

FOUNDATIONS (AMENDMENT) BILL, 2021

(Bill No. 35 of 2021)

OBJECTS AND REASONS

The Foundations Act allows for the registration of Foundations with the FSA. A foundation has the features of both a company and a trust. In view that civil law jurisdictions do not recognize trusts, foundations were introduced in Seychelles to serve that market. A foundation is legally a separate entity. Once assets have been transferred to a foundation, they become the assets of that foundation with full legal and beneficial title and do not form part of the founder's personal estate on death.

2. In line with international standard in relation to exchange of information in tax matters and especially, following the subsequent review of Seychelles by the Global Forum of the Organization for Economic Corporation & Development (“OECD”), amendments are being proposed to the Foundations Act, to improve the availability of information in Seychelles and hence, improving the standing of Seychelles' vis-à-vis such international standards. To give effect to these matters, some of the notable amendment of this Bill are hereby mentioned.

3. A new section 30A would now impose an obligation on registered agents to preserve for 7 years, such records of the foundation (already being kept at their business premise in Seychelles) in respect of which they act as registered agent. This will ensure the availability of information, mainly legal ownership and accounting information upon request by relevant authorities.

4. Amendment to section 75 is being proposed in order to reduce the risk of unavailability of accounting records (as currently similar to IBCs, the law allows foundations to keep accounting records outside Seychelles on the condition that they should promptly be made available to Seychelles' authorities upon request) to require all foundations to keep their accounting records at their registered office (i.e. with the registered agent) in Seychelles. A foundation will also be allowed to keep a copy of its accounting records in electronic form in Seychelles instead of the original records.

5. Amendment to section 101 is being proposed in order to ensure that struck-off foundations remedy any previous contraventions to record keeping obligations before being restored. It is being proposed, to make it a legal requirement that the Court will only restore a foundation if it is satisfied that the foundation is in compliance with its obligations relating to accounting records, and the keeping of registers of councilors, registered agents, supervisory persons, authorised persons, beneficiaries and founders.

6. Amendment to section 101 is being proposed in order to reduce the risks associated with struck-off foundations retaining their legal status for 10 years, to reduce the number of years that a struck off foundation holds its legal status from 10 years to 3 years (i.e. a foundation will be automatically dissolved after 3 years of being struck off).

7. Amendment to section 103 in line with OECD's recommendation for international business companies (IBCs), in order to reduce the risks associated with struck-off foundations retaining their legal status for 10 years, it is proposed to reduce the number of years that a struck off foundation be “automatically” dissolved to 3 years.

8. Amendment to schedule 1 to provid for the new fees payable to the Registrar and amendment 9 provideds for commencement date in relashion to section 5, 6, 7 and 8 to come into operation from 1st January 2022 and that section 75 as amended shall be complied with by Foundations within 6 months from the commencement of this Act.

9. The Bill seeks to achieve the above objectives.

Dated this 23rd day of July, 2021.

**FRANK D.R. ALLY
ATTORNEY-GENERAL**

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ARRANGEMENT OF SECTIONS

Sections

1. Short title
2. Amendment of section 2 of Cap 270
3. Insertion of new section 30A
4. Amendment of section 75
5. Amendment of Section 77A
6. Substitution of new section for section 101
7. Amendment of section 102
8. Amendment of section 103
9. Amendment of Schedule 1
10. Commencement and compliance of certain provisions

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A BILL

FOR

AN ACT to amend the Foundations Act (*Cap 270*).

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Foundations (Amendment) Act, 2021.

Amendment of section 2 of Cap 270

2. Section 2 of the Foundations Act (*Cap 270*) (*hereinafter referred to as the “principal Act”*) is amended by repealing the definition of “Registrar”, and substituting therefor the following definition —

““Registrar” means the Financial Services Authority established under the Financial Services Authority Act (*Act 19 of 2013*);”.

Insertion of new section 30A

3. The principal Act is amended by inserting after section 30, the following section —

Registered Agent —

“30A.(1) A registered agent shall, in respect of each Foundation (including a Foundation, whose name has been struck-off the Register or which is dissolved or which has continued outside Seychelles) to which it was or is acting as registered agent, preserve for at least 7 years —

- (a) the registers specified in section 77(1), from the date of the last striking-off or dissolution of the Foundation;
- (b) the accounting records of the Foundation in the possession of the registered agent, from the date of completion of the transactions or operations to which they each relate.

(2) Where a registered agent ceases to hold a licence to provide foundation services under the International Corporate Service Providers Act (*Cap 275*), that person shall handover all the records specified under subsection (1) to the Registrar or any other person approved by the Registrar.

(3) All records to be handedover under subsection (2) shall be preferably in the digital form or in such form as agreed upon between the Registrar and the registered agent.

(4) If the registered agent fails to comply with the requirements of this section, the registered agent shall be liable to a penalty not exceeding US\$10,000.”

Amendment of section 75

4. Section 75 of the principal Act is amended —

- (a) in subsection (1)(c), by repealing the word “accounts”, and substituting therefor the words “financial statements”;
- (b) by repealing subsection (3), and substituting therefor the following subsections —

“(3) A Foundation shall —

- (a) prepare an annual financial summary to be kept at its registered office in Seychelles within 6 months from the end of the Foundation's financial year; and
- (b) on a bi-annual basis, keep its accounting records at its registered office in Seychelles.

(3A) It shall be sufficient compliance with subsection (3) if a copy of the accounting records and financial summary is kept in electronic form at the Foundation's registered office.

(3B) Where a Foundation keeps a copy of its accounting records at its registered office, the Foundation shall keep, with its registered agent, a written record of the physical address of the place where the original accounting records are being kept, and of any change thereto.

(3C) The financial year of the Foundation shall be the calendar year, unless it is changed by a resolution of councillors and notified to the Foundation's registered agent within 14 days of the passing of the resolution.

(3D) The Registrar may issue written guidelines regarding the implementation of the obligations relating to accounting records.”;

- (c) by repealing subsections (5) and (6), and substituting therefor the following subsections —

“(5) Where a Foundation fails to comply with the requirements of subsection (1), (3) or (3B), the Foundation shall be liable to a penalty not exceeding US\$10,000.

(6) Where a Foundation is liable to a penalty under subsection (5) for non-compliance with subsection (1), (3) or (3B), the councillor who is responsible for such non-compliance shall also be liable to a penalty not exceeding US\$10,000.”.

Amendment of section 77A

5. Section 77A of the principal Act is amended —

- (i) by inserting after subsection (1), the following subsection —

“(1A) For the purposes of sub-section (1), where a document is not in the English or French language, the Registrar may request a translation of the records in the English or French language from the Foundation or from the registered agent.”

- (ii) in subsection (2),

by inserting after the words “compliance inspection” the words “, or fails to comply with subsection (1A),”.

Substitution of new section for section 101

6. The principal Act is amended by repealing section 101, and substituting therefor the following section —

Application to Court for restoration of Foundation to Register

“101.(1) This section shall apply in relation to the proposed restoration of the name of a Foundation who has been dissolved or whose name has been struck off the Register but is not yet dissolved.

(2) An application for restoration of the name of the Foundation to the Register may be made to the court by —

- (a) a creditor, councillor, founder, protector or liquidator of the Foundation; or
- (b) any person who can establish an interest in the Foundation to be restored to the Register.

(3) An application under sub-section (2) to restore the name of a struck-off or dissolved Foundation to the Register may be made to the Court —

- (a) within one year from the date of the striking off the Foundation; or
- (b) within five years of the date of dissolution of the Foundation.

(4) A notice of the application shall be served on the Registrar, who is entitled to appear and be heard on the hearing of the application.

(5) On an application under subsection (2) and subject to subsection (6), the court may —

- (a) restore the Foundation to the Register subject to such conditions as it considers appropriate; and
- (b) give such directions or make such orders as it considers necessary or desirable for the

purpose of placing the Foundation and any other persons as nearly as possible in the same position as if the Foundation had not been dissolved or struck off the Register.

(6) The court shall not make an order restoring a Foundation to the Register, unless it is satisfied that —

- (a) a person with a foundation services licence under the International Corporate Service Providers Act (*Cap 275*) has agreed to act as registered agent of the Foundation; and
- (b) the Foundation is in compliance with its obligations —
 - (i) under this Act relating to —
 - (A) accounting records; and
 - (B) the registers specified under section 77(1); and
 - (ii) under the Beneficial Ownership Act, 2020 (*Act 4 of 2020*) relating to register of beneficial owners.

(7) Where the court makes an order restoring a Foundation to the Register, a sealed copy of the order shall be filed with the Registrar by the applicant.

(8) On receiving a sealed copy of the order under subsection (7), and subject to payment to the Registrar of all outstanding annual fees and any penalty or other fees payable under this Act in relation to the Foundation, the Registrar shall restore the Foundation to the Register with effect from the date and time that the copy of the sealed order was filed.

(9) A Foundation is restored to the Register with the name that it had immediately before it was dissolved or struck-off the Register.

(10) A Foundation that is restored to the Register is deemed to have continued in existence as if it had never been dissolved or struck off the Register.”

Amendment of section 102

7. Section 102 of the principal Act is amended —

(a) by repealing subsection (1), and substituting therefor the following subsections —

“(1) Subject to subsection (1A), where the name of a Foundation has been struck off the Register under section 99(2) or a Foundation has been deemed dissolved under section 103(1), the Foundation or a councillor, beneficiary, founder, supervisory person or liquidator thereof, may apply to the Registrar to have the name of the Foundation restored to the Register.

(1A) An application under subsection (1) may be made to the Registrar —

- (a) within one year from the date of the striking off the Foundation; or
- (b) within five years of the date of dissolution of the Foundation.”;

(b) in subsection (2), by repealing the words “The Registrar may”, and substituting therefor the words “Subject to subsection (2A), the Registrar may”;

(c) by inserting after subsection (2), the following subsection —

“(2A) The Registrar shall not restore the name of a Foundation to the Register unless the Registrar is satisfied that the Foundation is in compliance with its obligations —

- (a) under this Act relating to —
 - (i) accounting records; and

- (ii) the registers specified in section 77(1); and
- (b) under the Beneficial Ownership Act, 2020 (*Act 4 of 2020*) relating to register of beneficial owners.”.

Amendment of section 103

8. Section 103 of the principal Act is amended in subsection (1) by repealing the words “3 years or 10 years respectively” and substituting thereof the words “one year”.

Amendment of Schedule 1

9. Schedule 1 of the principal Act is amended, in PART 2, by inserting after paragraph (l), the following paragraphs —

<i>[section 101(7)]</i>	
(m) For filing with the Registrar of a sealed copy of an order of the court for the restoration of the name of a Foundation to the Register	US\$500
<i>[section 102(1)]</i>	
(n) For the restoration of the name of a Foundation to the Register by the Registrar —	
(i) if the application for restoration is made 6 months or less after the date that the name of the Foundation was struck off the Register; or	(i) US\$300
(ii) if the application for restoration is made more than 6 months after the date that the name of the Foundation was struck off the Register.	(ii) US\$500”.

Commencement and compliance of certain provisions

10.(1) Sections 5, 6, 7 and 8 shall come into operation from 1st January, 2022.

(2) Every Foundation shall comply with section 75 of the Foundation Act (*Cap 270*), as amended by this Act, within a period of 6 months from the commencement of this Act.