the foundation's return date and must be sent to the Registrar within one month from that date.

(4) A foundation must pay to the Registrar the published fee when the annual return is sent.

(5) The foundation's return date is the anniversary of the foundation's establishment or such other date as the Registrar considers appropriate.

(6) A foundation which contravenes this section commits an offence.

45. (1) A foundation must notify the Registrar in accordance with subsections (2) and (3) of any amendment made to its foundation instrument within one month of the amendment taking effect.

Amendment of
the foundation
instrument

(2) The notification must be given in a form and manner published by the Registrar.

(3) It must be accompanied by —

- (a) a copy of the foundation instrument as amended; and
- (b) the published fee.

(4) If the Registrar is satisfied that the requirements of this Act in respect of the amendment of the foundation instrument have been complied with, the Registrar must enter the foundation instrument as amended in the register and date the entry.

(5) An attempt to amend the foundation instrument of a foundation otherwise than —

- (a) in accordance with its foundation instrument and foundation rules; or
- (b) by an order of the High Court,

is of no effect.

(6) The foundation must provide a copy of any notification under subsection (1) to the registered agent of the foundation.

(7) The registered agent must retain the copy.

(8) A foundation which fails to comply with subsection (1) or (6) commits an offence.

(9) A registered agent who fails to comply with subsection (7) commits an offence.

PART 4

THE REGISTRAR

The Registrar **46.** The Department must appoint a suitably experienced person or body to be the registrar of foundations.

Exercise of functions of the Registrar **47.** A function of the Registrar under this Act may, to the extent authorised by the Registrar, be exercised by an officer on the staff of the Department.

Register to be kept and made available for public inspection **48.** (1) The Registrar must keep a register for the purposes of this Act.

(2) The Registrar must include in the register the foundation instrument of each foundation.

(3) The Registrar must on payment of any published fee, make the register available for public inspection at any reasonable time.

(4) On payment of any published fee, the Registrar must supply a person with a certificate stating whether or not a named body is a foundation and, if it is, the following details as they appear in the register —

- (a) the date of its establishment;
- (b) its registration number;

- (c) its business address;
- (d) the names and residential addresses of the members of its council;
- (e) whether it has paid all fees and penalties due and payable; and
- (f) the name and business address of the registered agent or, if there is no such registered agent, its last registered agent.

(5) On payment of any published fee, the Registrar must supply a person with a certified copy of the foundation instrument of a foundation as included in the register.

- (6) There is admissible in evidence in legal proceedings —
 - (a) a certificate supplied under subsection (4); or
 - (b) a certified copy of the foundation instrument supplied under subsection (5).

49. (1) A record delivered to the Registrar under this Act may be kept by the Registrar in any form —

Keeping of records by the Registrar

- (a) that is approved by the Registrar; and
- (b) that is capable of being reproduced in a legible form.

(2) The Registrar is to be taken to have complied with an obligation to keep a record if the Registrar has complied with subsection (1) in respect of the record.

(3) The Registrar may destroy a record kept by the Registrar if —

- (a) it is an original record and the Registrar has recorded and kept the information in it in accordance with subsection (1); or
- (b) it relates to a foundation which has been dissolved more than 10 years previously.

50. (1) The Registrar may refuse to accept any document delivered under this Act if —

Power of the Registrar to refuse documents

- (a) it does not comply with this Act;
- (b) it has not been duly completed;

- (c) it contains any material error;
- (d) it is not legible; or
- (e) it is not accompanied by the published fee.

(2) If the Registrar refuses to accept a document, the Registrar must return it to the person who submitted it together with a notice specifying the grounds upon which the document was refused.

(3) Subject to subsection (5), a document refused by the Registrar is deemed not to have been delivered.

(4) A person who is aggrieved by the refusal of a document by the Registrar may appeal to the High Court within one month after the date of refusal or such further time as the High Court may allow.

(5) On hearing an appeal under subsection (4), the High Court may confirm the refusal or make such determination in the matter as it sees fit.

PART 5

POWERS OF THE HIGH COURT

Applications
to the High
Court

51. (1) A person with sufficient interest in respect of a foundation may apply to the High Court for the Court to take, in respect of the foundation, any of the actions specified in this Part.

(2) Where the question or one of the questions to be determined by the High Court is whether a person is a person with sufficient interest in respect of a foundation, the reference in subsection (1) to a person with sufficient interest is to be taken, for the purpose of determining that question, to include such a person.

(3) Where the High Court considers that a person's interest in a foundation is sufficiently close that the person ought to be treated as a person with sufficient interest, the High Court may determine that the person is to be a person of sufficient interest for the purposes of this Act.

Power of the
High Court
to order
compliance

52. (1) If the High Court is satisfied that, in respect of a foundation, a person has failed to comply with —

- (a) a requirement of this Act or of the foundation instrument or foundation rules; or

- (b) an obligation imposed on the person by this Act or the foundation instrument or foundation rules,

the Court may, by order, require the person to comply with the requirement or obligation.

(2) If the High Court is satisfied that a foundation, acting through its council, has failed to carry out its objects or any of them, the Court may, by order, require the foundation to do so.

(3) An order under this section may specify the action the person or foundation is required to take.

53. (1) The High Court may order the amendment of the foundation instrument or the foundation rules if the Court is satisfied —

Power of the High Court to order amendment of foundation instrument or foundation rules

- (a) that the change will assist the foundation to administer its assets or to attain its objects; or
- (b) that those objects are no longer attainable and that the change will assist the foundation to attain objects as near as reasonably possible to those objects.

(2) If the order is to amend the foundation instrument, section 45 has effect.

(3) Without limiting subsection (1), the High Court may make an order under subsection (1) in the event that a foundation does not have foundation rules or that the terms of those rules cannot be readily ascertained or are otherwise incomplete.

54. (1) This section applies if the High Court is satisfied —

Power of the High Court to give directions

- (a) that if it gives a direction it will assist a foundation to administer its assets or to carry out its objects; or
- (b) that it is otherwise desirable for the Court to give a direction.

(2) The Court may give a direction as to —

- (a) the meaning and effect of a provision or term in the foundation instrument or foundation rules;
- (b) the manner in which the council of the foundation is required to carry out the administration of the foundation's assets or the carrying out of its objects;

- (c) the functions of the council of the foundation or of any of its members;
- (d) the functions of any other person appointed under the foundation rules;
- (e) whether a person is a beneficiary;
- (f) the rights of beneficiaries under the foundation as between themselves or as between themselves and the foundation; or
- (g) such other matters as the High Court considers relevant to the foundation, its foundation instrument, its foundation rules, the administration of its assets or the carrying out of its objects.

(3) The High Court may, in addition to giving a direction under subsection (2), make such an order as it thinks fit to give effect to the direction.

Power of the High Court to protect interests under a foundation

55. The High Court may by order appoint a person to protect the interests of a person who the Court is satisfied is or may come to be a beneficiary under a foundation, where —

- (a) the person is unborn; or
- (b) the Court is satisfied that the person is unable to act on his, her or its own behalf.

Power of the High Court to dismiss or appoint a registered agent

56. (1) If the High Court is satisfied that it is in the interest of a foundation to do so, it may order —

- (a) the removal of the registered agent of the foundation; or
- (b) the appointment of a class 4 licenceholder to be the registered agent of the foundation,

or do both.

(2) As a change of registered agent entails an amendment to the foundation instrument, section 45 has effect.

Power of the High Court to take action on behalf of others

57. (1) This section applies where the High Court is satisfied, in respect of a foundation, that a person has failed to comply with —

- (a) a requirement of this Act or of the foundation instrument or foundation rules; or

- (b) an obligation imposed on the person by this Act or by the foundation instrument or foundation rules.

(2) The High Court may, by order, comply with the requirement or obligation on behalf of the person who has failed to do so.

- (3) The Court must not do so unless it is satisfied —

- (a) that to do so will assist the foundation in the administration of its assets or the attainment of its objects; or

- (b) that it is otherwise desirable that it should do so.

(4) Where the Court does so, its order has the same effect as if it were an action taken by the person required to comply with the requirement or obligation.

58. (1) An order made by the High Court under this Part in respect of a foundation may, in particular, provide for the appointment or removal of a person appointed under the foundation rules.

General power of the High Court in respect of orders

- (2) Any order made by the High Court under this Part —

- (a) may be made on such terms; and

- (b) may impose such conditions,

as the Court thinks fit.

PART 6

CLOSING PROVISIONS

59. A person commits an offence if, when giving information to the Registrar, the person —

False or misleading statements

- (a) makes a statement which the person knows is false in a material particular; or

- (b) recklessly makes a statement which is false in a material particular.

60. (1) A person guilty of an offence under this Act is liable on summary conviction to a fine not exceeding £5,000.

Offences

(2) Subsection (3) applies if an offence under this Act is committed by a foundation and it is proved that a member of the council of the foundation or its registered agent (or a person purporting to act in either such capacity) authorised, permitted, participated in or failed to take all reasonable steps to prevent the commission of the offence.

(3) The member of the council or registered agent (or person purporting to act in either such capacity), as well as the foundation, commits the offence and is liable to the penalty provided for the offence.

(4) Subsection (5) applies if an offence under this Act is committed by a body corporate and it is proved that a director or other officer of the body corporate, or its registered agent (or a person purporting to act in any such capacity) authorised, permitted, participated in or failed to take all reasonable steps to prevent the commission of the offence.

(5) The director, officer or registered agent (or person purporting to act in any such capacity), as well as the foundation, commits the offence and is liable to the penalty provided for the offence.

Regulations

61. (1) The Treasury may make regulations in respect of any of the following —

- (a) restricting the business that foundations may carry on;
- (b) the conduct of business of foundations;
- (c) permitting the continuance in the Island of foundations or analogous bodies established outside the Island;
- (d) for foundations established in the Island to be permitted to seek continuance outside the Island;
- (e) the taxation of foundations.
- (f) the form and content of model foundation rules;
- (g) the form and content of the accounting records and financial statements of foundations;
- (h) requiring compliance with specified accounting standards;
- (i) requiring the audit of the financial statements of foundations;

- (j) the qualifications of auditors of such statements;
- (k) requiring auditors to comply with systems of public oversight specified in the regulations;
- (l) the winding up and dissolution of foundations;
- (m) the removal of foundations from the register (by striking them off or otherwise);
- (n) the merger of foundations;
- (o) any other matter where the Treasury considers that regulations are necessary or expedient to give effect to this Act.

(2) The Financial Supervision Commission may make regulations modifying the Company Officers (Disqualification) Act 2009 in its application to foundations.

[c.4]

- (3) Regulations under subsections (1) and (2) may —
- (a) provide for their contravention to be an offence and prescribe a penalty for commission of the offence of a fine not exceeding £5,000 on summary conviction;
 - (b) exempt a person from a provision of this Act to which the regulations relate;
 - (c) permit a person to exercise a discretion in respect of any matters specified in the regulations;
 - (d) require compliance with standards or the adoption of practices recommended or specified from time to time (whether before or after the making of the regulations) by a person or body specified in the regulations;
 - (e) permit a person to publish fees that may be imposed by the regulations;
 - (f) permit a person to publish forms and other material in respect of any matter specified in the regulations; and
 - (g) contain consequential, incidental, supplementary and transitional provisions which the maker of the regulation considers to be necessary or expedient.

(4) The power conferred by subsection (3)(g) includes the power to modify, adapt or amend any provision of this Act or any other enactment.

(5) Regulations under this section must not come into operation unless approved by Tynwald.

Fees,
penalties
and forms

- 62.** (1) The Registrar may —
- (a) set the level of any fees payable under this Act;
 - (b) impose a penalty for non-payment of a published fee and set the level of that penalty;
 - (c) specify the form of any statement, document or form required under this Act ; and
 - (d) publish such fees, penalties and forms.
- (2) A published fee or penalty is a debt due to the Registrar from the foundation and may be sued for accordingly.
- (3) Fees and penalties payable under this Act form part of the General Revenue of the Island.

Application
of bankruptcy
rules in
winding up

63. Unless regulations made under section 61(1) provide otherwise, in the winding up of an insolvent foundation the same rules concerning rights of creditors, proof of debts, valuation of liabilities and preferential payments as are in operation for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt apply and must be observed.

Foundation
not precluded
from being a
registered
charity
[XIX p.632]
[c.11]

64. A foundation is an “institution” for the purposes of section 14 of the Charities Act 1962 and a “Manx institution” for the purposes of section 15 of the Charities Registration Act 1989.

Taxation
status of a
foundation
[XXI p.260]

65. In section 120 of the Income Tax Act 1970 (definitions), in the definition of “corporate taxpayer”, after paragraph (b) insert —

“(ba)a foundation within the meaning of the Foundations Act 2011;”.

Amendment
of the
Financial
Services Act
2008
[c.8]

- 66.** (1) The Financial Services Act 2008 is amended as follows.
- (2) In the definition of “specified enactment” in section 33(4), at the end insert —

“(i) the Foundations Act 2011.”.

- (3) In Schedule 1, in paragraph 2(2), at the end insert —
“(zb) the Foundations Act 2011.”.

