

CAYMAN ISLANDS



Supplement No. 17 published with Extraordinary
Gazette No. 100 dated 16th December, 2016.

**A BILL FOR A LAW TO ALLOW CERTAIN COMPANIES TO BE
REGISTERED AS FOUNDATION COMPANIES, FOR THEIR
CONSTITUTION, OPERATION, MANAGEMENT AND
WINDING UP; AND TO PROVIDE FOR INCIDENTAL AND
CONNECTED MATTERS**

THE FOUNDATION COMPANIES BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to allow certain companies to become foundation companies and to provide for their constitution, operation, management and winding up and for other matters concerning them.

PART 1 - PRELIMINARY

Clause 1 provides for the short title and commencement of the resulting Law (“the Law”).

Clause 2 provides for definitions for the Law.

Clause 3 provides for a modified version of the Companies Law (2016) Revision (the “Companies Law”) to apply to foundation companies, but not to other companies under the Companies Law.

PART 2 - BECOMING A FOUNDATION COMPANY

Clause 4 sets out the requirements for a company or proposed company to be able to become a foundation company (the “foundation company requirements”).

Clause 5 provides for an existing or proposed company to become a foundation company by way of a declaration by the Companies Registrar under the Companies Law. The registrar must be satisfied the foundation company requirements will be met for the company or proposed company.

PART 3 - THE CONSTITUTIONS OF FOUNDATION COMPANIES

Clause 6 permits a foundation company to adopt any part of or all of the model forms in Schedule 2 or any other prescribed model form as its constitution.

Clause 7 provides for the rights, powers or duties that a foundation company’s constitution may provide for and in what circumstances a foundation can have a duty to carry out its objects.

Clause 8 provides for when a foundation company may have members or supervisors and when it may cease to have members.

Clause 9 provides for how a foundation company's memorandum of association may be altered. The memorandum cannot be altered in a way that contravenes the foundation company requirements.

Clause 10 provides for how a foundation company's articles of association may be altered.

Clause 11 provides that a foundation company's constitution may provide for resolving disputes, differences or difficulties with or among its directors, officers, interested persons or beneficiaries.

PART 4 - THE OPERATION AND MANAGEMENT OF FOUNDATION COMPANIES

Clause 12 permits foundation companies to have bylaws.

Clause 13 requires that a foundation company's registered office must be at its secretary's business address as a qualified person (that is, someone who is licensed or permitted by the Companies Management Law (2003 Revision) to provide company management services in the Islands).

Clause 14 requires foundation companies to have a register of supervisors and sets out the matters the register must include.

Clause 15 prohibits foundation companies from distributing of any of their assets if, immediately following the date on which the distribution is proposed to be made, they will be unable to pay their debts as they fall due in the ordinary course of business. The clause also provides for when distributions made in contravention of the prohibition can be recovered.

Clause 16 requires foundation companies to always have a qualified person as their secretary.

Clause 17 requires foundation companies to comply with regulatory laws (as defined under section 2 of the Companies Law).

PART 5 - THE GRAND COURT'S FUNCTIONS

Clause 18 confers jurisdiction on the Grand Court in cases involving the constitutional difficulties of foundation companies.

Clause 19 confers jurisdiction on the Grand Court in cases involving breakdowns in the appointment of directors and supervisors of foundation companies.

Clause 20 confers jurisdiction on the Grand Court to give opinions, advice or directions about foundation companies.

Clause 21 confers a general order-making jurisdiction Grand Court for Part 5, including about costs.

PART 6 - MISCELLANEOUS

Clause 22 provides that offences against the Law are to be summary. The clause also removes a \$2,000 monetary cap under the Criminal Procedure Code (2014 Revision) for the maximum penalty for offences, which cap would otherwise apply instead of the ones under the Law.

Clause 23 confers Regulation-making powers to prescribe fees and forms and about other matters that are required or permitted under this Law to be prescribed, or are necessary or convenient to be prescribed.

Schedule 1 excludes and modifies certain provisions of the Companies Law for clause 3(2) and the definition “Companies Law applicable to foundation companies” in clause 2.

Schedule 2 sets out a model constitution that foundation companies may adopt, in whole or part.

THE FOUNDATION COMPANIES BILL, 2016

ARRANGEMENT OF CLAUSES

PART 1 - PRELIMINARY

1. Short title and commencement
2. Definitions
3. Application of Laws

PART 2 - BECOMING A FOUNDATION COMPANY

4. Foundation company requirements
5. Declaration of foundation company

PART 3 - THE CONSTITUTIONS OF FOUNDATION COMPANIES

6. Model form of constitution - Schedule 2
7. Duties, powers and rights
8. Members and supervisors
9. Altering a memorandum
10. Altering articles
11. Dispute resolution

PART 4 - THE OPERATION AND MANAGEMENT OF FOUNDATION COMPANIES

12. Bylaws
13. Registered office
14. Register of supervisors
15. Limitation on distributions
16. Secretary
17. Compliance with regulatory laws

PART 5 - THE GRAND COURT'S FUNCTIONS

18. Constitutional obsolescence etc.
19. Breakdown in the appointment of directors or supervisors
20. Application to the Court for opinion, advice or directions
21. General order-making power for Part

PART 6 - MISCELLANEOUS

22. Provision about offences
23. Regulations

Schedule 1: The Companies Law Applicable to Foundation Companies

Schedule 2: Model constitution

CAYMAN ISLANDS

A BILL FOR A LAW TO ALLOW CERTAIN COMPANIES TO BE REGISTERED AS FOUNDATION COMPANIES, FOR THEIR CONSTITUTION, OPERATION, MANAGEMENT AND WINDING UP; AND TO PROVIDE FOR INCIDENTAL AND CONNECTED MATTERS

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Foundation Companies Law, 2016. Short title and commencement
- (2) This Law comes into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.
2. (1) In this Law - Definitions
- “articles” means articles of association;
- “beneficiary”, for a foundation company, means a person who will or may benefit from the foundation company carrying out its objects;
- “bylaws”, for a foundation company, means its bylaws made under section 12;
- “Companies Law” means the Companies Law (2016 Revision); 2016 Revision
- “Companies Law applicable to foundation companies” means the Companies Law applicable to foundation companies under section 3(2);

“constitution” means the memorandum and articles of a foundation company, but not its bylaws;

“Court” means the Grand Court;

“foundation company” means a company declared under section 5 to be a foundation company;

“foundation company requirements” is defined in section 4(1);

“interested person”, for a foundation company, means -

- (a) any of its members or supervisors;
- (b) someone who has the right to be a member or supervisor of the foundation company; and
- (c) someone declared under its constitution to be an interested person;

“memorandum” means memorandum of association;

“notice” means a notice in writing;

2003 Revision

“qualified person”, for a company or foundation company, means a person who is licensed or permitted by the Companies Management Law (2003 Revision) to provide company management services in the Islands;

“supervisor”, for a foundation company, means a person, other than a member, who under the foundation company’s constitution has a right to attend and vote at general meetings, whether or not the person has supervisory powers or duties.

(2) A term used in this Law that is not defined in subsection (1) has the same meaning that it has in the Companies Law.

Application of Laws

3. (1) This Law applies to a company if it is declared by the Registrar to be a foundation company under section 5.

Schedule 1

(2) Except insofar as it is inconsistent with this Law, the Companies Law applies to a foundation company with the changes described in Schedule 1.

(3) Other than as provided for under subsection (2) or Part 2, nothing in this Law affects, directly or by implication, a company that is not a foundation company.

(4) Sections 92 and 93 of the Trusts Law (2011 Revision) (which deny heirship rights to the property of a living person) are of general application, and apply to property contributed to foundation companies and other companies.

2011 Revision

PART 2 - BECOMING A FOUNDATION COMPANY

4. (1) For a company to be a foundation company, the requirements (the “foundation company requirements”) are that -

Foundation company requirements

- (a) it is limited by shares or by guarantee, with or without share capital;
- (b) it has a memorandum that -
 - (i) states the company is a foundation company;
 - (ii) generally or specifically describes its objects (which may, but need not, be beneficial to other persons);
 - (iii) provides, directly or by reference to its articles, for the disposal of any surplus assets the company may have on winding-up; and
 - (iv) prohibits dividends or other distributions of profits or assets to its members or proposed members as such; and
- (c) it has adopted articles; and
- (d) its secretary is a qualified person.

(2) For subsection (1)(b)(iv), a member is not regarded as receiving a dividend or distribution as a member merely because the member -

- (a) is a beneficiary of the foundation company and receives benefits as such;
- (b) receives reasonable remuneration as a director, officer or a person having a duty under its constitution;
- (c) is indemnified or reimbursed for expenses or liabilities incurred in relation to the company;
- (d) benefits from a loan or other transaction or relationship entered into with the company on terms that are no more favourable to the member than if they had been negotiated at arm’s length; or
- (e) will or may, under the constitution, receive benefits disposing of surplus assets on winding-up.

5. (1) If the Registrar is satisfied the foundation company requirements will be met in relation to a company being formed under the Companies Law, the certificate of incorporation shall contain a declaration that it is a foundation company.

Declaration of foundation company

(2) The directors and members of an existing company may apply to the Registrar for the company to become a foundation company, and, if the Registrar

is satisfied the foundation company requirements will be met, a new certificate of incorporation shall be issued containing a declaration that it is a foundation company.

(3) The application shall accompanied by the prescribed fee.

(4) A declaration under this section is conclusive evidence that the company is a foundation company.

PART 3 - THE CONSTITUTIONS OF FOUNDATION COMPANIES

Model form of
constitution - Schedule 2

6. A foundation company's constitution may adopt any part of or all of the model forms in Schedule 2 or any other prescribed model form.

Duties, powers and
rights

7. (1) A foundation company's constitution may, as well as providing for its management by directors (however called) or their delegates, give rights, powers and duties of any type to members, directors, officers, supervisors, founders or others concerning the foundation company.

(2) Without limiting subsection (1), the rights, powers or duties may provide for or relate to any or all of the following for the foundation company -

- (a) admitting, appointing or removing its members, supervisors, directors or officers;
- (b) making and altering by-laws;
- (c) the supervision of the management and operations of the foundation company;
- (d) the enforcement on behalf of the foundation company of duties and liabilities under the constitution;
- (e) the calling of, and attendance at, its general meetings;
- (f) voting on its ordinary or special resolutions;
- (g) subject to sections 9 and 10, altering the constitution; and
- (h) winding-up the foundation company and disposing of its surplus assets.

(3) Powers given by the constitution may be given for the benefit of the foundation company, for the benefit of the donee, or for any other purpose, and may be subject to any condition.

(4) Except as otherwise expressly provided by the constitution -

- (a) duties under the constitution are owed to the foundation company only;
- (b) rights under the constitution are enforceable against the foundation company only;

- (c) the directors shall give an interested person the reports, accounts, information and explanations concerning the foundation company's business and affairs, and the discharge of its directors' duties and the exercise of their powers, as may be required by an ordinary resolution, or by a written request from the interested person;
- (d) an interested person may bring an action in the name or on behalf of the foundation company for the enforcement of the duties or liabilities of directors in the same circumstances and manner as may a member of a company that is not a foundation company; and
- (e) a beneficiary of the foundation company has no powers or rights relating to the foundation company, its management or its assets and is not an interested person.

(5) A foundation company has a duty to carry out the objects set out in its memorandum if, and only if, the memorandum -

- (a) expressly so declares; and
- (b) designates, or provides for the designation of, persons with standing to enforce the duty by action against the foundation company.

8. (1) A foundation company's constitution may grant, or authorise the grant, to any person or persons or description of persons, whether or not ascertained or in existence, the right to become a member or supervisor of the foundation company and such right is enforceable by action against the foundation company, whether or not enforceable as a matter of contract.

Members and
supervisors

(2) A foundation company may cease to have members if its memorandum so permits or requires and it continues to have one or more supervisors.

(3) The cessation does not affect the foundation company's existence, capacity or powers.

(4) The cancellation of a foundation company's issued shares may be carried out by any method permitted under the Companies Law applicable to foundation companies.

(5) If a foundation company has ceased to have members, it may not subsequently admit members, or issue shares, unless expressly authorised to do so by its constitution.

(6) Subject to the constitution -

- (a) a member or supervisor may also be a director; and
- (b) there is no requirement that a foundation company have supervisors who are not directors.

Altering a memorandum 9. (1) The objects or any other matter specified in a foundation company's memorandum may be altered if, and to the extent that, the memorandum authorises the alteration, or by an order under Part 5.

(2) However -

- (a) an alteration cannot be made and has no effect if the foundation company would no longer comply with the foundation company requirements; and
- (b) unless expressed to do so, a provision of the memorandum authorising an alteration does not authorise an alteration of the provision itself.

(3) The power to make, or consent to, alterations to a foundation company's memorandum, may be given to any person or persons, or description of persons, whether or not members or supervisors, exercisable by such process as may be required by the constitution or, if no process is specified, by special resolution.

(4) The foundation company must within fifteen days give the Registrar a copy of the resolution or other document altering the memorandum accompanied by -

- (a) the prescribed fee; and
- (b) if the copy is given to the Registrar after the fifteen days, a late filing penalty of ten dollars for each day after the fifteen days.

(5) However, the Registrar shall not accept and shall not register a document that purports to make an alteration in contravention of subsection (2).

Altering articles 10. A foundation company's articles can only be altered if and to the extent authorised under its constitution, or by an order under Part 5.

Dispute resolution 11. (1) A foundation company's constitution may provide for the resolution of disputes, differences or difficulties (each an "issue") with or among its directors, officers, interested persons or beneficiaries (to the extent beneficiaries have any rights) concerning the foundation company or its operations or affairs, or the duties, powers or rights of persons under the constitution by arbitration or by any other lawful method.

(2) A resolution arrived at by agreement between the parties to an issue or under subsection (1) may not be set aside unless vitiated by fraud or bad faith.

PART 4 - THE OPERATION AND MANAGEMENT OF FOUNDATION COMPANIES

12. (1) A foundation company's constitution may provide for the making and altering of bylaws for the foundation company. Bylaws

(2) Directors, officers and their delegates, and any others who have duties or powers under the constitution, shall comply with applicable provisions of the bylaws, so far as that is possible and consistent with the constitution and the law, and the foundation company is able to meet the liabilities relating to such compliance.

(3) Bylaws do not form part of the constitution for any purpose of the Companies Law applicable to foundation companies or this Law.

(4) Persons dealing in good faith with a foundation company are not required to consider its bylaws or look into compliance by directors or others with its bylaws.

13. (1) A foundation company's registered office shall be at its secretary's business address as a qualified person. Registered office

(2) If the secretary's business address changes, sections 51 and 77 of the Companies Law applicable to foundation companies apply for the change.

14. (1) Each foundation company shall keep at its registered office a register of its supervisors containing- Register of supervisors

- (a) the names and addresses of its supervisors;
- (b) the date on which each of its supervisor was appointed; and
- (c) any date on which a supervisor's appointment ceased.

(2) If a change takes place in a foundation company's supervisors, the foundation company shall, within sixty days, update its register to reflect the change.

(3) If a foundation company contravenes this section, the following commit an offence and are liable to a maximum fine of five hundred dollars for each day during which the contravention continues -

- (a) the foundation; and
- (b) every director or manager of the foundation company who knowingly and wilfully authorised or permitted the contravention.

Limitation on distributions

15. (1) A foundation company shall not dispose of any of its assets if, immediately following the date on which the disposition is proposed to be made, it will be unable to pay its debts as they fall due in the ordinary course of business (a “prohibited distribution”).

(2) The recipient of a prohibited distribution is liable to the foundation company for the amount or value of the disposition if, when it was received, the recipient had actual knowledge that the disposition was a prohibited distribution.

(3) If a director or manager of a foundation company knowingly and wilfully authorises or permits a prohibited distribution, the foundation company and the director or manager commit an offence and are liable to a maximum fine of fifteen thousand dollars and to imprisonment for five years, or both.

(4) For this section -

2011 Revision

“dispose” is defined in section 87 of the Trusts Law (2011 Revision).

Secretary

16. (1) A foundation company shall at all times have a qualified person as its secretary.

(2) The secretary shall continue to hold office until a qualified person has been appointed in the secretary’s place and the Registrar has been given a notice of the change accompanied by the prescribed fee.

(3) A person who is not a qualified person may be appointed as an assistant secretary.

(4) Subject to contrary provision in the constitution of the foundation company, the secretary is authorised to apply to the Court under Part 5.

Compliance with regulatory laws

17. (1) A foundation company -

- (a) shall ensure the foundation company, and its directors, officers, and interested persons give information concerning the foundation company that its secretary may reasonably require to comply with the regulatory laws; and
- (b) shall not accept an asset contribution that is gratuitous or is in consideration of a share issue unless its secretary has given the foundation company a notice that there appears to be no objection under the regulatory laws to the acceptance.

(2) If a foundation company contravenes subsection (1), the following commit an offence and are liable to a maximum fine of fifteen thousand dollars and to imprisonment for five years, or both -

- (a) the foundation company;
- (b) its directors and any manager of the foundation company; and
- (c) anyone else who, when the offence was committed, was purporting to act as a director or manager of the foundation company.

(3) However, it is a defence for an individual to prove the offence was committed without the individual's consent or connivance or that the individual exercised reasonable diligence to prevent the commission of the offence.

(4) A foundation company's secretary shall maintain a full and proper record of the secretary's activities and enquiries made for giving notices under subsection (1)(b), including information given to the secretary for that purpose.

(5) A secretary who contravenes subsection (4) commits an offence and is liable to a maximum fine of fifteen thousand dollars and to imprisonment for five years, or both.

(6) In this section -

"information" includes accounts, documents and records.

PART 5 - THE GRAND COURT'S FUNCTIONS

18. (1) This section applies if -

- (a) a foundation company's objects or the provisions of its constitution about the disposal of its surplus assets on winding-up ("surplus asset disposal") become wholly or partly as follows (the "difficulty") -
 - (i) impossible or impracticable;
 - (ii) unlawful; or
 - (iii) obsolete in that, because of changed circumstances, they fail to achieve the foundation company's general intent; and
- (b) either -
 - (i) there is no power under the constitution to resolve the difficulty by altering the constitution or otherwise; or
 - (ii) such a power exists but has not been exercised.

Constitutional
obsolescence etc.

(2) Any of the following may apply to the Court for it to resolve the difficulty -

- (a) the foundation company;
- (b) subject to any contrary provision in the constitution, its secretary;
- (c) an interested person;
- (d) a person authorised under the constitution; or
- (e) the foundation company's liquidator.

(3) The Court may decide the application by -

- (a) altering the constitution in any way it considers appropriate to resolve the difficulty in accordance with the general intent of the foundation company; or
- (b) if the Court considers the difficulty cannot be so resolved or that the general intent cannot be sufficiently found from admissible evidence as a matter of probability, making a winding up order for the foundation company.

(4) If the Court makes a winding-up order, it shall give the liquidator directions about surplus asset disposal in the way it considers will best help to achieve any general intent found.

(5) If the Court considers that there is no better type of disposition for any general intent found or if no general intent was found, the surplus asset disposal is to be treated as a disposition for charitable purposes.

Breakdown in the
appointment of directors
or supervisors

19. (1) This section applies if -

- (a) a foundation company -
 - (i) ceases to have, or to have enough, directors, for it to be managed under its constitution, or its directors are not dealing with its business (a "directorship difficulty"); or
 - (ii) ceases to have members, supervisors or interested persons, or enough of them to perform their roles under the constitution, or they have not been doing so (a "supervisory difficulty"); and
- (b) either -
 - (i) there is no power under the constitution to resolve the directorship or supervisory difficulty by altering the constitution, or otherwise; or
 - (ii) such a power exists but has not been exercised.

(2) Any of the following may apply to the Court for it to resolve either difficulty -

- (a) a member, supervisor, director, officer or interested person of the foundation company;

- (b) subject to any contrary provision in the constitution, its secretary;
or
- (c) anyone else authorised under the constitution.

(3) Further, the directors and officers have a duty to make such an application for a directorship difficulty.

(4) The Court may decide the application by making a winding up order for the foundation company or by making any or all of the following orders -

- (a) for the directorship difficulty -
 - (i) appointing or removing directors; or
 - (ii) altering the provisions of the constitution about appointing or removing directors;
- (b) for the supervisory difficulty -
 - (i) appointing or removing supervisors; or
 - (ii) altering the provisions of the constitution about appointing or removing supervisors or about the powers, duties and other terms of appointment of supervisors;
- (c) for either difficulty, making an alternative order to winding up that may be made under section 95 of the Companies Law applicable to foundation companies.

20. (1) Subject to any contrary provision in its constitution, a foundation company with enforceable duties under section 7(5) has a right to apply to the Court for an opinion or advice or for directions.

Application to the Court for opinion, advice or directions

(2) Section 48 of the Trusts Law (2011 Revision) applies for the application and any such advice, opinion or directions and the protection of the foundation company as if a reference in the section -

2011 Revision

- (a) to a trustee or personal representative were a reference to the foundation company;
- (b) to trust money or assets were a reference to the foundation company's assets; and
- (c) to a person interested in an application were only a reference to an interested person for the foundation company.

21. The Court may also make any further order or direction it thinks fit to give effect to an order under this Part, including about costs.

General order-making power for Part

PART 6 - MISCELLANEOUS

22. (1) A proceeding for an offence against this Law shall be tried summarily.

Provision about offences

2014 Revision (2) The penalty under this Law for an offence applies despite sections 6(2) and 8 of the Criminal Procedure Code (2014 Revision).

Regulations 23. The Cabinet may make Regulations prescribing fees and forms for the purposes of this Law and all other matters that are required or permitted under this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law.

SCHEDULE 1

(section 3(2))

THE COMPANIES LAW APPLICABLE TO FOUNDATION COMPANIES

PART 1 - EXCLUDED PROVISIONS

The following provisions of the Companies Law do not apply to a foundation company -

- Section 11 (Address of registered office may be changed);
- Section 22 (Adoption and application of Table A in Schedule 1);
- Section 37(3)(b) (Redemption and purchase of shares);
- Section 217(3) and (4) (Shares and dividends);
- Subject to Part 2, item 19, Parts XII (Transfer by way of Continuation) and XVI (Merger and Consolidation)

PART 2 - MODIFICATIONS TO SPECIFIC PROVISIONS OF THE COMPANIES LAW FOR FOUNDATION COMPANIES

1. Sections 12, 25(3), 28(1), 29, 40, 44, 46, 48, 57, 60, 61, 66, 67, 73, 75, 86, 95(3) and 159 apply as if a reference to a member were a reference to an interested person.
2. Section 24 applies subject to section 10 of this Law.

3. Section 26(3)(b) applies as though it referred to the business address in the Islands of the secretary for the time being.
4. Section 37B(1) applies without the final phrase “unless, as a result of the surrender, there would no longer be any issued shares of the company other than shares held as treasury shares”.
5. Sections 50 and 51 apply subject to section 13 of this Law.
6. Section 64 applies as though paragraphs (a), (b) and (c) were replaced by the following -
 - “(a) on the application of at least one fifth of the total number of interested persons.”
7. In section 89, the definition of “contributory” includes: “(c) every interested person.”.
8. Section 92 applies subject to any provision of a foundation company’s constitution restricting or excluding the power of members or contributories to petition the Court for the foundation company’s winding-up.
9. Section 94(1)(c) applies subject to any provision of a foundation company’s constitution restricting or excluding the power of members or contributories to petition the Court for its winding-up.
10. Sections 101(3) and 103(1) apply as though they included any supervisors who have a duty of any description under the foundation company’s constitution.
11. Section 110(1)(a) applies as though the phrase “to the persons entitled to it” were replaced by “in the way required by its memorandum or articles of association”.
12. Section 116 applies subject to any provision of a foundation company’s constitution restricting or preventing its voluntary winding-up.
13. Section 121(2) applies as though “any shareholder or shareholders holding not less than one fifth of the foundation company’s issued share capital” were replaced by “interested persons with not less than one fifth of the voting rights exercisable at general meetings”.

14. Section 131(b) applies as though the words “in the interests of the contributories” were omitted.
15. Section 134 applies as if a reference to an officer included a reference to a supervisor.
16. Section 135, 136, 137 and 160 apply as though they included any supervisor who has duties of any description under the foundation company’s constitution.
17. Section 140 applies as though the words “shall be distributed amongst the members according to their rights and interests in the company” were replaced by “shall be distributed or applied in the way required by the foundation company’s constitution”.
18. Section 153(1) applies as though it contained the additional words “or, for a foundation company, on trust to distribute or apply the same in the way required by foundation company’s constitution”.
19. Regulations may prescribe a modified version of the following Parts for foundation companies, which are to apply as part of the Companies Law applicable to foundation companies instead of those Parts -
 - (a) Part XII (Transfer by way of Continuation) for body corporate existing under the laws of a jurisdiction outside of the Islands applying to be registered in the Islands by way of continuation as a foundation company, and to a foundation company proposing to be registered by way of continuation in a jurisdiction outside the Islands; and
 - (b) Part XVI (Merger and Consolidation) for mergers and consolidations in which one or both of the constituent companies or the consolidated company is or is intended to be a foundation company.

SCHEDULE 2

MODEL CONSTITUTION

(section 6)

PART 1 - MEMORANDUM OF ASSOCIATION

MEMORANDUM OF ASSOCIATION
OF
THE JOHN SMITH FOUNDATION COMPANY LIMITED
A foundation company limited by guarantee

1. The name of the foundation company is The John Smith Foundation Company Limited.
2. The foundation company is a company within the meaning of the Companies Law and a foundation company within the meaning of the Foundation Companies Law, 2016.
3. The objects for which the foundation company is established are -
 - (a) to act as a holding company and an investment company, with no restriction on the objects or operations of its subsidiaries or on the nature of its or their investments;
 - (b) to provide financial assistance or benefits to beneficiaries designated under the articles of association; and
 - (c) to do all such things as in the opinion of the directors are or may be incidental or conducive to the above objects or any of them.
4. The foundation company shall have and be capable of exercising all the functions of a natural person of full capacity irrespective of any question or corporate benefit, as provided by section 27(2) of the Companies Law (2016 Revision).
5. The foundation company may not carry on a business for which a licence is required under the Laws of the Cayman Islands unless duly licensed.
6. No portion of the income or property of the foundation company from whatever place or source shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members, directors or supervisors of the foundation company, as such, apart from authorised remuneration for services to the foundation company.
7. The liability of the members is limited.
8. The foundation company may cease to have members.

2016 Revision

9. Each person who is a member undertakes to contribute to the assets of the foundation company in the event of the foundation company being wound up during the time that the person is a member, or within one year afterwards, for payment of the debts and liabilities of the foundation company contracted before the time at which the person ceases to be a member, and the cost, charges and expenses of the winding-up of the foundation company, and for the adjustments of the rights of the contributories amongst themselves, such amounts as may be required, not exceeding the sum of one United States dollar (US\$1.00).
10. If on the winding-up or dissolution of the foundation company there remain surplus assets after the satisfaction of its debts and liabilities, the same shall be applied or distributed under the articles of association of the foundation company and, subject thereto, shall be paid or transferred to such charitable objects as shall be decided by ordinary resolution of the foundation company.
11. This memorandum and the articles of association may be altered by special resolution, except that neither clause 6 nor clause 10 of this memorandum may be altered, and no other alteration may be made which is in any way inconsistent with clause 6 or clause 10.

Dated this ____ day of _____ 20 ____.

SIGNATURE, NAME, OCCUPATION
AND ADDRESS OF SUBSCRIBER

PART 2- ARTICLES OF ASSOCIATION

ARTICLES OF ASSOCIATION

OF

THE JOHN SMITH FOUNDATION COMPANY LIMITED

A foundation company limited by guarantee

1. INTERPRETATION

- 1.1 In these articles, unless the context requires otherwise -

“founder” means the founder named in these articles;

“Laws” means the Foundation Companies Law, 2016, the Companies Law applicable to Foundation Companies, and every statutory modification or re-enactment of them;

“ordinary resolution” means a resolution passed at a general meeting of the foundation company by a simple majority of votes cast or by a written resolution in writing under article 9.8;

“special resolution” means a resolution passed at a general meeting of the foundation company by not less than a two-thirds majority of votes cast or by a resolution in writing under article 9.8; and

“written” and “in writing” include all modes of representing or reproducing words in visible form.

1.2 Except as provided above, words and expressions defined or used in the Laws have the same meaning in these articles.

2. PRELIMINARY

2.1 The business of the foundation company may be commenced immediately upon registration under the Laws.

2.2 The foundation company may ratify any contract or other transaction entered into in its name or on its behalf prior to registration.

2.3 The preliminary expenses of incorporating the foundation company shall be paid by the foundation company, including any expenses concerning any contract or transaction ratified under article 2.2.

3. THE FOUNDER

3.1 The founder is John Smith of George Town, Grand Cayman.

3.2 The founder has the following powers, each of which is described in more detail elsewhere in these articles -

- (a) the power to authorise the admission of members, or to restrict or prohibit the admission of members (see article 4);
- (b) the power to appoint or remove directors (see article 5);
- (c) the power to call for reports, accounts, information and explanations from the directors (see articles 5 and 13);

- (d) the power to appoint or remove supervisors, and settle their powers and duties (see article 6);
 - (e) the power to designate beneficiaries, give directions as to their benefits, grant them enforceable rights, and to revoke or vary the same (see article 7);
 - (f) the right to receive notice of, and attend and vote at, general meetings of the foundation company (article 9);
 - (g) the power to cause the foundation company to be wound up (see article 16); and
 - (h) the power to adopt, revoke or vary bylaws (see article 18);
- 3.3 The founder's powers are free of any duty, and may be exercised for the founder's own benefit.
- 3.4 The founder may by notice to the foundation company revocably or irrevocably terminate or restrict any or all of the founder's powers. If the termination or restriction is expressed to be irrevocable, it may not be altered or revoked, directly or through an alteration of these articles.
- 3.5 The founder's powers are not assignable and, except as permitted by these articles or required by law, may not be exercised by any other person on behalf of the founder.
- 3.6 Upon the founder's death the founder's powers shall terminate.
- 3.7 An exercise of a founder's power does not cease to be effective by reason only that the founder subsequently dies or ceases to have the power.

4. MEMBERS

- 4.1 The subscribers to the memorandum are the first members of the foundation company.
- 4.2 Subject to these articles, the directors may, if so authorised by the founder or by a special resolution of the foundation company, admit as a member any person who has applied for membership in writing, and the terms of admission may restrict, enlarge or exclude any or all of the voting and other rights or powers of members under these articles, or provide for termination of membership at a specified time or in specified circumstances.
- 4.3 The founder by notice to the foundation company, or the foundation company by special resolution, may restrict or prohibit the subsequent

admission of members. If the restriction or prohibition is expressed to be irrevocable, it may not be altered or revoked, directly or through an alteration of these articles.

- 4.4 A person's membership of the foundation company terminates -
- (a) if the person dies or, being a corporation, is dissolved;
 - (b) if the person resigns as a member by notice to the foundation company. The resignation shall be effective immediately unless the notice states otherwise; or
 - (c) as provided in the person's terms of admission as a member.
- 4.5 It is not a condition of this article that the foundation company continues to have one or more members.
- 4.6 The rights and powers of members are not assignable and, except as permitted by these articles or required by law, the rights or powers of a member may not be exercised by any other person on behalf of the member.
- 4.7 The rights and powers of members are free of any duty.

5. DIRECTORS

- 5.1 The foundation company shall at all times have at least two directors.
- 5.2 The first directors may be appointed by the subscribers to the memorandum.
- 5.3 The founder has the power, exercisable by notice to the foundation company, to appoint or remove directors, including the founder if the founder is one.
- 5.4 By ordinary resolution the foundation company may appoint or remove directors.
- 5.5 A person ceases to be a director if removed under the foregoing provisions or -
- (a) if the person dies or becomes bankrupt or, being a corporation, enters into winding-up or is dissolved; or
 - (b) if the person resigns as a director by notice to the foundation company. The resignation shall be effective immediately unless the notice states otherwise.

- 5.6 Subject to these articles and the bylaws, the business and affairs of the foundation company shall be managed by or under the control of the directors, who may exercise all the powers of the foundation company other than those that are required by these articles or the bylaws to be exercised by the general meeting or others.
- 5.7 The directors shall observe these articles and the bylaws, and shall at all times act in the interests of the foundation company and its objects.
- 5.8 The directors shall give to the founder or the general meeting (or the persons who have the right to attend the general meeting) such reports, accounts, information and explanations concerning the business and affairs of the foundation company, and the discharge of the directors' duties and the exercise of their powers, as may be required by -
- (a) notice from the founder, or
 - (b) an ordinary resolution of the foundation company.
- 5.9 The duties of the directors are owed to the foundation company only.
- 5.10 Directors' remuneration shall be at such rates and on such terms as may be agreed in writing by the founder or by an ordinary resolution of the foundation company.

6. SUPERVISORS

- 6.1 The founder has the power, exercisable by notice to the foundation company, to appoint or remove supervisors to supervise the management of the foundation company.
- 6.2 The founder's notice appointing a supervisor may -
- (a) restrict, enlarge or exclude any or all of the voting and other rights or powers of supervisors under these articles;
 - (b) impose any supervisory or other duty or disability, grant a related exculpation, and waive conflicting interests or duties;
 - (c) give the supervisor rights to remuneration or indemnity by the foundation company; and
 - (d) provide for the termination of the supervisor's appointment at a specified time or in specified circumstances.
- 6.3 A person who is a supervisor has the power by notice to the foundation company to appoint a person to succeed the person as supervisor immediately or at a specified time or in specified circumstances, with and subject to the same terms of appointment as applied to the

appointor, and to revoke such appointment at any time before it takes effect.

- 6.4 A person ceases to be a supervisor -
- (a) if the person dies or becomes bankrupt or, being a corporation, enters into winding-up or is dissolved;
 - (b) if the person resigns as a supervisor by notice to the foundation company. The resignation shall be effective immediately unless the notice states otherwise;
 - (c) if the person becomes a director or acquires any interest or duty that conflicts with any duty of the person as a supervisor, unless authorised by the founder, or by a special resolution of the foundation company;
 - (d) as provided in the person's terms of appointment as a supervisor; or
 - (e) if removed by the founder.
- 6.5 The foundation company is required at all times after the founder's death, or if the founder is incapacitated, to have at least two supervisors who are not directors and are able and willing to supervise the management of the foundation company. If this requirement is not met, the foundation company shall by ordinary resolutions appoint one or more supervisors, on such terms as it thinks fit, to make up the shortfall, failing which the directors shall apply to the Court under section 19(2) of the Foundation Companies Law, 2016.
- 6.6 A supervisor -
- (a) may require access during normal working hours to the files, books, accounts and records of the foundation company;
 - (b) may by notice to the foundation company call for such reports, accounts, information and explanations from the directors as to the administration of the foundation company as are described in the notice;
 - (c) has the right to receive notice of, and attend and vote at, general meetings; and
 - (d) shall observe these articles and the bylaws.
- 6.7 The powers granted to a supervisor under these articles may only be exercised in the interests of the foundation company and its objects.
- 6.8 Any duties of a supervisor are owed to the foundation company only.

7. BENEFICIARIES

8.5 The secretary shall at all times comply with the requirements of regulatory laws as defined in section 2 of the Companies Law and shall be entitled to receive from the foundation company and any interested person such information as the secretary may reasonably require for such compliance.

8.6 Section 16 of the Foundation Companies Law, 2016 shall be observed.

9. GENERAL MEETINGS

9.1 The foundation company shall in each year of its existence hold a general meeting as its Annual General Meeting at the time and place appointed by the secretary after consultation with the directors.

9.2 The secretary shall convene a general meeting when required to do so by written requisition of -

- (a) the founder, or
- (b) any person who has the right to attend general meetings, or
- (c) the directors.

9.3 The persons who have the right to receive notice of, and to attend and have one vote each at, general meetings are -

- (a) the founder;
- (b) any members;
- (c) the supervisors; and
- (d) any beneficiary to whom the right has been granted by an unrevoked declaration under article 7.1(c)/

9.4 General meetings shall be convened by not less than twenty-one days' notice (exclusive of the day on which the notice was served) to everyone entitled to attend, unless all persons entitled to attend agree to short notice (or no notice). The notice shall state the place, day and hour of the meeting and the general nature of the business to be transacted.

9.5 The accidental omission to give notice of a general meeting to any person so entitled or the non-receipt of a notice of a meeting shall not invalidate the proceedings at that meeting.

9.6 No business shall be transacted at a general meeting unless a quorum is present in person or by proxy when the meeting proceeds to business. The quorum is a majority of the persons entitled to attend and shall include the founder if the founder is alive and not incapacitated.

- 9.7 At any general meeting of the foundation company, unless the Law or these articles otherwise provide, every motion proposed shall be decided by ordinary resolution of those present in person or by proxy and entitled to vote.
- 9.8 A resolution in writing signed by all persons for the time being entitled to vote at general meetings shall be as valid and effective as if the same had been passed at a general meeting of the foundation company duly convened and held.
- 9.9 A general meeting may be held, and any person may participate in a meeting, by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting are capable of hearing each other, and such participation shall be deemed to constitute presence in person at the meeting.

10. PROXIES

- 10.1 Any person entitled to attend and vote at a general meeting of the foundation company may by written instrument under hand, or if the appointor is a corporation, either under the corporation's seal or under the hand of an officer or attorney duly authorised, appoint a proxy to represent at the general meeting of the foundation company.
- 10.2 The instrument appointing a proxy may be in any usual or common form or as otherwise acceptable to the chairman of the meeting for which the instrument is first presented.

11. DIRECTORS MEETINGS

- 11.1 Except as otherwise provided by these articles, the directors shall meet together for the despatch of business, convening, adjourning and otherwise regulating their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes of the directors present. Each director shall have one vote. In case of an equality of votes, the chairman of the meeting shall have a second or casting vote.
- 11.2 The secretary on the written requisition of a director shall, at any time summon a meeting of the directors by at least five days' notice (exclusive of the day on which the notice is served) in writing to every director specifying the place, the day and the hour of the meeting and the general nature of the business to be transacted unless notice is waived by all the directors either at, before or after the meeting is held.

- 11.3 The quorum necessary for the transaction of the business of the directors may be fixed by ordinary resolution of the foundation company and unless so fixed shall be at least two of the directors then holding office, present in person.
- 11.4 Minutes of all meetings of the directors shall be signed by the chairman of the meeting or the next succeeding meeting and a copy of the minutes shall be circulated to all directors and the secretary within fourteen days after the meeting and in any event before the next scheduled meeting.
- 11.5 A resolution in writing signed by all the directors for the time being shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened.
- 11.6 A meeting of the directors may be held, and any director may participate in a meeting, by means of a telephone conference or similar communications equipment by means of which all persons participating in the meeting are capable of hearing each other, and such participation shall be deemed to constitute presence in person at the meeting.

12. REGISTERS

- 12.1 In addition to the registers required to be maintained under the Laws, the foundation company shall maintain a register of interested persons at its registered office which shall, *inter alia*, record -
- (a) the date upon which a person first became an interested person, and upon which the person ceased to be an interested person;
 - (b) the name of the currently designated representative of such interested person in the case of a corporate member; and
 - (c) the address of the interested person in the Islands for service of notices.

13. ACCOUNTS

- 13.1 The directors shall cause proper books of account to be kept for -
- (a) all funds received or expended or distributed by the foundation company and the matters in respect of which the receipt or expenditure takes place; and
 - (b) the assets and liabilities of the foundation company,

and proper books of account shall not be deemed to be kept if there are not kept such books as are necessary to give a true and fair view of the state of the foundation company's affairs and to explain its transactions.

Such books shall be kept at the registered office or such other place as may be determined by special resolution of the foundation company.

- 13.2 The books of account shall be open at any time in ordinary business hours to inspection by the founder, a supervisor, and any other person to whom a right of access has been granted under these articles.
- 13.3 By notice to the foundation company the founder or a supervisor may call for such reports, accounts, information and explanations from the directors as to the administration of the foundation company as are described in the notice.

14. AUDITORS

- 14.1 The foundation company may by ordinary resolution at any time appoint or replace an auditor or auditors of the foundation company. The remuneration of an auditor shall be fixed by ordinary resolution.
- 14.2 Every auditor shall have a right of access at all times in ordinary business hours to the books of account of the foundation company and shall be entitled to require from the directors and officers of the foundation company such information and explanation, and access to vouchers and other documents, as the auditor considers necessary for the performance of the auditor's duties.

15. WINDING-UP

- 15.1 The foundation company shall be wound up if the founder delivers notice to the foundation company at its registered office declaring that it is to be wound up. The person designated in the founder's notice shall be the liquidator, or if no liquidator is so appointed, then the directors or such person as they shall appoint shall be the liquidator. The surplus assets shall be distributed to the Founder or as the founder directs.
- 15.2 Members, director and supervisors as such have no power or authority to wind up the foundation company or petition the Court to wind up the foundation company, except in the case of insolvency or for the purposes of a *bona fide* reorganisation intended to enable the foundation company to carry out its objects more efficiently.

16. INDEMNITY

16. The directors, supervisors, secretary and other officers of the foundation company shall be indemnified out of the assets of the foundation

company from and against all actions, proceedings, costs, charges, losses, damages and expenses which they or any of them shall or may incur or sustain because of an act done or omitted in or about the execution of their duties in their respective offices, except such as they shall incur or sustain by or through their own wilful neglect or default.

17. BYLAWS

- 17.1 The founder by notice to the foundation company, or the foundation company by special resolution, may adopt bylaws that are not inconsistent with the Laws or the constitution.
- 17.2 Bylaws may relate to any aspect of the business or affairs of the foundation company, or any of the duties or powers of the directors or their delegates, or others who have duties or powers under these articles including the way of achieving the foundation company's objects, the benefitting of beneficiaries, the investment, management and protection of the foundation company's assets, the remuneration of directors and their delegates, the delegation of the directors' duties and powers, the supervision of the management of the foundation company, and the appointment of advisers and other service-providers.
- 17.3 The bylaws may be varied or revoked by the founder by notice to the foundation company, or by special resolution of the foundation company.
- 17.4 The adoption or variation of bylaws shall not render any director or other person liable for prior conduct.
- 17.5 No third party dealing in good faith with the foundation company need be concerned with the bylaws or their observance.

18. ALTERATION OF ARTICLES

Subject to provisions of the constitution restricting alterations, these articles may be altered by the founder by notice to the foundation company or by special resolution of the foundation company.

Passed by the Legislative Assembly the day of , 2016.

Speaker.

Clerk of the Legislative Assembly.