

ANTIGUA AND BARBUDA



THE INTERNATIONAL FOUNDATIONS ACT, 2007

No. of 2007

THE INTERNATIONAL FOUNDATIONS ACT, 2007

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ANTIGUA AND BARBUDA
THE INTERNATIONAL FOUNDATIONS ACT, 2007
No. of 2007

AN ACT to provide for the regulation of international foundations and related matters.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I - PRELIMINARY MATTERS

1. Short title

This Act may be cited as the International Foundations Act, 2007.

2. Definitions

In this Act unless the context otherwise requires—

“auditor” means a person who

- (a) is qualified as an accountant by examination conducted by:
 - (i) any of the institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland;
 - (ii) the Canadian Institute of Chartered Accountants; or
 - (iii) the American Institute of Certified Public Accountants;and is a practicing member in good standing with any of those institutes; or
- (b) is approved by any supervisory body of the accounting profession recognised under the laws of Antigua and Barbuda;

“beneficiary” of a foundation means a person

- (a) who is identifiable by name or is ascertainable by reference to
 - (i) a class, or
 - (ii) a relationship to a person, whether or not living or in existence at the time of the registration of the foundation or at the time which, under the terms of the foundation charter, is the time by reference to which members of a class are to be determined; and
- (b) who is entitled to benefit under the foundation charter or by-laws or in whose favour a power to distribute any part of the foundation endowment may be exercised;

“Board” means the Board of Directors established to manage the Financial Services Regulatory Commission under Section 316 of the Antigua and Barbuda International Business Corporations Act, Cap. 222;

“by-laws” means the rules, regulations or administrative provisions adopted by a foundation council for the internal governance of the administration of the foundation;

“Commission” means the Financial Services Regulatory Commission, the body established under Section 316 of the Antigua and Barbuda International Business Corporations Act, Cap. 222;

“company” means any body corporate or unincorporate;

“Court” means the High Court of Antigua and Barbuda;

“creditor” means a person who has obtained a judgment for specified monetary damages issued by the Court, or an assignee of the judgment;

“date of establishment” of a foundation means the date on which the foundation is registered;

“disposition” of property includes every form of conveyance, transfer, assignment, sale, gift, encumbrance or other transaction by which any legal or equitable interest or right in the property is voluntarily created, transferred or extinguished;

“domiciliary” means a person who resides in Antigua and Barbuda with the intention of making Antigua and Barbuda his or her permanent place of residence or an entity that is incorporated or registered in Antigua and Barbuda and has its principal place of business in Antigua and Barbuda;

“endowment” means the property of a foundation;

“familial relationship” means a relationship by blood or by marriage recognised by the laws of Antigua and Barbuda, and in particular, a relationship in which

- (a) one person is the adopted, legitimate or illegitimate child, direct lineal descendant or direct ancestor of the other person; or
- (b) one person is married to the other person;

“fiscal offence” means a crime or violation of existing tax, finance, securities, money laundering, accounting, currency, foreign exchange control or corporate laws, rules or regulations of Antigua and Barbuda or elsewhere;

“foreign” means a location or jurisdiction other than Antigua and Barbuda;

“foreign law” means the laws, rules, regulations and judicial precedents recognised in a location or jurisdiction other than Antigua and Barbuda;

“foreign foundation” means a foundation which is governed by the laws of a jurisdiction other than Antigua and Barbuda;

“functions” includes rights, obligations and duties set forth in this Act or in the terms of the foundation charter;

“governing law” means the law specified in a foundation charter or, if no law is specified, the law of the jurisdiction in which the rights of all parties and the terms of the foundation are construed and regulated;

“heirship rights” means any interest or right in, against, or to property as a result of a person’s death, other than an interest or right created by testamentary disposition or other specific voluntary disposition by the person;

“insolvency” means the filing of a petition in bankruptcy in a court having subject matter jurisdiction over the petition and personal jurisdiction over the debtor;

“interest” in relation to a beneficiary means the beneficiary’s interest in a foundation or its property;

“judgment” means an enforceable judgment issued by the Court;

“member” means a member of the foundation council;

“Minister” means the Minister of Finance of Antigua and Barbuda;

“minor” means a person who has not attained the age of eighteen years;

“non-resident” means a person who is not a domiciliary;

“person” means a natural person or a company;

“personal representative” means the executor or administrator of the estate of a deceased natural person or a person appointed in writing by another person, by a court or by a government to act on behalf of the other person;

“principal place of business” means the location where a substantial portion of a company’s or entity’s administrative and managerial activities are conducted;

“profit” includes gain or advantage;

“property” means real, personal, movable, immovable, tangible, intangible or intellectual assets of any description, wheresoever situated, including future interests and partial interests;

“protector”, with respect to an international foundation, means a person or entity who

(a) is not a member;

(b) holds a power to appoint or remove a member or to approve or disapprove of a foundation council’s actions, decisions or transactions; and

(c) to the extent set forth in the terms of the foundation charter, may direct the foundation council in matters relating to the foundation;

“provisions of this Act” include the provisions of any order made under this Act;

“registered office” means the office of the Antigua and Barbuda member of the foundation council for which the service of all documents upon the foundation is to be addressed;

“relatives” means current spouse, direct lineal descendants, whether adopted, legitimate or illegitimate, ancestors and siblings;

“resolution” means a formal decision adopted by the foundation council and memorialized in written form authorizing a particular act or transaction;

“serious criminal offence” means a criminal offence punishable on conviction by imprisonment for a period of not less than two years;

“terms of the foundation” means the provisions of a foundation charter or equivalent enabling document which provide for the establishment of the foundation, upon proper execution and registration under this Act.

PART II - INTERNATIONAL FOUNDATION

3. International foundation

(1) An international foundation is a separate legal entity under the laws of Antigua and Barbuda upon proper execution of a foundation charter or equivalent document by a founder and by the members of a foundation council, by which a founder makes a disposition of rights, title or interest in property to the foundation for a specific purpose.

(2) Upon the disposition and acceptance by the foundation council on behalf of the foundation, the property ceases to be a part of the estate of the founder irrevocably, and shall be the exclusive property of the foundation as its endowment.

(3) A foundation shall be administered by a foundation council, which shall be vested with the powers and obligations set forth in the foundation charter and this Act.

(4) The foundation council shall represent and act on behalf of the foundation in all matters.

(5) The foundation council shall administer the foundation and its endowment in accordance with the foundation charter and this Act solely for the benefit of the beneficiaries of the foundation, or if no beneficiaries exist, solely for the purposes, charitable or otherwise, set forth in the foundation charter.

(6) Neither the foundation council nor any of its members shall have personal ownership or title to the endowment.

(7) No creditor of a member of the foundation council, other than a founder or beneficiary of the foundation, shall have any right to the foundation endowment or right to cause the foundation council or any member of the foundation council to act in violation of its or his duties or obligations under the terms of the foundation charter or this Act.

(8) The endowment shall be exempt from attachment, lien, levy or other restraint by a creditor of a member of the foundation council other than a founder or beneficiary of the foundation.

(9) The establishment of a foundation shall not be complete until the foundation has registered.

(10) Upon the establishment of a foundation, the foundation shall have the right to hold title, rights or other interests in and to property in its own name or through a nominee in the same manner and with the same rights and obligations as any person under the laws of Antigua and Barbuda.

(11) Subject to section 11, a foundation may be established for a charitable or non-charitable purpose or for both, or for no purpose, other than the benefit of a founder or a beneficiary or both.

(12) A foundation may be established and exist with no beneficiaries, provided that it is established for a clear and specific purpose which is specified in the foundation charter.

(13) A foundation may not manufacture products or provide goods or services for sale anywhere in the Caribbean region, or otherwise actively conduct business for profit in Antigua and Barbuda.

(14) Subject to approval by the Government, a foundation may hold title to real property in Antigua and Barbuda or elsewhere and may hold equity interests in companies incorporated or registered in Antigua and Barbuda or elsewhere.

(15) Unless otherwise specified, all references in this Act to a foundation mean an international foundation.

4. Domicile of founder and beneficiary

Neither the founder nor the beneficiaries of an international foundation shall be domiciliaries of Antigua and Barbuda.

5. Domicile of foundation council members

At least one member of the foundation council shall at all times be—

- (a) a domiciliary of Antigua and Barbuda;
- (b) subject to section 34, a company or other entity incorporated or registered under the Antigua and Barbuda Companies Act; or
- (c) a company licensed under the Antigua and Barbuda Corporate Management and Trust Service Providers Act, 2007.

6. Name of international foundation

(1) The name of an international foundation shall end with the word “Foundation” or its abbreviation, “Found,” or its equivalent in any language using Latin characters, and must not be similar to the name of a foundation previously existing in Antigua and Barbuda so as to be misleading as to the identity or activities of a foundation.

(2) The name of a foundation may not be geographical in nature unless it is established that the name has a secondary meaning.

(3) The name of a foundation shall not imply a connection with any Antigua and Barbuda government department, agency, authority or branch, any political party or any university or professional association recognised by the laws of Antigua and Barbuda.

(4) A foundation may not include any of the following words, abbreviations, or a variation or synonym of the words, in its name: Bank, Credit, Depository, Insurance, Surety, Bond, Securities or Broker, unless specifically licensed to engage in that activity under the Antigua and Barbuda International Business Corporations Act, Cap. 222.

(5) The Commission may refuse to register a foundation or an amendment changing the name of an international foundation where the name to be registered is, in the opinion of the Commission, in any way misleading or is otherwise undesirable.

7. Registered office of international foundation

(1) The address for service of any documents upon a foundation shall be its registered office.

(2) The registered office of a foundation shall be the address of the Antigua and Barbuda member of the foundation council.

8. Irrevocable nature of international foundation

(1) Subject to Part VI, a foundation shall be irrevocable.

(2) If, after the foundation is established, it becomes impossible for the foundation council to reasonably fulfil or effectuate all of the purposes of the foundation, as specified in its charter, the charter may be amended by the foundation council or the foundation may be dissolved.

9. Duration of international foundation

A foundation may be established for any period or for an indefinite period.

10. Governing law of international foundation

(1) The governing law of an international foundation shall be the law of Antigua and Barbuda, unless the foundation charter specifies the law of a different jurisdiction, or the foundation council chooses the law of a different jurisdiction.

(2) Where the law of Antigua and Barbuda is the governing law of the foundation, the foundation shall be subject to the exclusive and continuing jurisdiction of the Court, which shall be the exclusive forum for the adjudication of all disputes relating to the foundation.

11. Charitable foundation

(1) A charitable foundation must be established for one of the following purposes, which shall be clearly specified in its charter—

- (a) the relief of poverty;
- (b) the advancement of health, education, art, culture, sports or religion;
- (c) the protection of the environment, fauna or flora;
- (d) the advancement of human rights or fundamental freedoms; or

(e) any other purpose which is beneficial to the community in Antigua and Barbuda or elsewhere.

(2) Participation in, or support of, any political campaign, the support of any political party or political cause, or the support or advocacy of any legislation shall not be regarded as a charitable purpose.

12. Qualification of charitable foundation

(1) A foundation may qualify as a charitable foundation under this Act regardless of the timing or form of any distribution in furtherance of any of the purposes specified in section 11.

(2) A foundation created for both charitable and non-charitable purposes qualifies as a charitable foundation, even if the non-charitable purposes are the primary purposes of the foundation or if a majority of distributions are made to non-charitable beneficiaries.

(3) Business activities in Antigua and Barbuda undertaken by a charitable foundation that are necessary for the proper administration of the foundation are permissible only to the extent that the activities are ancillary and incidental to the main purpose of the foundation.

PART III - VALIDITY OF INTERNATIONAL FOUNDATION

13. Validity of international foundation

(1) No international foundation governed by this Act and no disposition of property to be held by the foundation shall be declared invalid, void, voidable, liable to be set aside, restrained or defective in any manner, nor shall the capacity of any founder, foundation council or member of a foundation council, protector or the right of any beneficiary be questioned by reason that

- (a) the laws of a foreign jurisdiction prohibit or do not recognise the foundation or disposition of property to the foundation;
- (b) a foundation or disposition of property to be held by a foundation avoids or defeats rights, claims or interests conferred by the law of a foreign jurisdiction upon a person or contravenes any foreign rule, law, judicial or administrative decision, order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests; or
- (c) a law of Antigua and Barbuda is inconsistent with any foreign law, rule or order.

(2) A foundation shall not be declared invalid or be affected in any way if a founder

- (a) retains, possesses or acquires any benefit or interest in or from the foundation; or
- (b) is or becomes a beneficiary of the foundation, even if the founder is or becomes the sole beneficiary of the foundation.

(3) A foundation shall not cease to be valid by reason that the foundation council has no members or that there are fewer than the number of members required by the terms of the foundation charter or by this Act. If this occurs, a member or members shall be appointed in accordance with the charter, or if the charter does not contain a relevant provision or the person authorised in the charter to appoint a member is unable or unwilling to do so, a former member, protector, founder or a beneficiary may apply to the Court for an order appointing a member or members.

14. Declaration of invalid and unenforceable international foundation

(1) The Court may declare an international foundation to be invalid and unenforceable if it determines that—

- (a) the foundation was created or established under duress, mistake, undue influence or misrepresentation;
- (b) the foundation was created for a purpose that violates the laws of Antigua and Barbuda, or the foundation purports to confer any right or power to impose any obligation the exercise of which is contrary to the laws of Antigua and Barbuda;
- (c) the foundation is contrary to the public policy of Antigua and Barbuda;
- (d) the foundation endowment, or part of it, has been determined by the Court to be the proceeds of a serious criminal offence for which the founder has been convicted in any jurisdiction, if the offence is also a serious criminal offence under the laws of Antigua and Barbuda, but if the Court determines that a portion of the foundation endowment is the proceeds of a serious criminal offence, the Court may declare the foundation invalid only with respect to that property and the Court may declare what property is to be held subject to the foundation;
- (e) the terms of the foundation charter are so uncertain that its performance is rendered impossible; or
- (f) the founder was, at the time of the establishment of the foundation, incapable under the laws of Antigua and Barbuda of creating such a foundation.

(2) Where a foundation is created for multiple purposes of which some are lawful and others are not or where some of the terms of the foundation charter are lawful and others are not

- (a) if those purposes or terms cannot be separated, the foundation shall be declared invalid; and
- (b) if those purposes or terms can be separated, the Court may declare that the foundation is valid as to the purposes or terms which are lawful.

(3) Property provided by a founder to a foundation that is declared invalid by the Court shall, subject to any order of the Court, be held by the foundation council, as nominee for the founder absolutely or, if the founder is deceased or no longer in existence, as if the property had formed part of his or her estate at death or part of the founder's assets at the date of dissolution.

15. Determination of validity of international foundation

In determining the validity of an international foundation, the Court shall apply:

- (a) the provisions of this Act;
- (b) the other laws of Antigua and Barbuda; and
- (c) any other applicable law that would validate the foundation.

16. Powers of Commission

(1) The Commission may

- (a) prohibit the registration of an international foundation;

- (b) apply to the Court to order an international foundation to cease carrying on an activity immediately, or within the time ordered by the Court; or
- (c) remove an international foundation from any register, effective thirty days after notice of removal is served upon the foundation.

(2) The Commission may take actions to modify its actions under this section.

PART IV - ESTABLISHMENT OF INTERNATIONAL FOUNDATION

17. Registration

(1) The Commission shall maintain a Register of International Foundations containing only the following information for each foundation—

- (a) the name of the foundation;
- (b) the name and address of the Antigua and Barbuda member of the foundation council; and
- (c) the date of the registration of the foundation.

(2) All international foundations shall be registered on the Register of International Foundations.

(3) Any foundation that specifies the laws of Antigua and Barbuda for any part of its administration shall be registered on the Register of International Foundations.

(4) An application for entry on the Register of International Foundations shall be made to the Commission within forty-five days of the date on which the foundation charter was executed by the Antigua and Barbuda member of the foundation council.

(5) Where the governing law of a foreign foundation is changed to the law of Antigua and Barbuda, an application for entry on the Register as an international foundation shall be made to the Commission within forty-five days of the date on which the foreign foundation's charter is amended to provide for the law of Antigua and Barbuda to be the governing law of the foundation.

(6) An application for entry on the Register of International Foundations shall be made in accordance with Schedule 1, and shall be accompanied by the following:

- (a) the prescribed fee;
- (b) the name and address of the Antigua and Barbuda member of the foundation council; and
- (c) a certificate from the Antigua and Barbuda member, in accordance with Schedule 2.

(7) Upon receipt of the prescribed fee and the certificate, the Commission shall—

- (a) enter the information required in subsection (1) in the Register of International Foundations; and
- (b) issue a Certificate of Establishment to the foundation council.

(8) The date of establishment of the foundation is the date on which all required documentation and the prescribed fee have been received by the Commission.

(9) A Certificate of Establishment is valid for one year from the date of establishment and is renewable in accordance with section 18.

(10) A Certificate of Establishment under the hand and seal of the Commission shall be conclusive evidence of the existence and validity of the foundation and that the foundation is in full compliance with all registration requirements under this Act.

(11) If the foundation council fails to submit the application for entry on the Register of International Foundations within the forty-five day period, the foundation council may, on application, in accordance with Schedule 3 and payment of the prescribed extension fee, request an extension of time to register. The Commission may extend the period to register for an additional forty-five days, if satisfied that there are sufficient grounds for the delay in registration.

(12) Any amendments to the charter of a foundation must be deposited with the Commission within ten days of the execution of the amendment by the members of the foundation council.

(13) All fees payable under this section are non-refundable and are not contingent on the approval of any application.

18. Renewal of registration

(1) An application for renewal of registration shall be made by filing an application for renewal with the Commission in accordance with Schedule 4, together with the prescribed renewal fee.

(2) An application for renewal of registration shall be made not later than ninety days after the date of expiration of the last certificate.

(3) On application of the foundation council in accordance with Schedule 5, and payment of the prescribed fee, the Commission may extend the period to renew the foundation registration for an additional ninety days, if satisfied that there are sufficient grounds for the delay in renewal of the registration.

(4) Every renewal of registration shall take effect from the date of expiration of the last certificate and shall be valid for one year.

(5) Where the application for renewal of registration is not made within ninety days after the date of expiration and the Commission has not extended the period of renewal, a member of the foundation council may make an application accompanied by the prescribed fee, for the reinstatement of the foundation, in accordance with Schedule 6, within one hundred and eighty days after the date of expiration of the last Certificate.

(6) This Act ceases to apply to a foundation ninety days after the expiration of its Certificate of Registration unless the Commission extends the renewal period, in which case this Act ceases to apply to the foundation one hundred and eighty days after the expiration of its Certificate of Registration, and the Commission shall then mark the Register entry of the foundation as cancelled, unless the Certificate is renewed or reinstated.

(7) All fees payable under this section are non-refundable and are not contingent on the approval of any application.

19. Notice of dissolution of foundation

Upon dissolution or relocation of a foundation to a foreign jurisdiction, the foundation council shall notify the Commission within thirty days and return the Certificate of Establishment. The Commission shall then cancel the Register entry and issue a Certificate of Discontinuance.

20. Inspection of the Register of International Foundations

Neither the Register of International Foundations nor the files or records of the Commission shall be open for inspection by anyone other than a founder, foundation council, protector or beneficiary of a foundation, and then only with respect to the entry of that foundation on the Register, except that the foundation council may, in writing, authorise a person to inspect the entry of that foundation on the Register. The Register, files and records of the Commission shall, however, be open for inspection by any officer of the Government of Antigua and Barbuda or any of its agencies, authorities or courts in the course of carrying out his or her mandate.

PART V - FOUNDATION CHARTER**21. Foundation charter**

- (1) A foundation charter is the governing document of the foundation.
- (2) The charter shall—
 - (a) specify the name of the foundation;
 - (b) specify the beneficiary or class of beneficiaries, or, if no beneficiary, the purpose of the foundation;
 - (c) appoint a foundation council and specify its members;
 - (d) set forth the respective rights, duties, responsibilities and beneficial interests of the foundation council and the beneficiary;
 - (e) set forth the method for appointing or removing a member of the foundation council;
 - (f) specify the initial endowment; and
 - (g) set forth the manner in which the endowment shall be maintained and distributed.
- (3) The charter may designate a protector and set forth the protector's rights, duties and responsibilities.
- (4) The charter shall be executed by a founder and by each member of the foundation council and any protector, either before two witnesses or before a notary public or officer of a court.
- (5) The foundation charter may convey property to the foundation and, upon execution of the charter by the founder and by each member of the foundation council, property so conveyed shall vest in the foundation.
- (6) A finding that part of the foundation charter is invalid or unenforceable does not affect the validity or enforceability of the rest of it.

22. Execution of the foundation charter

Except where there is an express provision to the contrary set forth in the foundation charter, the charter may be executed by a founder, member of a foundation council, protector and any other party at different times and in different places, whether within Antigua and Barbuda or elsewhere, provided all signatures are either witnessed or notarised.

23. Amendments to the charter

An amendment to the foundation charter must be unanimous and shall be signed by all members of the foundation council in the manner set forth in subsection 21(4).

24. Interpretation rules

- (1) Where the terms of a foundation charter conflict with the laws of Antigua and Barbuda, the Court shall interpret them so that they may conform with the laws of Antigua and Barbuda.
- (2) The terms of a foundation charter shall be interpreted as follows—
 - (a) first, for the benefit of a beneficiary of the foundation;
 - (b) second, to effectuate the purpose of the foundation;
 - (c) third, for the benefit of a founder;
 - (d) fourth, for the benefit of the foundation council; and
 - (e) lastly for the benefit of other interested parties.

PART VI - DISSOLUTION OF INTERNATIONAL FOUNDATION**25. Dissolution by foundation council**

An international foundation shall be irrevocable upon the registration of the foundation on the Register of International Foundations pursuant to Section 17. However, the foundation council shall have the power to dissolve the foundation, upon resolution signed by all the members of the foundation council, under the following circumstances—

- (a) the foundation endowment contains de minimis assets, with an aggregate value of less than twenty thousand Eastern Caribbean dollars;
- (b) if the foundation is established for a definite period and the period has expired; or
- (c) on the written request of the founder, or if there is more than one founder, on the written request of all living founders, and all persons who are beneficiaries at the time of the resolution.

26. Dissolution due to impossibility

The foundation council may apply to the Court for an Order to terminate the foundation if

- (a) the foundation can no longer reasonably achieve its purpose, or

(b) the foundation is impossible to reasonably administer or maintain.

27. Procedure on dissolution

(1) The foundation council, or the person authorised by the foundation charter to supervise the dissolution of the foundation, shall take all actions necessary for the orderly supervision of the dissolution of the foundation.

(2) Subject to the provisions of the foundation charter, the council or person may collect the endowment of the foundation and retain sufficient assets to make reasonable provisions for the obligations of the foundation, either existing or anticipatory in nature, including outstanding or anticipatory fees and disbursements of the foundation council.

(3) The foundation council shall distribute the remaining foundation endowment within a reasonable time, in accordance with the terms of the foundation charter, to the persons entitled to it.

(4) If the foundation charter is silent as to the distribution upon dissolution of the foundation, the remaining foundation endowment shall be distributed to the beneficiaries in equal shares.

(5) If there is no person entitled to receive the remaining foundation endowment or the person entitled to receive it refuses to accept the distribution of the endowment, the endowment shall be transferred to the Commission to be held in escrow for thirteen months from the date of the resolution or order granting dissolution, for the benefit of persons who may claim a beneficial interest in the endowment, and

(a) if no such claim has been asserted within that period, the Commission shall treat the endowment as abandoned property and dispose of it pursuant to Sections 256 and 257 of the Antigua and Barbuda International Business Corporations Act, Cap. 222; and

(b) if a claim is asserted within that period, the Commission shall deposit the endowment with the Court and apply to the Court for a determination as to the validity of the claim.

(6) All costs of an application under paragraph (5) (b) shall be paid from the endowment.

(7) If the foundation was established for charitable purposes, the foundation endowment shall be distributed for the charitable purposes that the Court, on the application of the foundation council, declares are consistent with the original intention of the founder.

(8) A foundation shall continue to exist after its dissolution during the winding up of its affairs.

(9) On dissolution of the foundation, the foundation council shall notify the Commission within thirty days and return the Certificate of Establishment. The Commission shall then cancel the Register entry and issue a Certificate of Discontinuance.

PART VII - FOUNDER, FOUNDATION COUNCIL, PROTECTOR AND BENEFICIARY

28. Founder

(1) A person who establishes a foundation, or on whose behalf a foundation is established, or who makes a disposition of property to a foundation is a founder. An international foundation may have more than one founder.

(2) A founder shall not serve as a member of a foundation council or as protector of the foundation that he or she established or to which he or she disposed property.

(3) A founder may be a beneficiary, including the sole beneficiary, of a foundation that he or she establishes.

(4) A founder shall not retain, possess or acquire the power to direct a foundation council in respect to the administration of a foundation, nor shall a founder retain, possess or acquire any control, power or dominion over the endowment of a foundation that he or she establishes or to which he or she disposes property.

(5) A founder shall not retain, possess or acquire the power to dissolve a foundation or amend a foundation charter.

29. Foundation council

The foundation council is composed of the members charged with the responsibility of managing and administering the foundation and its endowment, pursuant to the powers, rights, obligations and duties set forth in the foundation charter and this Act, for the benefit of the beneficiaries and to effectuate the purpose of the foundation.

30. Member not to be beneficiary of foundation

A member of a foundation council may not be a beneficiary of the foundation.

31. Fiduciary duty of the foundation council

The foundation council and each member of the foundation council shall owe a fiduciary duty to the foundation, its founder and its beneficiaries, and shall preserve and administer the foundation endowment in the manner of a reasonably prudent business person.

32. Number of members of the foundation council

Subject to the terms of the foundation charter,

(a) the minimum number of members shall be two and the maximum number of members shall be thirteen;

(b) if at any time more than thirteen members are appointed, only the first thirteen members appointed shall serve; and

(c) members shall act together by majority, unless, in the reasonable discretion of a member, an emergency requires immediate action.

33. Domicile requirement of the members

At least one member of a foundation council must be a domiciliary of Antigua and Barbuda at all times.

34. Limitations on company serving as member

A company which is not licensed or regulated under the Corporate Management and Trust Service Providers Act, 2007 may not serve as member of more than three foundation councils for international foundations.

35. Appointment and removal of members

(1) Members shall be appointed and removed from office in accordance with the foundation charter, its regulations and the by-laws of the foundation.

(2) If the foundation council has no remaining members or fails to appoint a successor member for any reason, the Court may appoint a successor member pursuant to section 77.

36. Meeting of members

(1) The foundation council shall conduct meetings at the times, in the manner and at the places set forth in the foundation charter, either within or outside Antigua and Barbuda, so long as it meets at least once annually.

(2) Foundation council meetings may be held in person, telephonically, via video conference, or by any other means acceptable to a majority of the foundation council members.

(3) The minutes of each council meeting shall be kept at the registered office of the foundation and shall be open to inspection by the founder, any foundation council member, any beneficiary, the Court or the Commission.

37. General power of the foundation council

Subject to the terms of the foundation charter and this Act, the foundation council shall have the power to take all actions that are necessary, in its discretion, for the benefit of the founder, foundation, endowment and beneficiaries.

38. Power to manage foundation endowment

Unless the foundation charter or this Act provides otherwise, the foundation council has the exclusive power to hold and manage the endowment, including any entity whose shares, equity or ownership interests are comprised directly or indirectly in the endowment.

39. Power of investment

Unless otherwise directed by the foundation charter, the foundation council may invest the endowment as and for so long as it sees fit and, at any time, the council may sell, call in or convert into money any investment and re-invest the moneys produced.

40. Power to distribute

Unless the foundation charter or this Act provides otherwise, the foundation council shall make the distributions it deems appropriate for the benefit of any beneficiary.

41. Power to delegate acts of administration

Subject to the terms of the foundation charter and this Act, the foundation council may delegate any act of administration to a third party, but each member of the foundation council continues to be responsible for any breach of fiduciary duty arising from or relating to all acts delegated or omissions relating to them.

42. Non-recognition of foreign judgments

No member of a foundation council shall recognise, act upon or comply with any foreign judgment, injunction, order, decree, levy, attachment, garnishment, execution or other legal or equitable process.

43. Power to relocate foundation endowment or change governing law

Unless the foundation charter or this Act provides otherwise, a foundation council may change the governing law of the foundation, relocate the foundation endowment or change the place of foundation administration as it deems necessary or desirable to protect the endowment or a beneficiary from harm, prejudice, risk of loss or diminution.

44. Segregation of foundation endowment

The foundation council shall not dispose of the foundation endowment, or any part of it, in such a manner as to frustrate or adversely affect the purpose of the foundation. The foundation council shall maintain the endowment separate from the assets of any member of the foundation council or the assets of any other foundation.

45. Foundation council's power to apply to Court

If the foundation council, or any of its members, is concerned or in doubt as to the appropriateness of any act of administration, disposition or distribution of the foundation endowment, the foundation council, the member or any interested party may apply to the Court for an order with respect to that act. All reasonable costs related to the application shall be paid from the endowment, unless the Court determines otherwise.

46. Accounting

(1) Subject to the terms of the foundation charter and this Act, the foundation council shall keep accounts and inventory of the assets, income and liabilities of the foundation at its registered office for not less than six years.

(2) The foundation council shall render accounts annually to the beneficiary in accordance with international financial reporting and auditing standards, audited by an independent auditor.

(3) On request of a founder, foundation council member, beneficiary, the Court or the Commission, the foundation council shall provide an accounting as to the assets, income and liabilities of the foundation.

(4) If the request is made by a founder, foundation council member, the Court or the Commission, the foundation council shall provide an accounting as to the foundation endowment as a whole.

57. Power to renounce interest

(1) A beneficiary may renounce his or her interest under a foundation charter or an endowment, whether or not he or she has already received any benefit from the foundation or endowment.

(2) The renunciation must be in writing, may be temporary and may be revoked in the manner and circumstances set out in it.

(3) A renunciation is not effective until it is received by the foundation council.

(4) A renunciation does not constitute a transfer of rights or benefits for any purpose.

58. Breach of fiduciary duty - liability

(1) Subject to subsection (7), an intentionally and wilfully fraudulent act or omission by, at the behest of, under the direction of, or with the participation or concurrence of, the foundation council, a member of the foundation council or a protector, that results in actual prejudice to a foundation, founder or beneficiary shall be a breach of fiduciary duty.

(2) An action for breach of fiduciary duty may be brought before the Court by a founder, the foundation council or any of its members, a protector or a beneficiary of a foundation.

(3) Where a foundation council is found liable for a breach of fiduciary duty, all of its members shall be jointly and severally liable. Where individual members or protectors are found liable, together with others, for a breach of fiduciary duty, they shall be jointly and severally liable.

(4) The foundation council, any of its members, or any protector who commits or is party or privy to a breach of fiduciary duty shall be liable for

- (a) the failure, depreciation or loss of any investments or any other property held by the foundation and resulting from the breach; and
- (b) to the extent reasonably ascertainable, any profit or benefit which would have accrued to the foundation endowment had there been no breach.

(5) A foundation council shall segregate the foundation endowment and shall not set off a profit accruing to one asset of the endowment against a loss or depreciation in value of another asset of the endowment resulting from a breach of fiduciary duty.

(6) Where the foundation council, any of its members or a protector commits a breach of fiduciary duty at the instigation, request, direction, or with the participation or concurrence of a beneficiary, the Court may impound all or part of the beneficiary's interest by way of indemnity to a council member, the foundation, a protector, a founder or any other beneficiary, or any person claiming through any of them.

(7) A founder and the foundation council may agree to a standard of liability, as set forth in a foundation charter, that differs from the standard of liability described in subsection (1) provided that such standard is not more stringent than the standard described in subsection (1).

59. Constructive trustee

(1) A person who derives any profit or any property as a direct or indirect result of a breach of fiduciary duty shall be deemed to be a constructive trustee of the profit or property and shall be subject to the International Trust Act, 2007, unless he or she derives or obtains it in good faith for fair and adequate consideration and without actual, constructive or implied notice of the breach of fiduciary duty.

(2) A person who becomes a constructive trustee by virtue of subsection (1) shall deliver up the profit or property to the Court immediately upon receiving notice of the breach of fiduciary duty.

(3) The Court may declare a constructive trust over all or any part of a foundation's endowment in any other circumstances in which it deems such a declaration proper at law or equity.

60. Tracing foundation endowment

(1) Without prejudice to the personal liability of a council member or a protector, a foundation endowment which has been charged or dealt with in breach of fiduciary duty, or any property into which it has been converted, may be followed and recovered unless—

- (a) it is no longer identifiable as a foundation's endowment or as the proceeds of such an endowment; or
- (b) it is in the hands of a bona fide purchaser for value who has no actual, constructive or implied notice of the breach of fiduciary duty.

(2) In a case referred to in paragraph (1) (b), the proceeds of the bona fide sale may be recovered and held as foundation endowment.

61. Exculpation

(1) Unless the foundation charter or this Act provides otherwise, no member of a foundation council or protector shall be liable for any breach of fiduciary duty, unless the breach of fiduciary duty is the member's or protector's own intentionally and wilfully fraudulent act or omission or the member or pri

- (ii) the failure to act upon any information received from inquiring into the management or operation of any such entity; and
- (iii) the failure to require the management of any such entity to consult and inform the foundation council or protector so that the foundation council or protector may intervene if necessary to safeguard the interests of the foundation endowment;
- (d) the reliance in good faith upon the opinion or advice of a co-member or co-protector or counsel or the Court as to the interpretation of the terms of the foundation charter or by-laws in any respect or as to any other issue that may arise;
- (e) the reliance upon the opinion or advice of any other professional person in a matter apparently falling within the professional expertise of such person; and
- (f) giving advice to the founder regarding the establishment, administration, maintenance, business undertaking, affairs, investment or endowment of the foundation, the legal, accounting or taxation aspects of the foundation or any arrangements undertaken by the foundation council or protector and any representations that the arrangements suggested for the foundation will attain the objectives or advantages intended.

62. Breach of fiduciary duty by co-member or co-protector

Neither the foundation council nor any council member or protector shall be liable for a breach committed by a co-member or co-protector, or by a preceding or succeeding council member or protector unless—

- (a) he or she becomes or ought to have become aware of the breach; and
- (b) he or she fails to take all reasonable steps to remedy the breach, to mitigate the effect of the breach, to protect or restore the affected endowment or to prevent the continuation of a breach within a reasonable time.

63. Resignation, retirement or removal of member or protector

If a council member or protector resigns, retires, is removed or is unable to continue as council member or protector, the council member or protector shall be released from and indemnified against all claims, demands, actions, proceedings and accounts other than for breach of fiduciary duty.

64. Release from liability

A founder or a beneficiary may relieve a foundation council, council member or protector of liability for a breach of fiduciary duty, but only with respect to that founder's or beneficiary's interest, and except if that founder or beneficiary—

- (a) is a minor or a person under legal disability;
- (b) does not have full knowledge of all material facts pertaining to the breach of fiduciary duty; or
- (c) is improperly induced by any person to act.

65. Liability of former member or protector

All indemnities, protections and exculpations granted in this Act shall extend to each current and former foundation council, council member and protector and each director, officer or employee of any foundation council, council member or protector.

66. Liability to third party

Notwithstanding any other provision of this Act, a foundation, its foundation council and its members, a founder, a protector or a beneficiary shall not be liable, personally or otherwise, to any party other than to the foundation, its founder or its beneficiary for the actions of any other council member, founder, protector or beneficiary of that foundation and then only for breach of fiduciary duty.

PART VIII - FOUNDATION ENDOWMENT

67. Foundation endowment

(1) All property designated by a founder, and conveyed or transferred to an international foundation by deed, bill of sale, assignment, foreclosure, bequest, distribution, operation of law or other disposition is the endowment of the foundation.

(2) Assets acquired by the administration of the foundation and its endowment are also part of the endowment.

(3) The endowment includes property acquired by right accruing to the foundation as a substitute or replacement for property that has been destroyed, damaged, removed or acquired in any other way by the administration of the endowment.

(4) The endowment includes all profit, gain, appreciation or other accretion to the property.

(5) The foundation council shall have the authority to accept any property at any time from any person or entity by contribution, sale, loan, gift, testamentary or other disposition pursuant to the foundation charter.

(6) The endowment shall be maintained for the benefit of the beneficiaries of the foundation or to effectuate the purposes of the foundation as specified in its charter.

68. No validation of property not vested in founder

(1) Nothing in this Act shall validate any disposition of property by a founder to a foundation which, according to the laws of Antigua and Barbuda, is neither owned by the founder nor over which the founder has power at the time of the disposition.

(2) Subsection (1) does not require the recognition of any foreign law or rule in determining whether the founder is the owner of property or the holder of a power.

69. Community property

Unless the foundation charter provides otherwise, property that is determined to be community property prior to its transfer to a foundation is no longer community property upon the transfer.

70. Exempt property

The following property is, for all purposes, exempt property which is not available to satisfy any legal process—

- (a) a life insurance policy or annuity contract held, directly or indirectly, by or for the benefit of a foundation, a founder or a beneficiary, including its assets and the proceeds from it;
- (b) any residence located within Antigua and Barbuda or elsewhere, including its content or the proceeds of the sale of the residence or its contents;
- (c) any part of the foundation endowment used for the support, health, welfare, benefit or education of a minor or a partially or fully disabled individual until
 - (i) the minor reaches the age of eighteen years, or the disabled individual is no longer disabled, or
 - (ii) the Court has authorised the continuation of the payments after the minor has reached the age of eighteen or after the individual is no longer disabled; and
- (d) any part of the foundation endowment used or to be used exclusively for a charitable purpose within the meaning of section 11.

71. Anti-alienation

(1) A conveyance, transfer, sale, mortgage, pledge, hypothecation, encumbrance, order, assignment or other restraint of any interest in a foundation or its endowment by a founder or beneficiary by way of anticipation of income or principal is void.

(2) The endowment shall not be subject to alienation, transfer or restraint of any kind by operation of any foreign law and shall be exempt from the claims of any creditors of, claimants of, or parties adverse to, a founder or a beneficiary.

(3) The endowment shall be free from the control or interference of a spouse of a founder or a beneficiary or a parent of any minor beneficiary, and from all foreign legal proceedings.

72. Claims against property based upon relationship

(1) Unless the foundation charter provides otherwise, the Court shall not recognize a cause of action that seeks to establish a right to the foundation endowment, or the transfer, encumbrance or restraint of the endowment based upon principles of community property, equitable distribution, spousal, familial, heirship or other rights that depend on the establishment or existence of any familial or personal relationship.

(2) For the purposes of this section, “personal relationship” means a relationship based on friendship, companionship, cohabitation or other arrangement that is not based on familial relationship.

73. Foreign offences

Subject to the provisions of any valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction, no proceeding may be commenced nor any claim or cause of action be recognised by the Court

- (a) which seeks to establish a right to a foundation endowment, or the transfer, encumbrance or restraint of any part of a foundation endowment based upon any foreign law, rule or regulation, relating to any fiscal offence;
- (b) which seeks to establish a right to a foundation endowment, or the transfer, encumbrance or restraint of any part of a foundation endowment based upon any foreign law, rule or regulation requiring the forfeiture of a foundation endowment as the instrumentality or the proceeds of a serious criminal offence, prior to the conviction of a person or entity for the commission of the serious criminal offence; or
- (c) which is brought exclusively against any part of a foundation endowment, whether in rem or otherwise.

74. Bankruptcy

Notwithstanding any foreign law, rule or regulation and notwithstanding further that a foundation is voluntary and without valuable consideration being given for a disposition to a foundation or is established for the benefit of the founder, or the founder’s spouse or children, a foundation shall not be void or voidable, and the foundation endowment shall not be subject to transfer, attachment, encumbrance or other restraint, solely because of the founder’s bankruptcy, insolvency or liquidation in any action or proceeding at the suit of a bankruptcy trustee, receiver or creditor of the founder’s bankruptcy estate.

75. Fraudulent dispositions within the jurisdiction of Antigua and Barbuda

(1) The Court, after considering the factors specified in subsection (2), proven beyond a reasonable doubt, may

- (a) decide that a disposition of property that was conducted fraudulently is void; and
- (b) order the foundation to satisfy a creditor’s judgment rendered by the Court from a non-exempt portion of the foundation endowment to the extent of the interest that a creditor had in the property prior to the disposition of the property to the foundation.

(2) The factors to be considered by the Court are:

- (a) whether the disposition of property to the foundation by or on behalf of the founder was made with the sole and specific intent to avoid payment of an existing judgment rendered by the Court against the founder;
- (b) whether the founder presented no supervening legitimate purpose for the disposition; and
- (c) whether, at the time of the disposition, the foundation was insolvent.

(3) A founder shall not have imputed to him or her an intent to defraud a creditor, solely by reason that

- (a) the founder has disposed of property to the founder after the accrual of the creditor’s cause of action;
- (b) the outstanding debt or loan that is the subject of the creditor’s underlying cause of action has been held to be in default by the creditor; or
- (c) the founder is a beneficiary of the foundation.

(4) A founder's showing of a supervening legitimate purpose for a disposition of property to a foundation is a complete and

execution of the foundation charter or within two years after the plaintiff's underlying cause of action arises, whichever is earlier, irrespective of the date on which the founder made a disposition of property to the foundation.

(2) No action or proceeding, other than an action brought by a foundation council member, protector, founder, beneficiary, Antigua and Barbuda domiciliary or the Government of Antigua and Barbuda, shall be entertained by the Court that is based on a cause of action which arose after the date of the founder's execution of the foundation charter.

(3) For purposes of this Act—

- (a) the date on which a cause of action shall have arisen is the date of the act or omission being relied on to establish the cause of action, and if the act or omission is continuous in nature, or if multiple acts or omissions are alleged, then the date of the first act or omission shall be the date that the cause of action arises;
- (b) the term "cause of action" means the earliest cause of action capable of assertion by a plaintiff against a founder, beneficiary, foundation, foundation council member or foundation endowment, by which that plaintiff may establish a claim against that founder, beneficiary, foundation, foundation council member or endowment; and
- (c) the entry of judgment in any proceeding in any jurisdiction or court shall not constitute a separate cause of action.

(4) In the event of redomiciliation of a foreign foundation to Antigua and Barbuda, this section applies as if the foundation was always an Antigua and Barbuda international foundation, without regard to the law of the foundation's prior domicile.

83. Affidavits

(1) No action or proceeding to which section 82 applies, whether substantive or interlocutory in nature, shall be entertained by the Court and no judgment, declaration or order shall be made or granted by the Court unless accompanied by an affidavit attesting to the following—

- (a) the action or proceeding has been commenced in accordance with section 82;
- (b) the determination or order sought would not be contrary to Part IX; and
- (c) the undertaking required by section 85 has been deposited with the Registrar of the Court.

(2) Every affidavit required to be filed under this section shall be made by the person on whose behalf the action or proceeding is brought, or in the case of an entity, one of its directors or officers, attesting to

- (a) the circumstances under which the cause of action is brought;
- (b) the date on which the cause of action arose; and
- (c) the date on which the foundation charter was executed by the founder.

84. Government immunity from suit

No action or proceeding shall be entertained by the Court against the Government of Antigua and Barbuda, any statutory body, agency or authority or any public or judicial officer in respect of any act or failure to act in accordance with this Act.

85. Payment to Court Registry

Every plaintiff or applicant seeking to commence an action or proceeding against a foundation, founder, foundation council, council member, protector or beneficiary for the avoidance of the foundation or the transfer, encumbrance, attachment or other restraint of the foundation endowment shall first deposit with the Registrar of the Court an undertaking in the sum of one hundred thousand Eastern Caribbean dollars, or any other amount determined by the Court, to secure the payment of all legal fees and costs that may become payable by the plaintiff or applicant in the event the action or proceeding is not successful. This section shall not apply to any action or proceeding brought by a foundation, foundation council, council member, protector, founder or beneficiary of the foundation or by the Government of Antigua and Barbuda.

86. Contingent fee arrangements

No barrister, solicitor or attorney-at-law shall enter into any arrangement for, or charge or collect any fee, commission, compensation or award, that is contingent upon the success of an action or proceeding, or the amount of an award or judgment, in an action or proceeding for the avoidance of a foundation or the transfer, encumbrance, attachment or other restraint of the foundation endowment. This section does not apply to an action or proceeding brought by a foundation, foundation council, council member, protector, founder or beneficiary of a foundation or by the Government of Antigua and Barbuda.

PART X – CONFIDENTIALITY

87. Confidentiality

(1) Except where this Act otherwise provides (1) pursuant to an order of the Court, no person shall disclose any of the documents referred to in subsection (2), their contents or the information contained in them relating to the establishment, administration, maintenance, business undertaking, affairs or property of a foundation to any other person.

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

- (a) a foundation charter, a foundation's by-laws, rules or regulations, and any document relating to the charter, by-laws, rules and regulations;
- (b) a document relating to the exercise or proposed exercise of any function or duty conferred upon a foundation council, a council member, or a protector, or disclosing any deliberations of a foundation council, a council member, a protector or any of the foundation council's, member's or protector's directors, officers or employees as to the manner in which a foundation council, council member or protector should exercise any function or duty, or disclosing the reasons for any particular exercise of any function or duty or the material upon which those reasons were, or might have been based;
- (c) a document relating in any way, directly or indirectly, to the finances, investments, assets, income, expenses, profits, losses, appreciation, depreciation, value, net worth or business activity of a foundation, its founder or any beneficiary; and
- (d) a document relating in any way, directly or indirectly, to the rights, benefits or interests of any founder or any beneficiary of a foundation.

(3) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of fifty thousand Eastern Caribbean dollars or imprisonment for a term of two years or to both.

(4) For the purposes of this section, “document” and “information” include any papers, deeds, declarations, appointments, minutes, notes, memoranda, records, correspondence, telexes, telegrams, tape recordings, facsimile transmissions, computer data, e-mail, files, discs, and videotapes, of all kinds, whether in printed, electronic or holographic form, or any other form.

88. Permissible disclosure of confidential information

Notwithstanding section 87, nothing in this Act and no foundation charter shall prohibit the foundation council, a council member, a protector or any of the foundation council’s, member’s or protector’s directors, officers or employees from disclosing confidential information under the following circumstances:

- (a) upon an order of the Court, in connection with the presentation of evidence for the purpose of, or in the course of, the trial of any person in respect of a serious criminal offence recognised within Antigua and Barbuda, to the extent that the confidential information is required to prove the alleged offence;
- (b) upon an order of the Court, based upon the written request of the Government of Antigua and Barbuda, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction, pertaining to the exchange of information or legal assistance in connection with the investigation, prosecution or prevention of a serious criminal offence if
 - (i) the request for the information or legal assistance identifies with specificity the offence, as well as the person or entity charged with, or under investigation for, the offence,
 - (ii) the offence is also a serious criminal offence under the laws of Antigua and Barbuda,
 - (iii) the request for exchange of information or legal assistance does not conflict with any existing laws, rules or regulations of Antigua and Barbuda, and
 - (iv) the Court has determined that the confidential information is required to prove the offence;
- (c) upon an order of the Court, based upon the written request of the Government of Antigua and Barbuda, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction pertaining to the exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims or the investigation or prosecution of criminal tax matters, if
 - (i) the request for information or legal assistance identifies with specificity the offence as well as the person or entity charged with, or under investigation for, the offence, and
 - (ii) the offence is also a serious criminal offence under the laws of Antigua and Barbuda;
- (d) upon an order of the Court, based upon written request of the Government of Antigua and Barbuda, for information regarding the identification of a foundation, foundation council, council member, protector, founder, beneficiary, endowment or any transaction of a foundation for the purpose of complying with the Money Laundering (Prevention) Act, 1996, No. 9 of 1996 or the Prevention of Terrorism Act, 2001, No. 15 of 2001;
- (e) upon written request, by the Government of Antigua and Barbuda or by a financial institution for information regarding the identification of a foundation, foundation council member, protector, founder or beneficiary of a foundation, the purpose of a foundation or the identification of a foundation endowment or any transaction if
 - (i) the request is for the purpose of complying with customer due diligence guidelines as set by the Financial Services Regulatory Commission of Antigua and Barbuda, and
 - (ii) the requesting institution provides assurance satisfactory to the foundation council member or protector that the information shall be maintained as confidential by the requesting institution and shall not be disclosed to any third party;
- (f) to any person that the foundation council or any of its members reasonably believes requires the information to carry out the management and administration of the foundation and its endowment in the ordinary course of business; or
- (g) to a legal practitioner in connection with a request for, or the receipt of, legal advice relating to the establishment, administration, maintenance, business undertaking, affairs, taxation or property of the foundation or for the prosecution or defense of any litigation relating to the establishment, administration, maintenance, business undertaking, affairs, taxation or endowment of the foundation.

89. Maintenance of confidential nature of information

Disclosure of confidential documents or information specified in section 88 shall not constitute a violation of section 87 and shall not defeat the confidential nature of the documents or information with regards to any other person.

90. Reports and publications of judicial proceedings

(1) All judicial proceedings, other than criminal proceedings, relating to a foundation shall, unless ordered otherwise by the Court, be heard in camera and no details of the proceedings shall be published by any person except in accordance with this section.

(2) Every decision or order of the Court in respect of any proceedings concerning the application or interpretation of this Act or a foundation may be published or reported for the purposes of affording a record of the proceedings, if

- (a) the written decision or order of the Court is edited as necessary to preserve confidentiality in respect of the identity of the foundation, its endowment and every interested party and all identifying references are redacted; and
- (b) no decision or order is reported or published until the Court has ascertained the views of the parties to the proceedings as to the adequacy of any editing or redaction undertaken and certified in writing to the Registrar of the Court that the edited decision or order may be released for publication or reporting.

PART XI - EXEMPTION FROM TAXES AND DUTIES

91. Exemption from taxes and duties

(1) A foundation registered under this Act shall be exempt from—

- (a) all income tax, including all tax based upon appreciation of a foundation endowment;
- (b) all estate, inheritance, bequest or gift tax payable with respect to a foundation endowment by reason of any death, or any transfer of property to or from the foundation, provided such transfer is without consideration, including a transfer of

property to an entity as capital contribution in return for an equity interest in such entity, which shall be deemed without consideration;

- (c) all stamp duty with respect to all instruments relating to a foundation endowment or to transactions carried out by a council member on behalf of the foundation, or by any entity owned by the foundation; and
- (d) all exchange controls, including controls on the maintenance, investment, transfer or exchange of currencies in Antigua and Barbuda or in any other location.

(2) Notwithstanding subsection (1) and subject to the Antigua and Barbuda Income Tax Act, Cap. 212, a foundation registered under this Act shall not be exempt from—

- (a) tax on income derived from the sale or rental of property in Antigua and Barbuda unless the tax is paid by another person;
- (b) tax on income derived from the sale of equity or other interests in any entity incorporated or otherwise registered in Antigua and Barbuda and doing business in Antigua and Barbuda unless the tax is paid by another person; or
- (c) tax arising from or relating to the conduct of business or ownership of property in Antigua and Barbuda unless the tax is paid by another person.

PART XII - GENERAL PROVISIONS

92. Certificate of good standing

The Commission shall, on request by any person and on payment of the prescribed fee, certify that a foundation registered under this Act is in good standing if the Commission is satisfied that:

- (a) the foundation is registered pursuant to section 17; and
- (b) the foundation has paid all fees prescribed by this Act.

93. Translations

Every document filed with the Commission that is not in English shall be accompanied by an English translation certified as true and correct by a translator, to the satisfaction of the Commission.

94. Regulations

The Minister may, upon the recommendation of the Commission

- (a) make and publish rules and regulations to implement this Act; and
- (b) prescribe fees under this Act.

SCHEDULE 1
(Section 17)

Application for Entry on Register of International Foundations

1. Name of Foundation: _____
2. Name and Address of Antigua and Barbuda Member of Foundation Board:

3. Name and Address of All Non-Resident Members:

4. Name and Address of All Protectors:

5. Date of Execution of Charter by Founder: _____
6. Date of Execution of Charter by each Member: _____
7. Date of Execution of Charter by each Protector: _____
8. Please attach the following—
 - (1) Prescribed Fee: \$ _____.
 - (2) Certificate from the Antigua and Barbuda member which certifies:
 - (a) The name of the foundation;

- (b) The name and address of the Antigua and Barbuda member;
- (c) The name and address of each non-resident member;
- (d) The name and address of each protector;
- (e) The purpose of the foundation;
- (f) The date of submission of the Certificate to the Commission; and
- (g) If a re-domiciled foreign foundation:
 - i. The law under which the foundation was created;
 - ii. Original date of registration of the foundation in its original jurisdiction (or original date of execution if original date of registration is not available); and
 - iii. Date of amendment to provide for the law of Antigua and Barbuda to be the governing law of the foundation.

The applicant hereby declares that all the information provided in this application and any other document provided in support of this application is true and correct. Applicant further undertakes to inform the Commission without delay of any changes to the information supplied with this application.

Authorized Signature

Date

By:

SCHEDULE 2
(Section 17)

Certificate of Antigua and Barbuda Member of Foundation Council

I, _____, the Member of the _____ Foundation, domiciled in Antigua and Barbuda, herein certify the following:

1. The name of the foundation is _____.
2. The _____ Foundation, upon registration on the Register of International Foundations, shall be a foundation in accordance with the Antigua and Barbuda International Foundations Act, 2007.
3. Name and Address of Antigua and Barbuda Member:

_____.
4. Name and Address of All Non-Resident Members:

_____.
5. Name and Address of All Protectors:

_____.
6. Date of Submission of this Certificate to the Commission: _____.
7. In event that the above-named foundation is a re-domiciled foreign foundation, the original date of registration of the foundation in its original jurisdiction (or original date of execution if such date of registration is unavailable):

 - a. Original jurisdiction of the foundation: _____.
 - b. Date of Amendment of the Charter which provides for the law of Antigua and Barbuda to be the governing law of the foundation:
_____.

The undersigned hereby certifies that all the information provided in this certificate is true and correct.

Authorized Signature

Date

By:

SCHEDULE 3
(Section 17)

Application for Extension of Time for Entry on Register of International Foundations

1. Name of Foundation: _____.
2. Name and Address of Antigua and Barbuda Members of the Foundation Board:

_____.
3. Name and Address of All Non-Resident Members:

_____.
4. Name and Address of All Protectors:

_____.
5. Date of Execution of Charter by Founder: _____.
6. Date of Execution of Charter by Each Member: _____.
7. Date of Execution of Charter by Each Protector: _____.
8. Please state the reasons for the extension of time to register the foundation:

_____.
9. Please attach the prescribed extension fee: \$ _____.

The applicant hereby declares that all the information provided in this application and any other document provided in support of this application is true and correct. Applicant further undertakes to inform the Commission without delay of any changes to the information supplied with this application.

Authorized Signature

Date

By:

SCHEDULE 4
(Section 18)

Application for Renewal of Registration on Register of International Foundation

- 1. Name of Foundation: _____.
- 2. Name and Address of Antigua and Barbuda Member of the Foundation Board:

_____.
- 3. Name and Address of All Non-Resident Members:

_____.
- 4. Name and Address of All Protectors:

_____.
- 5. Original Date of Registration: _____.
- 6. Date of Expiration of Certificate of Establishment: _____.
- 7. Please attach prescribed renewal fee: \$ _____.

The applicant hereby declares that all the information provided in this application and any other document provided in support of this application is true and correct. Applicant further undertakes to inform the Commission without delay of any changes to the information supplied with this application.

Authorized Signature

Date

By:

SCHEDULE 5
(Section 18)

Application for Extension of Time for Renewal of International Foundation

- 1. Name of Foundation: _____.
- 2. Name and Address of Antigua and Barbuda Member of Foundation Board:

_____.
- 3. Name and Address of All Non-Resident Members:

_____.
- 4. Name and Address of All Protectors:

_____.
- 5. Original Date of Registration: _____.
- 6. Date of Expiration of Certificate of Establishment: _____.
- 7. Please state the reasons for the need for an extension of time to register the foundation:

_____.
- 8. Please attach prescribed extension fee: \$ _____.

The applicant hereby declares that all the information provided in this application and any other document provided in support of this application is true and correct. Applicant further undertakes to inform the Commission without delay of any changes to the information supplied with this application.

Authorized Signature _____
Date

By: _____

SCHEDULE 6
(Section 18)

Application for Reinstatement of Entry on Register of International Foundations

- 1. Name of Foundation: _____.
- 2. Name and Address of Antigua and Barbuda Member of the Foundation Board:

_____.
- 3. Name and Address of All Non-Resident Members:

_____.
- 4. Name and Address of All Protectors:

_____.
- 5. Original Date of Registration: _____.
- 6. Date of Expiration of Certificate of Establishment: _____.
- 7. Please attach prescribed reinstatement fee: \$ _____.

The applicant hereby declares that all the information provided in this application and any other document provided in support of this application is true and correct. Applicant further undertakes to inform the Commission without delay of any changes to the information supplied with this application.

Authorized Signature _____
Date

By:

Passed the House of Representatives on
the , 2007.

Passed the Senate on the , 2007.

Speaker.

President.

Clerk to the House of Representatives.

Clerk to the Senate.

EXPLANATORY MEMORANDUM

This Bill seeks to encourage investment in Antigua and Barbuda by establishing legal protections on behalf of international foundations and their endowments

It is divided into twelve parts.

Part I provides for interpretation of the terms used in the Act for which this is the Bill.

Part II provides general information about international foundations, including provisions relating to domicile of founders and beneficiaries, the naming of international foundations, the purposes of international foundations and their maximum duration.

Part III contains provisions respecting the validity of international foundations and provides the Financial Services Regulatory Commission with powers to prohibit the registration or remove from the register international foundations, and to apply to court to have the powers of international foundations curtailed.

Part IV provides for the registration of international foundations and creates a limited right of inspection of the register of international foundations.

Part V would regulate the foundation charter.

Part VI contains provisions respecting the dissolution of international foundations.

Part VII contains provisions respecting the powers, rights, obligations and duties of a founder, foundation council, foundation council member, beneficiary and protector of an international foundation, and includes rules about who can be members of international foundations, where their domicile must be, the power of beneficiaries to renounce their interests, fiduciary duties, constructive trusts and duress.

Part VIII contains rules about property that can and cannot form part of endowments of international foundations.

Part IX deals with domestic and international court proceedings, including an affirmation that an international foundation is to be treated as a separate legal entity, the prohibition of contingency fee arrangements and the requirement for deposit in court of money to be held as security for costs in certain situations.

Part X confirms the confidentiality of information provided under the Act for which this is the Bill.

Part XI provides that international foundations are exempt from certain taxes and duties.

Part XII has a provision dealing with certificates of good standing and one that deals with the certification of translations and provides a regulation-making authority for the Minister of Finance.

Hon. Justin L. Simon QC
Attorney General and

Minister of Legal Affairs