



## ST. CHRISTOPHER AND NEVIS

### **CHAPTER 7.08 (N)**

## **MULTIFORM FOUNDATIONS ORDINANCE**

### **Revised Edition**

showing the law as at 31 December 2017

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### **MULTIFORM FOUNDATIONS ORDINANCE**

**Ordinance 2 of 2004** ... in force

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**MULTIFORM FOUNDATIONS ORDINANCE**

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**ISLAND OF NEVIS**  
**CHAPTER 7.08**  
**MULTIFORM FOUNDATIONS ORDINANCE**

AN ORDINANCE FOR THE PROMOTION, DEVELOPMENT AND FURTHERANCE OF THE FINANCIAL SERVICES INDUSTRY, BUSINESSES AND TRADES IN AND FROM NEVIS AND THE GENERAL ECONOMIC DEVELOPMENT OF NEVIS AND ANY MATTER INCIDENTAL OR SUPPLEMENTARY THERETO BY PROVIDING FOR THE ESTABLISHMENT, CONTINUATION OR TRANSFORMATION, OR CONVERSION, MERGER OR CONSOLIDATION AND SUBSEQUENT OPERATION AND MANAGEMENT OF FOUNDATIONS FROM WITHIN NEVIS AS MULTIFORM FOUNDATIONS AND FOR SUCH OTHER PURPOSES OR OBJECTS AS MAY BE INCIDENTAL OR SUPPLEMENTARY THERETO.

PART I

PRELIMINARY MATTERS

**Short title.**

1. This Ordinance may be cited as the Multiform Foundations Ordinance.

**Interpretation.**

2. (1) In this Ordinance, unless the context otherwise requires—

“absolute beneficiary” means a beneficiary whose beneficial entitlement has vested and is held absolutely and unconditionally, provided that it may be limited in time or duration;

“auditor” means a person who is—

- (a) approved by an accountancy body or institute which is either internationally recognized or recognized by regulation made by the Minister under this Ordinance; and
- (b) a practising member in good standing with any such recognised body or institute;

“beneficial entitlement” means a right or interest, howsoever described, held or owned, whether or not vested, absolute or contingent, conditional or unconditional, limited or unlimited, defeasible or in the future, deferred or immediate, potential or notional, in or to the multiform foundation, or any of its assets or property;

“beneficiary” means a person who has a beneficial entitlement under or by virtue of the constitution of the multiform foundation or otherwise under this Ordinance and howsoever designated, classified, treated or expressed by its multiform, and which shall include, but without prejudice to the generality of the foregoing—

- (a) with respect to a multiform stated as a trust or an ordinary foundation, a beneficiary or potential beneficiary, or class of beneficiaries or potential beneficiaries, of that trust or ordinary foundation;
- (b) with respect to a multiform stated as a company, a shareholder, guarantor or member of that company; and

- (c) with respect to a multiform stated as a partnership, a partner, whether limited or unlimited in liability, of the partnership,
- and whether or not such beneficial entitlement is capable of transfer or assignment or sale or other disposition; and a “beneficiary” may include a subscriber, but shall not include a creditor who is not a subscriber;
- “body corporate” means an incorporated entity, wherever or however incorporated, other than a corporation sole or partnership which is not incorporated, and shall include a multiform foundation, unless its constitution upon establishment shall require otherwise;
- “by-laws” mean the regulations governing the multiform foundation and which shall be separate from the memorandum of establishment and adopted or incorporated as part of the constitution in accordance with the provisions of this Ordinance or otherwise under the constitution;
- “company” means a body corporate and includes a company limited by shares or by guarantee or by both, or a limited liability company;
- “company foundation” means a multiform foundation whose stated multiform is a company, or limited company or a limited liability company;
- “constitution” means, with respect to a multiform foundation, its memorandum of establishment and by-laws;
- “Corporation Ordinance” means the Nevis Business Corporation Ordinance, Cap. 7.01 (N);
- “Court” means the High Court of St Christopher and Nevis or any court with similar jurisdiction established in succession to that Court;
- “creditor” means a person to whom a financial obligation is owed;
- “dollars” means the currency of the United States of America;
- “entity” includes a body corporate, a trust, the estate of a deceased individual, a partnership or an unincorporated association of persons;
- “Financial Intelligence Unit” means the body created by the Financial Intelligence Unit Act, Cap. 21.09;
- “Financial Services Regulatory Commission” means the body created by the Financial Services Regulatory Commission Act, Cap. 21.10;
- “foundation” means any entity or proposed entity which is capable of establishment under Part II, by continuation or transformation under Part XI, or conversion or consolidation or merger under Part XII, and shall include a multiform foundation which has been so established;
- “*Gazette*” means the Official *Gazette* of St Christopher and Nevis;
- “Government” means the Nevis Island Administration;
- “initial subscription” means the initial or first subscription upon or subsequent to the establishment of a multiform foundation;
- “intent to defraud” means to act intentionally dishonestly with a view to defeating an obligation owed to, or gaining an advantage over, another person;
- “interdict” means a person in respect of whom a curator has been appointed by any court having jurisdiction, whether in St Christopher and Nevis or elsewhere, in matters concerning mental disorder;



- “Legal Adviser” means the person appointed by the Nevis Island Administration to carry out the function of legal adviser;
- “legally acknowledged” shall have the meaning given to that expression in section 111(4);
- “limited” means, with respect to a company or partnership, where the liability of the shareholder or guarantor or partner or member as described or defined under the constitution to contribute to, or discharge any obligations or liabilities of, the company or partnership is limited to a monetary amount or its equivalent;
- “limited liability company” means a company incorporated under the Limited Liability Company Ordinance or an equivalent statute, enactment or law in any other country or jurisdiction, and includes a limited liability partnership;
- “Limited Liability Company Ordinance” means the Nevis Limited Liability Company Ordinance, Cap. 7.04 (N);
- “liquidator” shall have the meaning given to that expression in section 78(2);
- “management board” means the person or persons appointed pursuant to the provisions of section 17 to manage the business and affairs of the multiform foundation in accordance with its constitution and otherwise under the provisions of this Ordinance, and howsoever called or described in the constitution, and which shall include but without prejudice to the generality of the foregoing—
- (a) with respect to a trust foundation, the trustee or trustees of that trust foundation;
  - (b) with respect to a company foundation, the board of directors or management, or council, of that company foundation; or
  - (c) with respect to a partnership foundation, the partner or partners designated as the managing partner or management board of that partnership foundation,
- and a member or members of the management board shall be construed accordingly;
- “memorandum of establishment” means the original memorandum of establishment delivered to the Registrar on establishment under Part II or, as the case may be, the original or derived memorandum of establishment delivered to the Registrar on establishment by continuation or transformation under Part XI, or conversion or consolidation or merger under Part XII;
- “Minister” means the Minister of Finance in the Nevis Island Administration;
- “minor” means a person who under the law of St Christopher and Nevis or under the laws of his or her domicile has not reached the age of legal capacity;
- “multiform” means, subject to the provisions of section 10, the form of the foundation as provided for in its constitution and stated in its certificate of establishment or, as the case may be, its certificate of establishment by continuation or transformation or conversion or consolidation or merger, and which may be amended in accordance with, but subject to, the provisions of section 10; and references in this Ordinance to a “stated multiform” or any expression similar thereto shall mean a multiform which is referred to in section 10(9) or otherwise in regulations made by the Minister under section 10(10);

“multiform foundation” means a foundation established under Part II, or established by continuation or transformation under Part XI, or conversion or consolidation or merger under Part XII and with a multiform designated, or deemed designated, upon registration as provided for in section 10(1);

“officer” means a member of the management board or the supervisory board or the secretary or any other person who under the constitution of the foundation or otherwise under this Ordinance has fiduciary duties and responsibilities to the foundation; and shall include, with respect to the management board, a person in accordance with whose directions or instructions the management board is accustomed to act provided that such a person shall not be deemed to be so included on the basis that the management board only acts on advice given by that person in a professional capacity;

“Official Seal” means the official seal of the Registrar referred to in section 85;

“ordinary foundation” means a multiform foundation whose stated multiform is unclassified, or which does not have a designated multiform on registration and upon registration whose multiform shall be deemed designated as unclassified;

“ordinary resolution” means, unless the constitution provides otherwise—

- (a) an affirmative resolution passed by a simple majority of all those persons who are present and entitled to vote thereon on a show of hands at a duly convened and constituted meeting of such persons; and
- (b) in the case of absolute beneficiaries, an affirmative resolution passed by a simple majority of the holders in value of beneficial entitlements having voting rights who are present and entitled to vote thereon at a duly convened and constituted meeting of such persons on a show of hands or by way of poll; and
- (c) in the case of subscribers, an affirmative resolution passed by a simple majority of subscribers in value of subscriptions having voting rights who are present and entitled to vote thereon at a duly convened and constituted meeting of such persons on a show of hands or by way of poll;

“partnership” means any partnership, including a limited partnership, limited liability partnership or limited liability company which is to be treated as a partnership notwithstanding it is a body corporate, or any other unincorporated association wherever and however established;

“partnership foundation” means a multiform foundation whose stated multiform is a partnership, or a limited partnership or limited liability partnership, or a limited liability company to be treated as a partnership;

“person” includes a legal person;

“prescribed fee” means a fee prescribed by the Minister by regulations made under this Ordinance with respect to a given matter;

“prescribed form” means a form prescribed by the Minister by regulations made under this Ordinance with respect to a given matter and to be completed, signed and filed with the Registrar as provided for under the regulations or otherwise under this Ordinance;

“promoter” means the person who, alone or jointly with another, and without regard to his or their residence, domicile or jurisdiction of establishment, establishes a multiform foundation under this Ordinance;

- “Register” means the Register of Foundations kept by the Registrar as required by section 86(3);
- “registered agent” means a person resident in Nevis authorised or licensed under the law of Nevis to act as an agent with respect to the incorporation, establishment or registration of an entity in Nevis;
- “registered office” means the office in Nevis of the registered agent for the time being of the multiform foundation to whom all communications and notices may be addressed;
- “Registrar” means the Registrar of Foundations appointed pursuant to section 84(1);
- “Regulator” means the person appointed by the Minister to perform, inter alia, the regulatory function of supervisor for financial services businesses in Nevis, including the business of registered agents, and includes any person acting as his assistant or deputy regulator;
- “secretary” means a person appointed to be the secretary of a multiform foundation pursuant to the provisions of section 18;
- “subscriber” means the person who makes the initial subscription or any subsequent subscription to the multiform foundation, and howsoever called or described in the constitution, including a founder, a settler, a guarantor or shareholder or partner or any other beneficiary who makes such a subscription;
- “subscription” means the assets or capital, irrevocably transferred or contributed or disposed, or covenanted to be transferred, contributed or disposed, with or without consideration, or any act by which title is effectively and irrevocably transferred, contributed or disposed of, upon or subsequent to the establishment of a foundation (whether under this Ordinance or otherwise) and vested in and being the property of the foundation; and “assets” includes any right, interest or title whatsoever in property and howsoever called or described and wherever existing or situate, whether absolute or contingent, and “capital” includes any asset in money or money’s worth subscribed or contributed by the giving or making of a loan or guarantee;
- “supervisory board” means the person or persons appointed pursuant to the provisions of section 21 and having the powers and responsibilities of supervision, protectorship or guardianship of the multiform foundation in accordance with the constitution and otherwise under the provisions of this Ordinance, and howsoever called or described, and which shall include, but without prejudice to the generality of the foregoing, a supervisor, protector, an enforcer, guardian or other such named person;
- “tax resident foundation” means a multiform foundation which has elected to be tax resident in Nevis pursuant to the provisions of section 93;
- “trust foundation” means a multiform foundation whose stated multiform is a trust;
- “Trust Ordinance” means the Nevis International Exempt Trust Ordinance, Cap. 7.03 (N);
- “unanimous resolution” means a resolution passed by all those persons entitled to vote thereon who are present at a duly convened and constituted meeting of such persons; which may be affirmed in writing or by telex, telegram, cable, facsimile, email or other written electronic communication signed by or on behalf of all such persons and, if so, shall be deemed to have effect as if passed at a duly convened and constituted meeting of such persons;
- “will constitution” shall have the meaning given to that expression in section 9(2).

- (2) A reference in this Ordinance to a Part or section by number only is a reference to the Part or section of that number contained in the Ordinance.
- (3) A reference in a section or other division of this Ordinance to a subsection or paragraph or subparagraph by number or letter only is a reference to the subsection, or paragraph or subparagraph of that number or letter contained in the section or other division of the Ordinance in which the reference occurs.
- (4) A reference to the masculine shall include the feminine or neuter.
- (5) In this Ordinance—
- (a) every multiform foundation shall, if carrying on business anywhere outside of Nevis, be deemed to be also carrying on business from within Nevis; and
  - (b) the expression “carrying on business from within Nevis” includes carrying on business outside of Nevis from a place of business or a registered office within Nevis; and
  - (c) the expression “management and control” shall mean the principal decision making function and mind of the multiform foundation.
- (6) The Minister may recognize any country or jurisdiction for the purposes of this Ordinance and shall cause a notice of such recognition to be published in the *Gazette*.

## PART II

### ESTABLISHMENT AND CONSTITUTION

#### **Registration.**

3. (1) A subscriber or promoter, or a registered agent acting on behalf of the subscriber or promoter, may on delivering to the Registrar the documents referred to in section 4 and on payment of the prescribed fee apply in the manner provided for in that section to have a foundation registered in accordance with the provisions of this Ordinance as a multiform foundation.
- (2) Upon the registration of a foundation as a multiform foundation, the foundation shall be a separate and independent legal entity in its own right, capable of suing and being sued in its own name and resident and domiciled in Nevis.
- (3) The memorandum of establishment and the by-laws (if any) of the foundation delivered to the Registrar shall be in the English language and shall be in such form and contain such particulars as are set out in section 7.
- (4) The establishment of a foundation under this Ordinance as a separate and legal entity shall not be effective until—
- (a) the memorandum of establishment and by-laws (if any) are registered in accordance with the provisions of this Ordinance; and
  - (b) a certificate of establishment is issued in accordance with section 5(2)(b).

**Registration documents.**

4. In order to register a foundation under this Ordinance, there shall be delivered to the Registrar an original copy of the memorandum of establishment and by-laws (if any) of the foundation accompanied by a statement in the prescribed form signed by the subscriber and legally acknowledged, or signed by the registered agent on his behalf and duly witnessed, setting out—

- (a) the foundation's name and address of its registered office in Nevis;
- (b) the particulars of the initial subscription transferred, or to be transferred, to the foundation;
- (c) the particulars prescribed by the Registrar with respect to the registered agent;
- (d) the particulars prescribed by the Registrar with respect to any person or persons who are to be the first management board;
- (e) the particulars prescribed by the Registrar with respect to any person or persons who are to be the first supervisory board;
- (f) the particulars prescribed by the Registrar with respect to any person who is to be the first secretary;
- (g) an undertaking, in the case of a tax resident foundation, that the management board shall forthwith notify the Minister, by notice in writing, if the multiform foundation ceases to be a tax resident foundation;
- (h) a statement as to its initial multiform and which, in the absence of any such statement, shall be presumed to be an ordinary foundation;
- (i) a statement as to whether or not the by-laws are to be made available for public inspection; and
- (j) any other particulars required by the Registrar to be provided for under or in accordance with this Ordinance.

**Establishment and sovereignty of the law of Nevis.**

5. (1) If the Registrar is satisfied that all the requirements of this Ordinance in respect of the registration of a foundation as a multiform foundation have been complied with, he shall register the memorandum and by-laws (if any) delivered to him under section 4.

(2) Upon the registration of the memorandum of establishment and by-laws (if any) referred to in subsection (1), the Registrar shall—

- (a) allocate a registration number to the multiform foundation in accordance with section 86(1); and
- (b) issue a certificate of establishment in respect of the multiform foundation stating—
  - (i) the name of the multiform foundation;
  - (ii) its registration number;
  - (iii) the date of registration of its constitution; and
  - (iv) its initial multiform.

(3) Each certificate of establishment shall be signed by the Registrar and be sealed with the Official Seal.

(4) The certificate of establishment shall be conclusive evidence of the establishment of the foundation as a multiform foundation.

(5) The proper law governing the establishment of a multiform foundation under this Part, or establishment by continuation or transformation under Part XI, or by conversion or consolidation or merger under Part XII, shall for the purposes of the rules of private and public international law be the law of Nevis if questioned in any other country or jurisdiction.

(6) The courts of any other country or jurisdiction shall have no power or authority to question the validity of any act or omission of a multiform foundation established under this Part, or established by continuation or transformation under Part XI, or by conversion or consolidation or merger under Part XII, unless that act or omission shall be a criminal offence under the law of Nevis.

#### **Status of by-laws and proper law.**

6. (1) The by-laws of a foundation may be delivered to the Registrar upon application for registration pursuant to section 3(1), or subsequently after registration and establishment pursuant to the provisions of section 8(4), provided that if no by-laws have been adopted by the foundation the by-laws of the foundation shall be those prescribed in regulations made by the Minister under this Ordinance and as may apply to the multiform for that foundation following registration as a multiform foundation.

(2) The by-laws shall be confidential and in respect of which the provisions of section 113 shall apply and they shall not be made available for public inspection on the Register, unless notice has been given by the foundation to the Registrar in the prescribed form that the by-laws are to be made available for public inspection, and which notice may be withdrawn by application made to the Registrar in the prescribed form.

(3) Without prejudice to the generality of the provisions of sections 5(5) and 5(6) with respect to the proper law governing the establishment of a multiform foundation, the proper law or laws governing the by-laws shall be stated in the memorandum of establishment of the multiform foundation and in the event that no proper law or laws are expressed, then the proper law governing the by-laws shall be the law of Nevis.

(4) The provisions of the by-laws may provide for a severable aspect of the multiform foundation (particularly, but without prejudice to the generality of the foregoing, the administration of the multiform foundation) to be governed by a different law from that governing other aspects of the multiform foundation and in which event the same shall be provided for in the memorandum of establishment.

(5) The by-laws may provide for the proper law governing the by-laws to be changed, or the law governing one aspect of the by-laws to be changed, or in the absence of any such provision the same may be changed by way of an amendment to the constitution in accordance with the provisions of section 8, and in the event of such a change a duly amended copy of the amended memorandum of establishment and by-laws (if any) incorporating the change in proper law signed and legally acknowledged by the secretary, or signed by the registered agent and duly witnessed, together with an original copy of resolution(s) approving the change in proper law and the amendments (if any) signed by the secretary, together with the prescribed form and prescribed fee shall, within 14 days of the latest date of the resolution(s)

giving effect to the change, be delivered to the Registrar, who shall retain and file the same in the Register, subject to the provisions of subsection (6).

(6) If the Registrar is satisfied that all the requirements of this Ordinance in respect of the change in proper law have been complied with, he shall register the amended memorandum of establishment and by-laws (if any) delivered to him under subsection (5) and shall issue an amended certificate of establishment incorporating the change in proper law which shall be conclusive evidence of the foundation's amended proper law and the change shall take effect from the date the certificate is issued.

(7) A change in the proper law of the by-laws (or any part thereof) shall not in any way affect the existence of the multiform foundation as a separate and independent legal entity, and shall not affect any rights or obligations of the multiform foundation or render defective any legal proceedings by or against it, and any legal proceedings which have been continued or commenced by or against it under its former proper law may be continued or commenced by or against it under its new proper law.

#### **Form of constitution.**

7. (1) The memorandum of establishment of a multiform foundation shall state—
- (a) the name of the foundation;
  - (b) the situation of the registered office in Nevis;
  - (c) the details of the subscriber or promoter, that is to say—
    - (i) the name and address of the subscriber or promoter; and
    - (ii) where the subscriber or promoter is a legal person, the number and place of registration of that legal person;
  - (d) the purpose or object of the foundation;
  - (e) the initial subscription and a statement (as appropriate) of the assets and property of the foundation sufficient to identify the assets and property;
  - (f) the multiform and the particulars required with respect to that multiform (if any) as provided for in regulations made by the Minister under this Ordinance;
  - (g) whether or not the foundation is established for a definite or indefinite period and, where it is established for a definite period, that period;
  - (h) whether or not the foundation is revocable or irrevocable, and if revocable, the identity of the person who holds the power of revocation, or the event giving rise to revocation;
  - (i) the proper law or laws governing the by-laws; and
  - (j) any other matters that the Minister may prescribe by regulations made under this Ordinance.
- (2) Subject to the provisions of this Ordinance, the by-laws of a multiform foundation may include provisions—
- (a) for the reservation of rights or powers to subscribers or promoters or beneficiaries;

- (b) for the appointment, removal, period of office and representative authority of the members of the management board, including the number and description of those members;
- (c) for the appointment, removal and period of office of the auditor, if any, and may provide that the appointment of an auditor is at the discretion of the supervisory board;
- (d) for the appointment of a supervisory board and specifying the duties, functions, powers, rights and remuneration of the supervisory board, if appointed, and how it shall be appointed or removed and also how it shall conduct itself whilst in office;
- (e) for the appointment of persons to act by power of attorney or otherwise to carry out particular duties on behalf of the foundation;
- (f) permitting amendment to the by-laws, and specifying circumstances in which they may be amended;
- (g) providing for subscriptions in addition to the initial subscription; and
- (h) for the addition or removal or qualification of beneficiaries, or any class or classes of beneficiaries.

(3) The memorandum of establishment and by-laws (if any) shall be signed and legally acknowledged by the subscriber or promoter, or signed by the registered agent and duly witnessed.

- (4) The constitution of a multiform foundation shall be—
  - (a) typed or printed; and
  - (b) divided into paragraphs and numbered consecutively.

#### **Amendments to the constitution.**

**8.** (1) Unless the constitution provides otherwise, the constitution may (subject to any provision in the by-laws to the contrary) be amended—

- (a) by ordinary resolution of the management board, and by ordinary resolution of the supervisory board (if any) and absolute beneficiaries (if any);
- (b) by unanimous resolution of the absolute beneficiaries (if any); or
- (c) in the absence of absolute beneficiaries, by unanimous resolution of the supervisory board (if any) and ordinary resolution of the subscribers.

(2) If it is not possible to comply with the relevant provisions of subsection (1) for any reason, or no provision was made in the constitution for amendment of the constitution after registration, the management board may, by ordinary resolution, resolve on such amendments as in their opinion are necessary in the circumstances to maintain the purpose or object of the multiform foundation, and apply to the Court for its approval of the proposed amendments.

(3) On any such application under subsection (2) the Court may make an order confirming the amendments, either wholly or in part, and on such terms and conditions as it thinks fit, or may make such other orders as it thinks expedient for facilitating or carrying into effect any such arrangement.

(4) A duly amended copy of the amended memorandum of establishment or by-laws signed and legally acknowledged by the secretary, or signed by the registered



agent and duly witnessed, together with an original copy of resolution(s) approving the amendments signed by the secretary, together with the prescribed fee shall, within 14 days of the amendment coming into effect, be delivered to the Registrar, who shall retain and file the same in the Register, subject to the provisions of section 6(2).

(5) For the purpose of this section, “amendment” or “amended”, shall include any alteration, variation or substitution of the constitution.

#### **Foundation established by will.**

**9.** (1) A foundation may be established as a multiform foundation by means of a duly executed will and, in that case, subject to subsection (11), there shall be only one subscriber who shall be the testator and the following provisions of this section shall apply.

(2) Where the constitution of a foundation proposed as a multiform foundation is the will of the subscriber and complies with the provisions of this Ordinance (a “**will constitution**”), the executor of the estate of the subscriber shall—

- (a) act as if he were the subscriber for the purposes of registering the foundation as a multiform foundation; and
- (b) cause the first management board and secretary to be appointed in accordance with the memorandum of establishment and the by-laws (if any).

(3) The executor referred to in subsection (2) shall periodically, and in any case at intervals of no more than 90 days, keep the management board appointed according to that subsection informed of the progress of the probate of the will to constitute the foundation.

(4) Where the provisions of section 3(1) cannot be satisfied at the end of a 12 month period in order for an application to be made after the death of the subscriber, an application shall be made by the executor, or if no application is made by the executor, by a person named or identified in the will as a member of the management board or supervisory board or the secretary, to the Court for the appointment of a person to act as administrator for the purpose of ensuring—

- (a) the proper appointment of the management board, supervisory board (if any) and secretary;
- (b) the subscription of property from the estate of the deceased subscriber to the foundation in accordance with the provisions of the will constitution; and
- (c) the registration of the foundation under this Ordinance as a multiform foundation,

and the Court may appoint a fit and proper person as the administrator.

(5) An administrator appointed under subsection (4) shall be subject to the supervision of the Court.

(6) Where provision is made in the will constitution for the appointment of a supervisory board, the administrator appointed under subsection (4) shall appoint a supervisory board in accordance with the will constitution and this Ordinance.

(7) Where an administrator is appointed under subsection (4) he shall—

- (a) if no management board has been appointed in accordance with subsection (2), appoint—

- (i) the persons specified in the will constitution as the management board; or
  - (ii) where the will constitution does not specify by name or some other identifying description the person or persons to be appointed as the management board, appoint such person or persons who are fit and proper and qualified under this Ordinance to act as the management board;
- (b) take steps, including, if in his opinion it is necessary, the institution of legal proceedings in Nevis or elsewhere, to ensure that the initial subscription is duly made to the proposed multiform foundation;
  - (c) administer, or cause to be administered, in a proper manner and to the best advantage to conserve and improve without undue risk the property to be the initial subscription of the proposed multiform foundation until such time as the initial subscription is vested in the proposed multiform foundation; and
  - (d) take such steps as are, in his opinion, necessary to ensure that the title in the assets and capital comprising the initial subscription is properly vested in the proposed multiform foundation.

(8) As soon as the Court is satisfied that application can be made to the Registrar to register the will constitution as a multiform foundation as provided for in sections 4 and 5 and the application under those sections has been made, the Court shall cause the appointment of the administrator under this section to terminate.

(9) The costs of the administrator appointed under this section, including his remuneration, as approved by the Court, shall be met by the executor—

- (a) out of property specified in the will constitution to be the subscriptions to the proposed multiform foundation; or
- (b) in the event that the foundation is not registered as a multiform foundation, out of the property of the estate of the deceased subscriber.

(10) Where a subscriber dies after subscribing to a foundation but before the registration of the foundation as a multiform foundation under this Ordinance, notwithstanding that the subscriber was not the sole subscriber, the provisions of subsections (1) to (9) shall apply *mutatis mutandis* as if the constitution of the foundation was contained in his will and is a will constitution for the purposes of this section.

(11) Where two or more testators have made mutual wills and those wills take effect simultaneously, the testators shall be deemed to be one subscriber for the purposes of subsection (1).

### PART III

#### MULTIFORM, PURPOSE AND SUBSCRIPTION PROVISIONS

##### **Multiform.**

**10.** (1) The initial multiform of the multiform foundation shall be designated in the prescribed form on registration of a foundation whether under Part II or Part XI or Part XII, and upon registration shall be stated in the certificate of establishment or, as

the case may be, certificate of continuation or transformation or conversion or consolidation or merger as the multiform of the multiform foundation.

(2) Following establishment or, as the case may be, continuation or transformation or conversion or consolidation or merger, a stated multiform may be changed by amendment to the constitution, and together with, if appropriate, a change in name, and in respect of which the provisions of subsections (3) to (6) below shall apply.

(3) A duly amended copy of the amended memorandum of establishment and by-laws (if any) incorporating the change in multiform, and change in name, as appropriate, signed and legally acknowledged by the secretary, or signed by the registered agent and duly witnessed, together with an original copy of resolution(s) approving the change in multiform and the amendments signed by the secretary, together with the prescribed form and prescribed fee shall, within 14 days of the latest date of the resolution(s) giving effect to the change, be delivered to the Registrar, who shall retain and file the same in the Register, subject to the provisions of section 6(2).

(4) If the Registrar is satisfied that all the requirements of this Ordinance in respect of the change in multiform have been complied with, he shall register the amended memorandum of establishment and by-laws (if any) delivered to him under subsection (3) and shall issue an amended certificate of establishment incorporating the change in multiform and change in name, as appropriate, which shall be conclusive evidence of the foundation's amended multiform and the change shall take effect from the date the certificate is issued.

(5) A change in the multiform shall not in any way affect the existence of the multiform foundation as a separate and independent legal entity, and shall not affect any rights or obligations of the multiform foundation or render defective any legal proceedings by or against it, and any legal proceedings which have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

(6) A multiform foundation shall have only one stated multiform from time to time and in the event none is designated on registration in the prescribed form the multiform shall be deemed to be unclassified, and characterised or interpreted as to its form by the provisions of its constitution and this Ordinance; provided that if the stated multiform is unclassified, the by-laws may provide for more than one form of entity within its by-laws.

(7) If, in the opinion of the Registrar, the proposed constitution for the multiform foundation does not correspond or conform in all material respects to the proposed multiform stated in the memorandum of establishment and the proposed proper law or laws governing the multiform, he shall be entitled to reject any constitution delivered to him for the purposes of either—

- (a) applying for registration of a foundation with that multiform under sections 3 and 4 or, as the case may be, by way of continuation or transformation under Part XI, or conversion or consolidation or merger under Part XII; or
- (b) a change in multiform under subsection (2) of this section,

and, if rejected under paragraph (b), any resolution(s) passed with respect to a change in multiform under subsection (2) of this section shall be deemed to be invalid and ineffective for the purposes of this Ordinance, notwithstanding any provision in the constitution to the contrary or any other provisions of any applicable law governing the constitution.

(8) A multiform foundation shall have as its stated multiform any of those multiforms stated in subsection (9) or otherwise stated by regulation made by the Minister under subsection (10) and with respect to any multiform the Minister may specify by regulations made under this Ordinance such matters as should be provided for in the memorandum of establishment or by-laws with respect to that multiform, or in the event no by-laws are adopted, the provisions of the by-laws that would be deemed to apply to that multiform.

(9) With respect to a stated multiform the following provisions shall apply—

- (a) if the multiform is stated to be a trust and the multiform foundation is a trust foundation, the by-laws shall be treated as the trust deed or settlement for the purposes of the trust foundation and in the event that the constitution shall fail to specify any other proper law as governing the by-laws, the provisions of the Trust Ordinance shall, subject to section 13(2), apply, *mutatis mutandis*, as if references therein to the ‘trust’ shall refer to the trust foundation; the ‘trustees’, the management board, the ‘settlor’, the subscriber; and the ‘protector’ the supervisory board, provided that it shall not be a requirement to have a protector for a trust foundation for the purposes of section 8 of the said Ordinance which has no beneficiary and the sole purpose is non-charitable;
- (b) if the multiform is stated to be a company and the multiform foundation is a company foundation, in the event that the constitution shall fail to specify any other proper law as governing the by-laws, the provisions of the Corporation Ordinance shall apply, *mutatis mutandis*, as if references therein to the ‘company’ referred to the company foundation; the ‘directors’, the management board; and the ‘shareholders’, the absolute beneficiaries; or in the case of a multiform which is stated to be a limited liability company, the provisions of the Limited Liability Company Ordinance shall apply, *mutatis mutandis*, as if references therein to the ‘limited liability company’ referred to the company foundation; the ‘manager’ or ‘member’ as manager, a member of the management board; and the ‘members’, the absolute beneficiaries; and
- (c) if the multiform is stated to be a partnership and the multiform foundation is a partnership foundation, in the event that the constitution shall fail to specify any other proper law as governing the by-laws, the provisions of the law of Nevis governing partnerships shall apply or, if the partnership is a limited liability company and to be treated as a partnership, the provisions of the Limited Liability Company Ordinance shall apply, *mutatis mutandis*, as if references therein to the ‘company’ referred to the partnership foundation; the ‘manager’ or ‘member’ as manager, a member of the management board; and the ‘members’, the absolute beneficiaries.

(10) The Minister may make regulations under this Ordinance permitting any other form of multiform and specifying any particular restrictions or conditions that may apply to a multiform, including which proper law shall govern the constitution and the relevant provisions of the law of Nevis governing such multiform.

(11) Without prejudice to the generality of sections 46 and 110, nothing in the constitution of the multiform foundation or the foregoing provisions of subsection (9) shall have the effect in anyway of—

- (i) overriding or qualifying or restricting any of the provisions of this Ordinance, in respect of which in matters of construction or interpretation the decision of the Court shall prevail for all purposes and be conclusive, including, without prejudice to the generality of the foregoing, as to proper establishment under Part II, or establishment by continuation and transformation under Part XI or conversion, consolidation and merger under Part XII, recognition of the multiform, administration and management, governance and dissolution or winding up of the multiform foundation in accordance with its constitution and this Ordinance; and
- (ii) removing the jurisdiction of the Court to render or provide a binding decision as against the multiform foundation or any of its officers with respect to the matters referred to in subparagraph (i) above or any other matters.

**Purpose or object.**

**11.** (1) A foundation established under this Ordinance as a multiform foundation shall have any purpose or object whatsoever and may have more than one purpose or object, and which purpose or object shall be set out in its memorandum of establishment, provided that such purpose or object is permissible and not contrary to public policy under the law of Nevis.

(2) A subscriber or beneficiary may or may not benefit from any purpose or object of the multiform foundation as set out in its memorandum of establishment and such purpose or object may be for a charitable or non-charitable purpose or object, or may be for a commercial or non-commercial purpose or object or a combination of any or all of the foregoing or as may be otherwise prescribed in its memorandum of establishment, subject to the provisions of subsection (1).

(3) There shall be no requirement for a multiform foundation to have a beneficiary.

**Restricted activities.**

**12.** (1) The Minister may, by Order, provide that multiform foundations, which intend to carry on or which are carrying on any business specified in the Order as being banking, trust, insurance or reinsurance business or the carrying on of any activity in Nevis which requires authorization, consent, licence or permission under any ordinance or regulation, shall be subject to such regulations as the Minister may prescribe.

(2) An Order made under this section may provide for the payment of annual and other fees, and for the imposition of fines for any breach of the matters specified in the Order.

**Subscriptions.**

**13.** (1) A subscription to a multiform foundation shall—

- (a) be irrevocable but without prejudice to any provision in its memorandum of establishment providing for revocation, whether of the multiform foundation itself to which Part XIII applies, or any power or authority conferred on the management board or the supervisory board (if any) after subscription with respect to the assets or property of the multiform foundation in favour of beneficiaries, and

whether or not, immediately following transfer, for a limited or unlimited period or otherwise on specified terms;

- (b) result in the assets or capital the subject matter of the subscription at the time of transfer, contribution or disposition ceasing to be under the ownership of the subscriber, but under the ownership of the multiform foundation, subject to its constitution, but without prejudice to any beneficial entitlement the subscriber may have under or by virtue of the constitution following any such transfer, contribution or disposition; and
- (c) result in the assets or capital the subject matter of the subscription immediately following transfer, contribution or disposition being held by the multiform foundation in accordance with its constitution, unless and until distributed or passed to a beneficiary in accordance with the provisions of the constitution:

Provided that nothing in the foregoing shall affect or diminish any beneficial entitlement that a beneficiary may hold under or by virtue of the constitution as a result of, or following such subscription.

(2) With respect to a trust foundation, the subscription to the trust foundation shall be held, subject to the constitution—

- (a) for the benefit of a beneficiary, whether or not yet ascertained or in existence; or
- (b) for any valid charitable or non-charitable purpose, which is not for the benefit only of the trust foundation; or
- (c) for such benefit as is mentioned in subparagraph (a) and also for any such purpose mentioned in subparagraph (b),

and the expression “trust” in this Ordinance shall be construed accordingly; and the expression “trust” in section 53 of the Trust Ordinance shall be modified accordingly with respect to a trust foundation whose proper law governing the constitution is stated to be the Trust Ordinance.

(3) With respect to a multiform foundation the sole subscription to which shall be held, subject to the constitution, only for the benefit of the multiform foundation per se shall be an ordinary foundation whose multiform is unclassified.

(4) Where a subscriber has made an undertaking to make a subscription to a foundation, whether that undertaking is given before or after registration of the foundation as a multiform foundation, the multiform foundation after registration—

- (a) may enforce that undertaking against the subscriber; and
- (b) shall do so in respect of the initial subscription, if at the end of a period of 12 months from the date of registration, the subscription which is the subject matter of the undertaking has not become the assets of the multiform foundation,

and where the undertaking is in the form of an irrevocable covenant—

- (i) subsection (4)(b) shall have effect as if the reference date of registration was a reference to the date on which the subscription should have been subscribed to the foundation in fulfillment of the irrevocable covenant; and
- (ii) the period of 12 months referred to shall be the period of 12 months from that date.

## PART IV

## MULTIFORM AND CHANGE OF NAME PROVISIONS

**Foundation names.**

**14.** (1) The name of a multiform foundation shall end with the word “Foundation” or an abbreviation thereof as “FDN”, together with such other appropriate name or abbreviation thereof (if any) as shall state its multiform and the Minister may provide by regulations made under this Ordinance.

(2) The Registrar shall enter the name of every multiform foundation on the Register.

(3) The Registrar may refuse to register—

(a) a foundation; or

(b) a resolution changing the name of a multiform foundation,

where the name to be registered is, in the Registrar’s opinion, in any way misleading or undesirable or confusing or similar to or like an existing name of a legal entity registered in Nevis.

(4) The Registrar may reserve names for foundations proposed to be registered as multiform foundations under this Ordinance for a period of one month or such longer period or periods as he may in his absolute discretion consider fit.

(5) A multiform foundation that—

(a) is a trust foundation, shall include in its name the word “Trust” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”;

(b) is a company foundation and whose stated multiform is a company but not a limited company or limited liability company, shall include in its name the word “Company” or “Co.” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”;

(c) is a company foundation and whose stated multiform is a limited company, shall include in its name the word “Limited” or “Ltd.” or “Incorporated” or “Inc.” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”;

(d) is a company foundation and whose stated multiform is a limited liability company, shall include in its name the words “Limited Liability Company” or “L.L.C.” or “LLC” or “L.C.” or “LC” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”;

(e) is a partnership foundation and whose stated multiform is a partnership but not a limited partnership, a limited liability partnership or limited liability company to be treated as a partnership, shall include in its name the word “Partnership” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”;

(f) is a partnership foundation and whose stated multiform is a limited partnership, shall include in its name the words “Limited Partnership” or “L.P.” or “LP” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”; or

- (g) is a partnership foundation and whose stated multiform is a limited liability partnership, or a limited liability company to be treated as a partnership, shall include in its name the words “Limited Liability Partnership” or “L.L.P” or “LLP” (with or without brackets) prior to the word “Foundation” or the abbreviation “FDN”.

#### **Change of name.**

**15.** (1) Subject to section 16, a multiform foundation may, by unanimous resolution of the management board, change its name, unless the constitution shall provide otherwise.

(2) An original copy of the resolution approving the change in name signed by the secretary, together with the prescribed fee shall, within 14 days of the latest date of the resolution giving effect to the change, be delivered to the Registrar, who shall retain and file the same in the Register.

(3) If the Registrar is satisfied that all the requirements of this Ordinance with respect to the name change have been complied with, the Registrar shall enter the new name on the Register in place of the former name, and shall issue a certificate of registration on change of name to meet the circumstances of the case, and the change of name shall have effect from the date on which the certificate is issued.

(4) A change of name by a multiform foundation under this Ordinance shall not affect any rights or obligations of the multiform foundation or render defective any legal proceedings by or against it, and any legal proceedings which have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

(5) Any entity established, incorporated or registered in Nevis having in its name the word “foundation” shall within six months of the coming into force of this Ordinance change its name to omit the word “foundation”, unless it has prior to the expiry of the six months period subsequently established itself by conversion or transformation into a multiform foundation in accordance with the provisions of this Ordinance; and, accordingly, the provisions of section 16 shall apply to any requirement under this section, save the provisions of subsections (3) and (4) of that section.

#### **Directions to change name.**

**16.** (1) If, in the opinion of the Registrar, the name by which a multiform foundation is registered is misleading or undesirable or confusing or similar to or like an existing name of an entity registered in Nevis, he may direct the multiform foundation to change its name.

(2) The direction, if not made the subject of an application to the Court under subsection (3), shall be complied with within three months from the date of the direction or such longer period as the Registrar may allow.

(3) The multiform foundation may, within 21 days from the date of the direction given under subsection (1), apply to the Court to set it aside, and upon any such application the Court may set the direction aside or confirm it, or make such other direction as it thinks fit.

(4) If the Court confirms the direction, it shall specify a period not being less than 28 days within which the direction shall be complied with, and may order the Registrar to pay the multiform foundation such sum, if any, as it thinks fit in respect of the reasonable expenses to be incurred by the multiform foundation in complying with the direction.



(5) A multiform foundation which fails to comply with a direction under this section commits an offence and shall be liable to a fine not exceeding 5,000 dollars and, in the case of a continuing offence, to a further fine not exceeding 500 dollars for each day in respect of which the offence continues or such amount as may from time to time be prescribed in regulations made by the Minister hereunder.

(6) The Minister may make regulations under this Ordinance prohibiting or restricting the use of any name or names for the purposes of a multiform foundation.

## PART V

### MANAGEMENT BOARD, SECRETARY AND REGISTERED AGENT

#### **Management board.**

17. (1) The business and affairs of a multiform foundation shall be managed by a management board which shall consist of one or more persons and, unless the constitution provides otherwise, every member of the management board shall have an equal vote at any proceedings of the management board.

(2) Subject to subsection (5), the first members of the management board of a multiform foundation shall be appointed upon establishment of the multiform foundation.

(3) Subject to subsections (2) and (9), the appointment and removal of members of the management board shall be effected in accordance with the provisions of the constitution or otherwise the provisions of this Ordinance.

(4) The remuneration of the members of the management board shall be fixed in accordance with the provisions of the by-laws of the multiform foundation; and any dispute in respect of the amount of the remuneration of the members of the management board may be referred by any member of the management board or the supervisory board or the auditor (if any) to the Court which shall determine the remuneration.

(5) A person shall not qualify as a member of the management board of a multiform foundation—

- (a) in the case of a natural person, if that person is a minor or an interdict, or if he is an undischarged bankrupt;
- (b) in the case of a legal person, if that person is a subject of any legal proceeding which may result in that person being wound up or otherwise dissolved;
- (c) if the person is a member of the supervisory board of a multiform foundation of which that person is the sole member; or
- (d) if the person is disqualified from being a member of the management board under this Ordinance or any other law.

(6) The appointment of a person as a member of the management board is personal to that person and shall not be assigned or delegated by him, except that where the member is a legal person, it may act through its duly authorised officers or agents.

(7) There shall be filed with the Registrar by the secretary or registered agent in the prescribed form particulars of every member of the management board who has been appointed as a member and who has consented to act as a member, and unless

the Registrar has received notice to the contrary, such particulars shall not be made available for public inspection on the Register.

(8) A member of the management board who wishes to resign shall give notice in writing of his intention to the secretary and remaining members of the board (if any); and such notice shall be given no later than seven days before the member intends to cease to act or such shorter notice as the management board may decide by unanimous resolution; and notice of resignation of a member of the management board shall be given to the Registrar in the prescribed form.

(9) The appointment of a member of the management board shall continue until—

- (a) he has been discharged or removed from office in accordance with the constitution or has resigned in accordance with this Ordinance;
- (b) the multiform foundation is dissolved or revoked in accordance with Part XIII;
- (c) if a natural person, the death or bankruptcy of the natural person, or a legal person the winding up or dissolution of the legal person; or
- (d) the occurrence of any event which otherwise disqualifies that member from so acting.

(10) Where there are no members of the management board or the number of board members is less than the number prescribed by the constitution and there is no provision in the constitution for the appointment of new or additional members, an application may be made to the Court by a member of the management board or the secretary, or a member of the supervisory board or an absolute beneficiary or subscriber, for the appointment by the Court of one or more persons to act as members; and if the Court is satisfied that the application is well founded and without the order of the Court the requirements of the constitution or this Ordinance will not be met, it may make an order appointing one or more persons duly qualified under this Ordinance to be members of the management board and whose appointment shall take effect from the making of the order by the Court.

### **Secretary.**

**18.** (1) A multiform foundation shall have a secretary.

(2) The secretary of a multiform foundation may be a natural or legal person, except that a multiform foundation shall not have as its secretary a person who is also the sole member of the management board.

(3) Subject to this Ordinance, the secretary shall be appointed by the management board for such term, and at such remuneration, and upon such conditions as they may think fit, and a secretary so appointed may be removed by them.

(4) Anything required or authorised to be done by or to the secretary may, if the secretary's office is vacant or for any other reason when the secretary is unable to, be done by or to a member of the management board authorised generally or specially in that behalf by the management board.

(5) There shall be filed with the Registrar by any member of the management board or the secretary or the registered agent in the prescribed form particulars of every secretary who has been appointed as secretary and who has consented to act as secretary.

(6) The appointment of a secretary is personal to that person and shall not be assigned or delegated by him, except that, where the secretary is a legal person, it may act through its duly authorised officers and agents.

(7) Nothing in this section shall be construed as making the secretary of a multiform foundation liable in any legal proceedings (whether criminal or civil) for any act or admission of the multiform foundation, but without prejudice to any other provision of this Ordinance which imposes on the secretary an obligation or responsibility with respect to the business and affairs of the multiform foundation and its compliance with the provisions of this Ordinance.

(8) A person shall not qualify as a secretary of a multiform foundation—

- (a) in the case of a natural person, if that person is a minor or an interdict, or if he is an undischarged bankrupt;
- (b) in the case of a legal person, if that person is a subject of any legal proceeding which may result in that person being wound up or otherwise dissolved;
- (c) if the person is a member of the management board or the supervisory board of a multiform foundation of which that person is the sole member; or
- (d) if the person is disqualified from being a member of the management board under this Ordinance or any other law.

(9) A secretary who wishes to resign shall give notice in writing of his intention to the members of the management board; and such notice shall be given no later than seven days before the member intends to cease to act or such shorter notice as the management board may decide by unanimous resolution, and notice of resignation of the secretary shall be given to the Registrar in the prescribed form.

(10) The appointment of a secretary shall continue until—

- (a) he has been discharged or removed from office in accordance with the constitution or has resigned in accordance with this Ordinance;
- (b) the multiform foundation is dissolved or revoked in accordance with Part XIII;
- (c) if a natural person, the death or bankruptcy of the natural person, or a legal person the winding up or dissolution of the legal person; or
- (d) the occurrence of any event which otherwise disqualifies that member from so acting.

(11) The secretary to a multiform foundation shall have all the duties, powers and responsibilities provided for in this Ordinance for his office and, in particular, but with limitation to the generality of the foregoing, shall, on behalf of the multiform foundation—

- (a) accept service of all documents in respect of legal proceedings against the multiform foundation which may be served on the multiform foundation under the provisions of this Ordinance or any other statute or law whether in Nevis or outside of Nevis; and
- (b) where the Registrar by notice served on the multiform foundation requires the multiform foundation to take any action or step or give any information concerning itself, take such action or give such information within the specified time in the notice or, if no such time is specified reasonable time,

and where in this or in other statute or law there is reference to any notice being served on a multiform foundation, the foundation shall be deemed to have notice of that service or knowledge of that requirement if the secretary appointed to that multiform foundation shall have been served with the notice or shall have had notice of the requirement.

#### **Registered agent.**

**19.** (1) A multiform foundation shall have at all times a registered agent in Nevis and a multiform foundation which fails to maintain a registered agent in accordance with the provisions of this section shall be in contravention of this Ordinance and shall be subject to dissolution in accordance with Part XIII.

(2) Service of process on a registered agent may be made by registered mail addressed to the registered agent or in any other manner provided by law for the service of summons as if the registered agent were a defendant and upon receipt the registered agent shall forward a copy of the same to the secretary of the multiform foundation by registered mail at the secretary's address last notified to the Registrar; and evidence of forwarding by registered mail by affidavit by the registered agent shall be conclusive evidence of compliance by the registered agent with the provisions of this subsection.

(3) Any registered agent of a multiform foundation may resign upon delivering written notice thereof in the form prescribed to the Registrar as well as to the secretary and which notice shall take effect on the expiration of 30 days from the filing of the written notice with the Registrar, or sooner if the secretary shall consent.

(4) If for any other reason the registered agent ceases to act, or is disqualified from acting, and in respect of which the registered agent is obliged to give notice to the secretary, within 30 days of the secretary becoming aware that the registered agent has ceased to act, he must file written notice in the prescribed form with the Registrar.

(5) Following the resignation of the registered agent or his ceasing to act, the multiform foundation shall appoint a new registered agent; and upon appointment of the new registered agent, the secretary or the registered agent must file with the Registrar the prescribed form duly signed by the secretary and the registered agent providing particulars of the new registered agent and whose appointment shall take effect on the day of filing of the prescribed form with the Registrar.

#### **Registered office.**

**20.** (1) A multiform foundation shall have a registered office in the Island of Nevis which shall be the address of the registered agent in Nevis and to which all communications and notices may be addressed.

(2) Notice of any change in the situation of the registered office shall be given within 28 days to the Registrar in the prescribed form signed by the secretary or the registered agent or a member of the management board, who shall file and retain the notice on the Register.

(3) Where by virtue of this Ordinance, a person ceases to be the registered agent—

- (a) the office of that person shall cease to be the registered office of the multiform foundation; and
- (b) until such time as the Registrar has received notice of the situation of a new registered office in accordance with subsection (2)—

- (i) the multiform foundation and every member of the management board and the secretary shall be in default; and
- (ii) the address of the registered office shall be deemed to be the address in Nevis of the Registrar and the requirements of the service of any document shall be satisfied by service to that address, subject to subsection (4).

(4) Service on the Registrar pursuant to subsection (3)(b)(ii) shall be made personally delivering to and leaving with him or his deputy or with any person authorised by the Registrar to accept service, at the office of the Registrar, duplicate copies of such process together with the prescribed fee; and the Registrar or his appointee shall promptly send one of such copies by registered mail, return receipt requested, to such multiform foundation at the last given address of the secretary or any member of the management board as shown on the files retained by the Registrar; and shall, if requested within five years of service, provide a certificate of due service of process in accordance with this provision.

## PART VI

### THE SUPERVISORY BOARD

#### **Supervisory board.**

**21.** (1) There shall be no requirement for a multiform foundation to have a supervisory board and this section applies where the constitution provides for the appointment of a supervisory board.

(2) Where the constitution of a multiform foundation provides for the appointment of a supervisory board, the member or members of the supervisory board may be a natural or legal person and the appointment of members shall take place in accordance with the provisions of the constitution.

(3) The subscriber or a beneficiary of a multiform foundation may be appointed as a member of the supervisory board, but a sole member of the management board may not also act as sole member of the supervisory board.

(4) Subject to the provisions of the constitution, where more than one person is appointed to act as the supervisory board such persons shall act by ordinary resolution and every member shall have an equal vote at any proceedings of the supervisory board.

(5) The first supervisory board of a multiform foundation may be appointed in the constitution of the foundation, and upon registration of the multiform foundation that person or persons shall be deemed appointed as the supervisory board, and where the supervisory board is appointed subsequent to the registration of the multiform foundation that person or persons may be appointed by the subscriber or such other person as may be provided in the constitution of the multiform foundation to make the appointment.

(6) The appointment of a person as a member of the supervisory board of a multiform foundation is personal to that person and shall not be assigned or delegated by him, except that, where the supervisory board is a legal person, it may act through its duly authorised officers or agents.

(7) There shall be filed with the Registrar by the secretary or registered agent in the prescribed form particulars of every member of the supervisory board who has

been appointed as a member and who has consented to act as a member, and unless the Registrar has received notice to the contrary, such particulars shall not be made available for public inspection on the Register.

(8) A member of the supervisory board who wishes to resign shall give notice in writing of his intention to the secretary and remaining members of the board (if any); and such notice shall be given no later than seven days before the member intends to cease to act or such shorter notice as the supervisory board may decide by unanimous resolution; and notice of resignation of a member of the supervisory board shall be given to the Registrar in the prescribed form.

(9) A supervisory board is duly appointed under the terms of the constitution and this Part shall cease to have effect in the event of—

- (a) the resignation of the supervisory board as a whole;
- (b) the discharge or removal of the supervisory board in accordance with the constitution of the multiform foundation;
- (c) the dissolution or revocation of the multiform foundation in accordance with Part XIII;
- (d) the death, incapacity or bankruptcy of the members of the supervisory board, being a natural person, or the winding up or dissolution of the members of the supervisory board, being a legal person; or
- (e) the occurrence of any other event which disqualifies the person from being a member of the supervisory board as provided for in the constitution.

(10) Where, for the time being, no supervisory board is appointed to a multiform foundation and one is required by the constitution, or the number of persons so appointed is less than that required by the constitution and there is no provision in the constitution for the appointment of a new or additional members of the supervisory board, an application may be made to the Court by—

- (a) the subscriber or an absolute beneficiary;
- (b) a member of the management board; or
- (c) a remaining member of the supervisory board,

for the appointment by the Court of one or more persons to be a member of the supervisory board.

(11) Where the Court is satisfied that an application made under subsection (10) is justified, the Court may appoint one or more persons who satisfy the requirements of this section as a member of the supervisory board of the multiform foundation.

(12) A person who is a member of the supervisory board shall not be liable in damages for anything done or omitted to be done in the discharge, or purported discharge of the functions, of the supervisory board under this Ordinance or any regulations made under this Ordinance, unless it is shown that the act or omission was in bad faith or the members of the supervisory board was in default of any obligation or responsibility imposed upon him under this Ordinance.

#### **Powers of supervisory board.**

**22.** (1) A supervisory board of a multiform foundation shall—

- (a) take such action as the supervisory board may deem necessary to ensure compliance by the multiform foundation with the provisions of its constitution and this Ordinance; and
  - (b) generally supervise the management and conduct of the business and affairs of the multiform foundation by the management board.
- (2) Subject to subsection (1), the constitution may—
- (a) specify the power of the supervisory board; and
  - (b) provide powers in addition to those provided in this Ordinance.
- (3) The supervisory board of a multiform foundation shall have full right of access to the books, records and accounts of the foundation.
- (4) The supervisory board shall, in addition to the rights conferred on the supervisory board by the constitution, or this Ordinance, have the right, unless expressly excluded by the constitution—
- (a) to be informed of all meetings of the management board or beneficiaries;
  - (b) to table business to be considered at meetings of the management board or beneficiaries;
  - (c) to attend and be heard, but not to vote, at such meetings; and
  - (d) where any business of a multiform foundation is conducted by—
    - (i) the circulation of documents, to be included in the circulation of documents at the time that they are circulated to the members of the management board or beneficiaries; or
    - (ii) the delegation of powers to a member or an agent of the management board, to be informed of the terms and any exercise of the delegation.
- (5) References in subsections (3) and (4) to the supervisory board of a multiform foundation apply to all members holding office at the relevant time acting jointly and severally.

## PART VII

### ADMINISTRATION AND MANAGEMENT

#### **Administration and management.**

**23.** (1) A multiform foundation shall manage, administer, invest and disburse its assets and otherwise carry on its business and affairs in accordance with the provisions of its constitution and this Ordinance for the attainment of any of its purposes or objects as set out in its memorandum of establishment or for the benefit of its beneficiaries (if any), or both.

(2) The management and control of a multiform foundation shall vest in the management board and shall be presumed to be in Nevis if at least one member of the management board is in Nevis and meetings of the management board are regularly convened from Nevis, even though no member of the management board may be present in person but only present by telephonic or electronic communication; and the

expression “resident in Nevis” shall have the same meaning given to that expression in section 93(5)(b).

(3) A multiform foundation may, in the course of the management of its assets and property or the carrying on of its business and affairs, do such things as are necessary for the proper administration of its assets and property or the carrying on of its business and affairs, including but not limited to buying and selling the assets and property and engaging in any other acts or activities which are not prohibited under any law of Nevis, provided that such acts and activities are ancillary or incidental to any of its main purposes or objects.

(4) A member of the management board or supervisory board on behalf of the multiform foundation may apply to the Court for directions as to how he should or might act in any of the business and affairs of the multiform foundation, and the Court may make such order as it thinks fit.

(5) The provisions of this section shall not prevent the administration of a multiform foundation being carried out in another jurisdiction, provided that the administration of the entity shall be carried out in accordance with the proper law of the by-laws and the constitution of the multiform foundation.

#### **Powers, privileges, etc.**

**24.** (1) Subject to this Ordinance, a multiform foundation has the capacity, rights, powers and privileges of an individual person.

(2) Subsection (1) does not authorise a multiform foundation to carry on any transaction in breach of—

- (a) any law that prohibits the transaction; or
- (b) any law that requires permission or licence to carry on the transaction.

(3) A multiform foundation shall not carry on any transaction or exercise any power that it is restricted by its constitution from carrying on or exercising, nor shall a multiform foundation exercise any of its powers in a manner contrary to its constitution.

(4) A transaction carried out by a multiform foundation, including the transfer of property, shall not be invalid by reason only that the act is contrary to its constitution.

#### **Ultra vires.**

**25.** (1) Any person dealing with a multiform foundation in good faith shall be entitled to assume that the members of the management board have power to bind the multiform foundation or authorise others to do so.

(2) The management board shall observe any limitations on their powers derived from the constitution and this Ordinance, and any action by any member of the management board which, but for this section, would be beyond the powers of the multiform foundation may only be ratified by the multiform foundation, unless the constitution provides otherwise—

- (a) by ordinary resolution of the management board and by ordinary resolution of the supervisory board and absolute beneficiaries (if any);  
or
- (b) by unanimous resolution of the absolute beneficiaries (if any); or



- (c) in the absence of absolute beneficiaries, by unanimous resolution of the supervisory board (if any) and ordinary resolution of the subscribers.

**Duties of management board.**

26. (1) A member of the management board, in exercising his powers and discharging his duties, shall—

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

(2) The duties of a member of the management board imposed by this section are owed to the multiform foundation alone, unless otherwise provided by the constitution.

**Information provided.**

27. (1) Subject to subsection (2) and otherwise the provisions of this Ordinance or any law of Nevis, and except as is necessary for the proper administration of a multiform foundation and is required to be disclosed by this Ordinance or its constitution, the management board shall keep confidential all information regarding the nature and amount of the assets and property of the multiform foundation and the conduct of their administration.

(2) The management board shall so far as is reasonable, and within a reasonable time of receiving a request in writing to that effect, provide full and accurate information as to the nature and amount of the assets and property of the multiform foundation and the conduct of their administration—

- (a) to the Regulator in respect of any investigation made under Part X;
- (b) subject to the constitution, to—
  - (i) a subscriber;
  - (ii) the supervisory board (if any); or
  - (iii) any beneficiary of the multiform foundation, who is not a minor or interdict; or
- (c) pursuant to an order of the Court.

(3) Subject to the provisions of this Ordinance, the constitution and to any order of the Court, the management board shall not be required to produce and make available to any person any document which—

- (a) discloses their deliberations as to the manner in which they have exercised or not exercised a power or discretion or performed a duty or responsibility conferred or imposed on them; or
- (b) discloses the reason for, or relates to, any particular exercise or non-exercise of the power or discretion or performance or non-performance of any duty or responsibility the material on which such reason was or might have been based.

**Indemnification.**

**28.** (1) Subject to subsection (2) and to the constitution, a multiform foundation may indemnify against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred in connection with legal, administrative or investigative proceedings, any person who—

- (a) is or was a party or is threatened to be made a party to any threatened, pending or completed proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that the person is or was a member of the management board or supervisory board, a secretary or a liquidator of the multiform foundation; or
- (b) is or was, at the request of the multiform foundation, serving as a member of the management board or supervisory board, a secretary or liquidator of, or in any other capacity is or was acting for, another foundation.

(2) Subsection (1) only applies to a person referred to in that subsection if the person acted honestly and in good faith with a view to the interests of the multiform foundation or that other foundation and, in the case of criminal proceedings, the person had no reasonable cause to believe that his conduct was unlawful.

(3) For the purposes of subsection (2), the decision of the management board as to whether the person acted honestly and in good faith and with a view to the interests of the multiform foundation or that other foundation and as to whether the person had no reasonable cause to believe that his conduct was unlawful, in the absence of fraud, shall be sufficient for the purposes of this section, unless a question of law is involved, when the matter shall be decided by the Courts.

(4) If a person referred to in subsection (1) has been successful in defence of any proceedings referred to in subsection (1), the person is entitled to be indemnified against all expenses, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred by the person in connection with the proceedings.

**Insurance.**

**29.** A multiform foundation may purchase and maintain insurance in relation to any person who is or was a member of the management board or supervisory board, a secretary or a liquidator of the multiform foundation or who, at the request of the multiform foundation, is or was serving as a member of the management board or supervisory board, a secretary or a liquidator of, or in any other capacity is or was acting for, another foundation, against any liability asserted against the person and incurred by the person in that capacity, whether or not the multiform foundation has or would have had the power to indemnify the person against the liability under section 28(1).

**Registers.**

**30.** (1) Each multiform foundation shall keep, at its registered office, a Register of past and present members of its management board and supervisory board (if any) and secretary and their respective particulars and their interests with respect to the multiform foundation, whether as subscriber or beneficiary.

(2) The Register referred to in subsection (1) shall contain the following particulars—

- (a) in the case of a natural person—

- (i) his or her present forenames and surnames;
- (ii) his or her former forenames and surnames;
- (iii) his or her business or usual residential address;
- (iv) his or her nationality;
- (v) his or her business occupation; and
- (vi) his or her date of birth;
- (b) in the case of a legal person—
  - (i) its name and any former names; and
  - (ii) the address of its registered or principal place of business; and
- (c) such particulars as the Registrar may otherwise require.

(3) The Register referred to in subsection (1) shall, during business hours, be open to inspection by the Registrar at the registered office, a subscriber, a member of the management board or supervisory board (if any), the secretary and a beneficiary.

(4) If an inspection required under this section is refused, or if there is a failure to comply with subsection (1), the multiform foundation, every member of the management board and the secretary who is in default commits an offence and shall be liable to a fine not exceeding 500 dollars for each day in respect of which the offence continues, or such other amount as may from time to time be prescribed in regulations made by the Minister hereunder.

#### **Meetings.**

**31.** (1) Subject to any limitations contained in the constitution of the multiform foundation, the management board shall meet at such times and in such manner and places within or outside Nevis as they may determine.

(2) Subject to the provisions of the constitution, a member of the management board shall be deemed to be present at a meeting of the management board if he participates by telephone or other electronic means, and all the management board participating in the meeting are able to hear each other.

#### **First Meeting.**

**32.** Every multiform foundation shall, within a period of not less than one month nor than three months from the date of registration, hold a meeting of the management board which shall be convened by the secretary and of which notice shall be given of the business of the meeting and the matters to be discussed and resolved thereat.

#### **Annual Meeting.**

**33.** (1) The multiform foundation shall, in each year, hold at least one meeting of the management board as its annual meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it.

(2) Subject to the provisions of the constitution, the supervisory board, the absolute beneficiaries and the subscribers shall be entitled to—

- (a) be notified of the meeting; and
- (b) table business to be considered at the meeting; and

- (c) attend and be heard at the meeting but shall not be entitled to vote at such a meeting.

**Requisitions.**

34. (1) Subject to the provisions of the constitution, the management board shall, on the requisition of—

- (a) the subscriber or an absolute beneficiary; or
- (b) the supervisory board,

forthwith proceed to convene a meeting of the management board.

(2) The requisition shall—

- (a) state the objects of the meeting and propose the business of the meeting;
- (b) be signed by the requisitioner; and
- (c) be deposited at the registered office,

and at which the requisitioner shall be entitled to attend but not vote.

(3) If the management board does not within 21 days from the date of the requisition convene a meeting, the requisitioner may convene the meeting, provided that the said meeting is held within 60 days from the said date.

(4) A meeting convened under this section by the requisitioner shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by the management board.

(5) Any reasonable expenses incurred by the requisitioner by reason of the failure of the management board to convene a meeting shall be repaid to the requisitioner by the multiform foundation, and any sum so repaid shall be retained by the multiform foundation out of any sums due or to become due from the multiform foundation by way of fees or other remuneration in respect of service to such of the management board as were in default.

**Quorum.**

35. The quorum for a meeting of the management board shall be that fixed by the constitution; but where no quorum is so fixed, a meeting of the management board shall be properly constituted for all purposes if at the commencement of the meeting one half of the total number of management board are present in person or by alternate.

**Written resolutions.**

36. Subject to any limitations in the constitution, an action which may be taken by the management board at a meeting, other than an annual meeting convened in accordance with section 33(1), may also be taken by a resolution of the management board consented to in writing or by telex, telegram, cable, facsimile, email or other written electronic communication, without the need for any notice.

**Alternates.**

37. (1) Subject to any limitations in the constitution, a member of the management board may by a written instrument appoint an alternate who need not be a member of the management board.

(2) An alternate for a member of the management board appointed under this section is entitled to attend meetings in the absence of the member who appointed him and to vote or consent in the place of the member.

#### **Agents.**

**38.** (1) The management board may, by ordinary resolution of the management board, appoint any person, including a person who is a member of the management board, to be an agent of the multiform foundation.

(2) Subject to any limitations in the constitution, any agent shall have such powers and authority of the management board as are set forth in the constitution or in the ordinary resolution of the management board appointing the agent, except that no agent has any power or authority with respect to the matters requiring a resolution of the management board under this Ordinance.

(3) The ordinary resolution of the management board appointing any person to be an agent of the multiform foundation may authorise the agent to appoint one or more substitutes or delegates to exercise some or all of the powers conferred on the agent by the multiform foundation.

#### **Minutes.**

**39.** (1) The secretary shall cause minutes of all proceedings at meetings of the management board to be entered in books kept for that purpose.

(2) The minutes referred to in subsection (1), if purporting to be signed by the Chairman of the meeting at which the proceedings took place, or by the Chairman of the next succeeding meeting, shall be evidence of the proceedings.

(3) Where minutes are made in accordance with the provisions of this section, minutes shall be conclusive evidence of the proceedings at any meeting of the management board and, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings which took place at that meeting to have duly taken place.

#### **Documents, seals, etc.**

**40.** (1) A multiform foundation may, but need not, have a seal for use in Nevis and, unless otherwise permitted by the constitution, where it has such a seal, the seal shall be affixed in the presence of and witnessed by a member of the management board or the secretary.

(2) Any contract, including any deed, instrument or other document, entered into by or on behalf of a multiform foundation may be made as follows—

- (a) a contract which, if made between private persons, would by law be required to be in writing and under seal may be made on behalf of the multiform foundation in writing—
  - (i) if the multiform foundation has a seal for use in Nevis or abroad, under that seal; or
  - (ii) signed by the authorised signatories of the multiform foundation, each signing or under the seal of the signatory, as the case may be;
- (b) a contract which, if made between private persons would by law be required to be in writing, signed by the parties to be charged therewith,

may be made on behalf of the multiform foundation in writing signed by the authorised signatories; and

- (c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the multiform foundation by any person acting under an express authority.

(3) A contract made according to this section shall be effectual in law, and shall bind a multiform foundation and all other parties thereto.

(4) A contract made according to this section may be varied or discharged in the same manner in which it is authorised by this section to be made.

(5) Where a multiform foundation executes a deed, instrument or other document, whether or not the multiform foundation has a seal, it shall be sufficient and the multiform foundation and any other party to that deed, instrument or document shall be bound if that deed, instrument or other document is signed by the authorised signatories of the multiform foundation intending it to be executed by way of a deed.

(6) A multiform foundation may, by writing—

- (a) if the multiform foundation has a seal for use in Nevis under that seal; or
- (b) signed by the authorised signatories of the multiform foundation, each signing or under the seal of the signatory, as the case may be,

empower any person either generally or in respect of any specified matters, as its attorney, to execute deeds, instruments or other documents on its behalf in any place outside Nevis.

(7) A deed, instrument or other document signed by an attorney appointed according to subsection (6) for and on behalf of a multiform foundation—

- (a) if it has a seal, under that seal; or
- (b) signed by him or, where the attorney is a legal person, authorised signatories of the attorney,

shall bind the foundation and have the same effect as if the deed, instrument or other document had been sealed or signed as provided for in subsection (2).

(8) A multiform foundation may have for use in any territory, district or place outside Nevis an official seal, which—

- (a) if the multiform foundation has a seal for use in Nevis, shall be a facsimile of that seal; or
- (b) if the multiform foundation does not have a seal for use in Nevis, shall bear the name of the multiform foundation engraved in legible characters,

with the addition on its face of the name of every territory, district or place where it is to be used.

(9) Where a multiform foundation executes a deed, instrument or other document outside Nevis, whether or not the multiform foundation has an official seal for use in the territory, district or place outside Nevis, it shall be sufficient, and the multiform foundation shall be bound, if that deed, instrument or other document is signed by the authorised signatories of the multiform foundation intending it to be executed by way of a deed.

(10) A multiform foundation having an official seal for use in any territory, district or place outside Nevis may—

- (a) by ordinary resolution of the management board; or
- (b) by instrument in writing, sealed or signed as provided for in subsection (2),

authorise any person appointed for the purpose in that territory, district or place, to affix the official seal to any deed, instrument or other document to which the multiform foundation is a party in that territory, district or place.

(11) The authority of a person appointed in accordance with subsection (10) shall, as between a multiform foundation and any person dealing with that person, continue during the period (if any) mentioned in the resolution or instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the person's authority has been given to the person dealing with him.

(12) The person affixing any official seal outside Nevis shall, by writing under his hand, certify on the deed or other instrument to which the seal is affixed, the date on which and the place at which it is affixed.

(13) The signature of a member of the management board or the secretary when acting on behalf of a multiform foundation shall be prefixed by the statement that he is so acting.

(14) A document or proceeding requiring authentication by a multiform foundation may be signed by any of the authorised signatories of the multiform foundation.

#### **Name requirements.**

**41.** (1) Every multiform foundation shall have its name—

- (a) engraved in legible characters on any seal; and
- (b) mentioned in legible characters in all notices, advertisements and other official publications of the multiform foundation, and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the multiform foundation, and in all bills of parcels, invoices, receipts and letters of credit of the multiform foundation.

(2) If a multiform foundation fails to comply with paragraph (a) or paragraph (b) of subsection (1), the multiform foundation is in default.

(3) A member of the management board or any person on its behalf who—

- (a) uses or authorises the use of any seal purporting to be a seal of the multiform foundation on which its name is not engraved as required by subsection (1)(a);
- (b) issues or authorises the issue of any notice, advertisement or other official publication of the multiform foundation, or signs or authorises to be signed on behalf of the multiform foundation any bill of exchange, promissory note, endorsement, cheque or order for money or goods, in which its name is not mentioned as required by subsection (1)(b); or

- (c) issues or authorises the issue of any bill of parcels, invoice, receipt or letter of credit of the multiform foundation, in which its name is not mentioned as required by subsection (1)(b),

is in default and is further personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods, for the amount thereof, unless it is duly paid by the multiform foundation.

**Name on business letters, etc.**

**42.** (1) Every multiform foundation shall have the following particulars mentioned in legible characters in all business letters, order forms and receipts for goods and services of the multiform foundation, that is to say—

- (a) the place of registration of the multiform foundation, and the number with which it is registered; and
- (b) the address of its registered office.

(2) If—

- (a) a multiform foundation fails to comply with the requirements of this section; or
- (b) the multiform foundation or any person on its behalf issues or authorises the issue of any business letter, order form or receipt for goods or services not complying with this section,

it and he is in default.

**Declaration of interests.**

**43.** (1) Subject to the provisions of this section, it shall be the duty of an officer of a multiform foundation who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the multiform foundation—

- (a) to declare the nature of his interest at a meeting of the management board of the multiform foundation; and
- (b) to advise the supervisory board (if any) of the interest.

(2) In the case of a proposed contract the declaration required by this section to be made by the officer shall be made at the meeting of the management board at which the question of entering into the contract is first taken into consideration, or if the officer was not at the date of that meeting interested in the proposed contract, at the next meeting of the management board held after he became so interested, and in a case where the officer becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the management board held after the officer becomes so interested.

(3) Subject to the constitution, for the purposes of this section, a general notice given to the management board by an officer to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) Where a multiform foundation has no supervisory board, any contract made between the multiform foundation and a member of the management board, other than a contract to serve the multiform foundation, shall require the unanimous resolution of the management board.



(5) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting officers from having any interests in contracts with a multiform foundation.

(6) This section shall also apply to the auditor (if any) where references to the officer shall be substituted with a reference to the auditor.

## PART VIII

### ACCOUNTS AND AUDIT

#### **Accounts.**

**44.** (1) A multiform foundation shall cause to be kept proper books of account including, where applicable, material underlying documentation including contracts and invoices with respect to its business and affairs, assets and property as follows and, in particular—

*(Amended by Ordinance 2 of 2011)*

- (a) all sums of money received, expended and distributed by the multiform foundation and the matters in respect of which the receipt, expenditure and distribution take place;
  - (b) all sales and purchases; and
  - (c) the assets and liabilities.
- (2) The books of account should—
- (a) correctly explain all transactions;
  - (b) enable the financial position of the multiform foundation to be determined with reasonable accuracy at any time; and
  - (c) allow financial statements to be prepared.

*(Inserted by Ordinance 2 of 2011)*

(3) The books of account shall be kept at the registered office of the multiform foundation or at such other place as the management board determines by ordinary resolution, and shall at all times be open to inspection by the management board, the supervisory board and the auditor (if any), and, if the constitution permits, a subscriber or beneficiary and the books of account required by this section to be kept shall be preserved for a period of 6 years from the date on which they are made.

(4) Where a member of the management board fails to take all reasonable steps to secure compliance by the multiform foundation with the requirements of this section, or has by his own wilful act been the cause of any default thereunder by the multiform foundation, that member is in default.

#### **Auditor.**

**45.** Unless the constitution otherwise provides, it shall not be obligatory for the management board to appoint an auditor.

## PART IX

## FORCED HEIRSHIP, RESTRICTION ON ALIENATION AND FORFEITURE OF BENEFITS

**Forced heirship.**

**46.** (1) No multiform foundation governed by the laws of Nevis, and no subscription of property to a multiform foundation which is valid under the law of Nevis, shall be void, voidable, or liable to be set aside or defective in any manner by reference to the law of a foreign jurisdiction.

(2) The capacity of a subscriber or promoter or of any other person who subscribes to a multiform foundation, shall not be questioned nor shall any beneficiary or other person be subjected to any liability or deprived of any right by reason that—

- (a) the laws of any foreign jurisdiction prohibit or do not recognise the concept of a foundation, a multiform foundation or any stated multiform; or
- (b) the subscription of property to the foundation, or any provision of its constitution avoids or defeats rights, claims or interest conferred by foreign law on any person by reason of a personal relationship to the subscriber or beneficiary or transferee of any beneficial entitlement or by way of heirship rights, or contravenes any rule of foreign law or any foreign, judicial or administrative order or action intended to recognize, protect, enforce or give effect on any such rights, claims or interest, or the provisions of this Ordinance or the law of Nevis is inconsistent with any foreign law,

and for the purposes of this subsection and this Ordinance generally, “heirship rights” shall have the meaning given to that expression in section 2 of the Nevis International Exempt Trust Ordinance, Cap. 7.03.

**Restriction on alienation.**

**47.** (1) Notwithstanding any rule of law to the contrary, a provision of the constitution, or an unanimous resolution by the management board or supervisory board, may provide that any assets or property of the multiform foundation available for distribution to a beneficiary shall not be alienated or pass by bankruptcy, insolvency or liquidation or be liable to be seized, sold, attached, or taken in execution by process of law and, where so provided, the provision shall take effect accordingly.

(2) Where any of the assets or property of the multiform foundation are subject to any of the restrictions contained in subsection (1), the right to derive income from such assets or property by a beneficiary and any income derived from those assets or property shall not pass by bankruptcy, insolvency or liquidation or be liable to be seized, attached or taken in execution by process of law.

(3) Where any of the assets of the multiform foundation are subject to a restriction against alienation then the right to derive income from that property shall not be alienable for as long as that restriction remains in force.

(4) A restriction imposed pursuant to this section may at any time be removed in accordance with any provisions for such removal.

(5) A person who is a subscriber and in his capacity as a subscriber to a multiform foundation may benefit from the provisions of this section.

**Forfeiture of benefits.**

48. The constitution of a multiform foundation may provide that any beneficiary or any creditor of the beneficiary or trustee-in-bankruptcy or liquidator of the beneficiary shall forfeit his beneficial entitlement in the event that he or any creditor of the beneficiary or trustee-in-bankruptcy or liquidator of the beneficiary challenges the creation of the multiform foundation, any subscriptions to the multiform foundation, the constitution or any provision thereof or any decision of the management board or the supervisory board.

## PART X

## POWERS OF INVESTIGATION

**Grounds for investigation.**

49. (1) Where the Regulator has *prima facie* evidence that—

- (a) a multiform foundation was created, or is to be dissolved or revoked, or discontinued in Nevis for an unlawful or fraudulent purpose;
- (b) any transaction with respect to the affairs of a multiform foundation is or has been conducted unlawfully or with intent to defraud any person;
- (c) persons concerned with the establishment, continuation or transformation, conversion, merger, or consolidation or otherwise of the affairs of a multiform foundation have in connection therewith acted fraudulently or dishonestly; or
- (d) in any case it is in the public interest that an investigation of the multiform foundation be made,

the Regulator may investigate the affairs of the multiform foundation and make a report to the Financial Services Commission and send a copy to the Financial Intelligence Unit, the Registrar, the Legal Adviser and the Minister.

(2) The investigation may be made on the application of the Registrar, any person who is a member of the management board or supervisory board, a beneficiary, a subscriber, a creditor or a liquidator of the multiform foundation sought to be investigated.

(3) The Regulator may require the applicant, other than the Registrar, to give security, up to an amount not exceeding 50,000 dollars or such other sum as may be prescribed for payment of the costs of the investigation.

(4) This section applies whether or not the multiform foundation is being dissolved or discontinued.

**Reporting.**

50. The Regulator may at any time in the course of his investigation, without the necessity of making an interim report, inform the Financial Services Commission and the Financial Intelligence Unit of matters coming to his knowledge as a result of the investigation which, in his opinion, shows that an offence has been committed.

**Production of records.**

**51.** (1) If the Regulator considers that any person is or may be in possession of information relating to a matter which he believes to be relevant to the investigation, he may, subject to sections 99 and 100, require that person—

- (a) to produce and make available to him all records which are in that person's custody or power relating to that matter;
- (b) at reasonable times and on reasonable notice to attend before him; and
- (c) otherwise to give him such assistance in connection with the investigation which he may reasonably require for the purpose of the investigation, and that person is reasonably able to give.

(2) The Regulator may, for the purposes of the investigation, examine on oath any person referred to in subsection (1), and may administer an oath accordingly.

(3) Subject to sections 99 and 100, an answer given by a person to, or the failure to answer, a question put to that person by the Regulator in exercise of the powers conferred by this section may be used in evidence against that person in any subsequent proceedings.

**Bank records.**

**52.** If the Regulator has reasonable grounds to believe that an officer of the multiform foundation whose affairs he is investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person, and whether in Nevis or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which in the opinion of the Regulator constitutes misconduct, whether fraudulent or not, on the part of that officer towards the multiform foundation, the Regulator may require the officer to produce and make available to them all records in the member's possession or under the officer's control relating to that bank account.

**Search warrants.**

**53.** (1) The Regulator may, for the purpose of an investigation, request any police officer above the rank of inspector or the Financial Intelligence Unit to apply to the Court for a warrant under this section in relation to specified premises.

(2) If the Court is satisfied that the conditions specified in subsection (3) are fulfilled, it may issue a warrant authorizing a police officer or any other person named in the warrant to enter the specified premises, using such force as is reasonably necessary for the purpose, and search the premises.

(3) The conditions referred to in subsection (2) are the following—

- (a) that there are reasonable grounds for suspecting that there is on the premises material, whether or not it can be particularised, which is likely to be of material assistance, whether by itself or together with other material, to the investigation for the purpose of which the application is made; and
- (b) that the investigation for the purposes of which the application is made might be prejudiced unless immediate entry can be secured to the premises.

(4) Where a person enters premises in the execution of a warrant issued under this section, that person may seize and retain any material, other than items subject to

legal professional privilege, which is likely to be of material assistance, whether by itself or together with other material to the investigation for the purpose of which the warrant was issued.

- (5) In this section, “premises” includes any place and, in particular, includes—
- (a) a vehicle, vessel, aircraft or hovercraft;
  - (b) an offshore installation; or
  - (c) a tent or movable structure.

#### **Obstruction.**

**54.** A person who wilfully obstructs a person acting in the execution of a warrant issued under section 53 commits an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or a fine of up to 10,000 dollars, or both and, in addition, where a continuing offence, the Court may institute a fine of up to 500 dollars per day until the matter is corrected.

#### **Refusing to answer.**

- 55.** (1) Where a person—
- (a) fails to comply with the provisions of section 52 or 53; or
  - (b) refuses to answer any question put to that person by the Regulator for the purpose of the investigation,

that person commits an offence, and the Regulator, by certifying in writing that the person has refused to comply with any of the provisions referred to in this Part may refer the matter to the Court for determination in accordance with subsection (2).

(2) The Court shall, upon receipt of a certificate referred to in subsection (1), inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the Court may, if satisfied that such person has committed an offence under this Part, impose a penalty on the offender as if the offender committed the offence of contempt of the Court.

(3) Notwithstanding subsections (1) and (2), no proceedings for an offence or for the recovery of any penalty shall be instituted under this Part against any person who refuses to answer any question if the refusal is made pursuant to sections 99 and 100.

#### **Interim and final reports.**

**56.** (1) The Regulator may, and if so directed by the Financial Services Commission shall, make interim reports to the Financial Services Commission with a copy to the Minister, the Legal Adviser and the Financial Intelligence Unit, and on the conclusion of his investigation shall make a final report to the Financial Services Commission with a copy to the Minister, the Legal Adviser and the Financial Intelligence Unit.

- (2) The Regulator may—
- (a) forward a copy of a report made to the multiform foundation’s registered office;
  - (b) on request and on payment of the prescribed fee, furnish a copy to—
    - (i) a member of the management board of the multiform foundation;

- (ii) a member of the supervisory board of the multiform foundation;
  - (iii) a person whose conduct is referred to in the report;
  - (iv) the auditors of the multiform foundation;
  - (v) the applicants for the investigation; or
  - (vi) any other person whose financial interests appear to the Regulator to be affected by the matters dealt with in the report, whether as a subscriber, beneficiary, creditor or liquidator of the multiform foundation, or otherwise; and
- (c) cause the final report to be printed and published.

### Proceedings.

57. (1) If, from any report made or information obtained under this Part, it appears to the Regulator that, having been so advised by the Legal Adviser after consultation with the Financial Services Commission and the Financial Intelligence Unit, civil proceedings ought, in the public interest, to be brought by the multiform foundation, the Legal Adviser may bring the proceedings in the name and on behalf of the multiform foundation.

(2) The Regulator shall, at the expense of the Government, indemnify the multiform foundation against any costs or expenses incurred by it in connection with proceedings brought under this section, and not recovered under section 58.

### Expenses.

58. (1) The expenses of, and incidental to, an investigation by Regulator shall be defrayed in the first instance by the Regulator, but the following shall be liable to make repayment to the Regulator to the extent specified—

- (a) a person who—
  - (i) is convicted in proceedings on a prosecution instituted as a result of the investigation; or
  - (ii) is ordered to pay the costs of the whole or any part of the proceedings brought under section 57;
- (b) a multiform foundation in whose name proceedings are brought under section 57(1) up to the amount or value of any sums or property recovered by it as a result of the proceedings;
- (c) a multiform foundation which has been the subject of the investigation except so far as the Regulator otherwise directs; and
- (d) the applicant or applicants for the investigation, other than the Registrar, to the extent, if any, which the Regulator may direct.

(2) For the purposes of this section, costs or expenses incurred by the Regulator in connection with proceedings brought under section 57(1) shall be treated as expenses of the investigation giving rise to the proceedings.

(3) A person liable under subsection (1) is entitled to a contribution from any other person liable under the same subsection according to the amount of their respective liabilities under that subsection.

(4) Expenses to be defrayed by the Regulator under this section shall, so far as not recovered under this section, be paid out of money provided by the Government.

(5) There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Regulator may determine in respect of his general staff costs and overheads.

#### **Evidence of report.**

**59.** (1) A copy of any report of the investigation, certified by the Regulator to be a true copy, shall be admissible in legal proceedings as evidence of the opinion of the Regulator in relation to a matter contained in the report.

(2) A document certified as mentioned in subsection (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

#### **Disclosure limitations.**

**60.** Nothing in this Part requires the disclosure or production to the Regulator—

- (a) by a person, of information or records which that person would in an action in the Court or under section 99 be entitled to refuse to disclose or produce on the grounds of legal professional privilege except, if that person is a lawyer, the name and address of that person's client; or
- (b) by the bankers, as such, of a multiform foundation of information or records relating to the affairs of any of their customers, other than the multiform foundation or any person concerned with the multiform foundation under section 49(1)(c) and who is the subject of investigation.

#### **Appeal.**

**61.** (1) A multiform foundation, or any person concerned with the multiform foundation under section 49(1)(a) and who is under investigation, with respect to the investigation and any action or step taken by the Regulator against the multiform foundation or that person in consequence thereof or any findings published by the Regulator as a result of that investigation, shall be entitled to appeal within 14 days after receiving notice of the decision to the Financial Services Commission and serve a copy of the notice of appeal on the Minister and Registrar.

(2) The appellant shall be entitled to have legal representation at the hearing of the appeal.

(3) The Financial Services Commission shall set a date for hearing within 14 days of receiving the notice of appeal and the date of the hearing of the appeal shall be within 30 days of receiving the notice of appeal in accordance with the rules of natural justice.

(4) Any person aggrieved by the decision of the Financial Services Commission may appeal within 14 days to a Judge or Master of the High Court in chambers by way of Form 6 of the Eastern Caribbean Supreme Court Civil Procedure Rules and the decision of the Judge or Master shall be final.

(5) The bringing of an appeal suspends the decision appealed against pending the determination or abandonment of the appeal.

## PART XI

## CONTINUATION OR TRANSFORMATION

**Overseas foundation.**

**62.** (1) A foundation (and, for the avoidance of doubt, having the meaning given to that expression in section 2)—

- (a) organized in a jurisdiction other than Nevis; and
- (b) that, if it were in Nevis, could be continued as, or its constitutional documents amended or varied or substituted such that it could be transformed into, a multiform foundation under this Ordinance,

and in this Ordinance called an “**overseas foundation**” may, if not prohibited under the law of that other jurisdiction, apply to the Registrar for a certificate of continuance or transformation under this Ordinance by delivering the documents to the Registrar referred to in section 64 and on payment of the prescribed fee apply in the manner provided for in that section to have the foundation registered in accordance with the provisions of this Ordinance as a multiform foundation.

(2) Upon applying for continuance or transformation under this Ordinance as a multiform foundation any amendment to the constitutional documents of the overseas foundation necessary to give effect to the continuance or transformation under this Part shall be deemed effective if the amendment—

- (a) is authorised in accordance with the law applicable to the overseas foundation before continuance or transformation under this Ordinance; and
- (b) is an amendment that a multiform foundation under this Ordinance is entitled to make.

**Constitution.**

**63.** (1) The constitution of the overseas foundation shall be written in the English language, but if it is written in a language other than English shall be accompanied by a certified translation in the English Language.

(2) The constitution of the overseas foundation shall—

- (a) be signed by all of the members of the management board or equivalent officers of the overseas foundation;
- (b) state the name of the overseas foundation and the name under which it is being continued or transformed;
- (c) state the jurisdiction under which it is established;
- (d) state the date on which it was established; and
- (e) state such other provisions as are required for the constitution of a multiform foundation under this Ordinance.

**Registration documents.**

**64.** (1) In order to apply for a certificate of continuance or transformation, there shall be delivered to the Registrar a statement in the form prescribed by the Registrar signed by a member of the proposed management board or secretary of the overseas foundation under the Ordinance and legally acknowledged, or signed by the registered agent on his behalf and duly witnessed, setting out—



- (a) the overseas foundation's name and address of its registered office in Nevis;
- (b) the particulars of the assets or property of the overseas foundation;
- (c) the particulars prescribed by the Registrar with respect to the registered agent;
- (d) the particulars prescribed by the Registrar with respect to any person or persons who are to be the members of the management board;
- (e) the particulars prescribed by the Registrar with respect to any person or persons who are to be the members of the supervisory board;
- (f) the particulars prescribed by the Registrar with respect to any person who is to be the secretary;
- (g) an undertaking, in the case of a tax resident foundation, that the management board shall forthwith notify the Minister, by notice in writing, if the multiform foundation ceases to be a tax resident foundation;
- (h) a statement as to its initial multiform and which in the absence of any such statement shall be deemed to be an ordinary foundation;
- (i) a statement that in applying for continuance as, or transformation into, a multiform foundation that it is authorised to do so under the existing law of establishment or governance of the overseas foundation; and
- (j) any other particulars required by the Registrar to be provided under or in accordance with this Ordinance,

and together with the supporting documents referred to in subsection (2).

(2) The supporting documents referred to in subsection (1) and in each case duly signed by a member of the proposed management board or secretary and legally acknowledged or signed by the registered agent and duly witnessed are—

- (a) the constitution of the overseas foundation referred to in section 63(2) and which shall be deemed to be the by-laws of the overseas foundation;
- (b) a form of memorandum of establishment derived from the constitution referred to in paragraph (a) above containing the particulars set out in section 7(1); and
- (c) a copy of the certificate, or an irrevocable undertaking that the application has been made for discontinuance or dissolution or striking off on the foreign register, if applicable.

#### **Establishment by continuance or transformation.**

**65.** (1) If the Registrar is satisfied that all the requirements of this Ordinance in respect of the registration of an overseas foundation as multiform foundation have been complied with, he shall register the overseas foundation as a multiform foundation.

(2) Upon the registration of the overseas foundation, the Registrar shall—

- (a) allocate a registration number to the multiform foundation in accordance with section 86(1); and

- (b) issue a certificate of continuance or transformation in respect of the multiform foundation stating—
  - (i) the name of the multiform foundation;
  - (ii) its registration number;
  - (iii) the date of registration of its constitution; and
  - (iv) its initial multiform.
- (3) Each certificate of continuance or transformation shall be signed by the Registrar and be sealed with the Official Seal.
- (4) The certificate of continuance or transformation shall be conclusive evidence of the continuance or transformation of the overseas foundation as a multiform foundation.
- (5) On the date shown in the certificate of continuance or transformation—
  - (a) the overseas foundation becomes a multiform foundation to which this Ordinance applies as if the overseas foundation had been established under this Ordinance and was for all purposes the same entity that existed prior to continuance or transformation;
  - (b) the constitution of the overseas foundation, together with the derived memorandum of establishment, becomes the constitution of the overseas foundation as a multiform foundation under this Ordinance; and
  - (c) the certificate of continuance or transformation is the certificate of establishment of the overseas foundation as a multiform foundation.

**Effect of continuance or transformation.**

**66.** When an overseas foundation is continued as, or transformed into, a multiform foundation under this Part—

- (a) the assets or property of the overseas foundation becomes the assets or property of the multiform foundation;
- (b) the multiform foundation continues to be liable for the obligations of the overseas foundation;
- (c) an existing cause of action, claim or liability to prosecute, of or against the multiform foundation is unaffected and assumed by the multiform foundation;
- (d) a civil, criminal or administrative action or proceeding pending by or against the overseas foundation may be continued by or against the multiform foundation; and
- (e) a conviction against, or ruling, order or judgment against or in favour of, the overseas foundation may be enforced against the multiform foundation,

and, in each case, without further act or deed.

**Discontinuance.**

**67.** Subject to section 68 and the provisions of its constitution, a multiform foundation may—

- (a) if it is authorised by unanimous resolution of its management board and an ordinary resolution of the supervisory board and absolute beneficiaries (if any); and
- (b) if it is established to the satisfaction of the Registrar that the multiform foundation's proposed continuance in another jurisdiction will not adversely affect the multiform foundation's creditors,

apply to the appropriate official or public body of the other jurisdiction to be continued as an entity in the other jurisdiction as if it had been established under the laws of the other jurisdiction.

#### **Restrictions on discontinuance.**

**68.** A multiform foundation may not apply for continuance in another jurisdiction, nor may it be continued under the laws of another jurisdiction, as an entity established in that other jurisdiction pursuant to section 67, unless the laws of that other jurisdiction provide that—

- (a) the assets or property of the multiform foundation continues to be the assets or property of the entity;
- (b) the entity continues to be liable for the obligations of the multiform foundation;
- (c) any existing cause of action, claim or liability to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the multiform foundation may be continued by or against the entity; and
- (e) a conviction, ruling, order or judgment against or in favour of the multiform foundation may be enforced by or against the entity.

#### **Certificate of discontinuance.**

**69.** (1) Upon receipt of a notice satisfactory to him in the prescribed form together with the prescribed fee that a multiform foundation that has made an application under section 67 has been continued as an entity under the laws of another jurisdiction, the Registrar must file the notice and issue a certificate of discontinuance in accordance with this Ordinance.

(2) After a certificate of discontinuance is issued under subsection (1) in respect of a multiform foundation that is continued as an entity under the laws of another jurisdiction, the multiform foundation's name shall be removed from the Register, but such removal does not affect the provisions of Part X.

(3) For the purposes of this Part and Part XII, "entity" includes a body, whether or not a body corporate, recognized as an entity in another jurisdiction and with its principal place of residence or domicile or establishment in that jurisdiction under such laws or regulations that are equivalent to the recognition of the entity or its previous multiform under the provisions of this Ordinance or otherwise under the law of Nevis; and the words "establish" and "establishment" with respect to that entity shall be construed accordingly.

## PART XII

## CONVERSION, CONSOLIDATION AND MERGER

**Interpretation.**

70. (1) This Part shall apply—

- (a) to an existing Nevisian entity or entities wishing to convert into a multiform foundation established under this Ordinance, and the word “convert” or “conversion” shall be construed accordingly; and
- (b) as may involve or include a multiform foundation—
  - (i) to any two or more of an existing Nevisian entity or non-Nevisian entity wishing to consolidate into a new multiform foundation or a new entity, and the word “consolidation” shall be construed accordingly; or
  - (ii) an existing Nevisian entity or non-Nevisian entity wishing to merge into an existing multiform foundation, or an existing Nevisian entity or non-Nevisian entity, respectively; and the words “merge” and “merger” shall be construed accordingly,

and the surviving entity following such merger or consolidation is referred to herein as the “surviving entity”.

(2) For the purposes of this Part—

- (a) “existing Nevisian entity” means a multiform foundation established or registered under this Ordinance or an entity established or registered in Nevis under the Corporation Ordinance, the Limited Liability Ordinance or the Trust Ordinance or otherwise under the law of Nevis; and with reference to such an entity, its governing Ordinance and constitution shall be construed accordingly; and
- (b) “non-Nevisian entity” means an entity organized in a jurisdiction other than Nevis.

**Conversion plan.**

71. (1) An existing Nevisian entity wishing to convert into a multiform foundation must set forth in a plan of conversion the terms and conditions and rationale for the conversion of the interests of the shareholders, members or beneficiaries, as the case may be, into interests in the multiform foundation or the cash or other consideration to be paid as a result of the conversion and which must be approved in the manner required by the governing Ordinance and constitution of the existing Nevisian entity.

(2) After the plan referred to in subsection (1) is approved, the Nevisian entity may apply to the Registrar for a certificate of establishment by conversion under this Ordinance by delivering the documents to the Registrar referred to in section 74 and on payment of the prescribed fee apply in the manner provided for in that section to have the existing Nevisian entity registered in accordance with the provisions of this Ordinance as a multiform foundation.

**Consolidation or merger plan.**

72. (1) A multiform foundation wishing to consolidate or merge and to be established or discontinued as a result of consolidation or merger must set forth in a plan of consolidation or merger—

- (a) the name and jurisdiction of formation of each entity that is party to the consolidation or merger;
  - (b) the name and address of the surviving entity and the type and organization of the surviving entity; and
  - (c) the terms and conditions and rationale for the consolidation or merger, and the basis of converting or merging the interests of the shareholder, members or beneficiaries, as the case may be, into interests of the surviving entity or the cash or other consideration to be paid as a result of the consolidation or merger and which must be approved in the manner required by the constitution of the multiform foundation as well as by the respective constitutions of the other parties to the merger or consolidation.
- (2) After the plan referred to in subsection (1) is approved, either the parties to the plan of consolidation or merger referred to in subsection (1)—
- (a) may apply to the Registrar in the prescribed form for a certificate of consolidation or merger under this Ordinance by delivering the documents to the Registrar referred to in section 74 and on payment of the prescribed fee apply in the manner provided for in that section to have the consolidated or merged entities registered in accordance with the provisions of this Ordinance as a multiform foundation; or
  - (b) subject to the provisions of section 75, if it is established to the satisfaction of the Registrar that the multiform foundation's proposed discontinuance as a result of the consolidation or merger will not adversely affect the multiform foundation's creditors, may apply to the Registrar in the prescribed form for a certificate of discontinuance in accordance with the provisions of section 76.
- (3) A consolidation or merger involving or including an entity which is not a multiform foundation must be permitted in accordance with the governing law of the entity.

#### **Constitution for conversion.**

**73.** (1) Upon applying for a certificate of conversion under section 71(2) as a multiform foundation any amendment to the constitutional documents of the existing Nevisian entity necessary to give effect to the conversion under this Part shall be deemed effective if the amendment—

- (a) is authorised under the governing Ordinance or other governing law; and
- (b) is an amendment that a multiform foundation under this Ordinance is entitled to make,

and complies with subsection (2).

(2) In the case of an existing Nevisian entity to be converted under section 71, its amended constitution shall—

- (a) be signed by all of the management board or equivalent officers of the existing Nevisian entity;
- (b) state the name of the existing Nevisian entity and the name under which it is being converted;
- (c) state the Ordinance under which it is established;

- (d) state the date on which it was established; and
- (e) state such other provisions as are required for the constitution of a multiform foundation under this Ordinance.

**Registration documents.**

**74.** (1) In order to apply for a certificate of conversion under section 71(2), or certificate of consolidation or merger under section 72(2)(a), there shall be delivered to the Registrar a statement in the prescribed form signed by the proposed management board or secretary of the existing Nevisian entity or the surviving entity and legally acknowledged, or signed by the registered agent on his behalf and duly witnessed, setting out—

- (a) the existing Nevisian entity's, or the surviving entity's, name and address of its registered office in Nevis;
- (b) the particulars of the assets of the existing Nevisian entity or the surviving entity;
- (c) the particulars prescribed by the Registrar with respect to the registered agent;
- (d) the particulars prescribed by the Registrar with respect to any person or persons who are to be the members of the management board;
- (e) the particulars prescribed by the Registrar with respect to any person or persons who are to be the members of the supervisory board;
- (f) the particulars prescribed by the Registrar with respect to any person who is to be the secretary;
- (g) an undertaking, in the case of a tax resident foundation, that the management board shall forthwith notify the Minister, by notice in writing, if the multiform foundation ceases to qualify as a tax resident foundation;
- (h) a statement as to its initial multiform and which in the absence of any such statement shall be deemed to be an ordinary foundation;
- (i) a statement that in applying for conversion into a multiform foundation that it is authorised to do so under its governing Ordinance and the constitution of the existing Nevisian entity; or, as the case may be, that in applying for consolidation or merger into a multiform foundation as the surviving entity that each party to the consolidation or merger is authorised to do so under its governing law or constitution; and
- (j) any other particulars required by the Registrar to be provided under or in accordance with this Ordinance,

and together with the supporting documents referred to in subsection (2).

(2) The supporting documents referred to in subsection (1) and in each case signed by a member of the proposed management board or secretary and legally acknowledged or signed by the registered agent and duly witnessed are—

- (a) the plan of conversion referred to in section 71(1), or plan of consolidation or merger referred to in section 72(1);

- (b) if a plan of conversion, the constitution of the existing Nevisian entity referred to in section 73, and which shall be deemed to be the by-laws of the existing Nevisian entity as amended;
- (c) a form of memorandum of establishment, either derived from the constitution referred to in paragraph (b) or, as the case may be, of the surviving entity, containing the particulars set out in section 71(1); and
- (d) a copy of the certificate of, or an undertaking that the application has been made for, discontinuance or dissolution or striking off on the register under the governing Ordinance or other applicable law of the existing Nevisian entity or, as the case may be, the other party or parties to the plan of consolidation or merger which are not the surviving party (as applicable).

**Establishment by conversion or consolidation or merger.**

75. (1) If the Registrar is satisfied that all the requirements of this Ordinance in respect of the conversion or, as the case may be, consolidation or merger have been complied with, he shall register, if a conversion, the existing Nevisian entity as a multiform foundation and, if a consolidation or merger, the surviving entity as a multiform foundation and in substitution for any prior registration, if applicable.

(2) Upon registration, the Registrar shall—

- (a) allocate a registration number to the multiform foundation in accordance with section 86(1); and
- (b) issue a certificate of establishment by conversion or, as the case may be, consolidation or merger, in respect of the multiform foundation stating—
  - (i) the name of the multiform foundation;
  - (ii) its registration number;
  - (iii) the date of registration of its constitution; and
  - (iv) its initial multiform.

(3) Each certificate of establishment by conversion or, as the case may be, certificate of consolidation or merger shall be signed by the Registrar and be sealed with the Official Seal.

(4) The certificate of establishment by conversion or, as the case may be, consolidation or merger, shall be conclusive evidence of the establishment by conversion of the existing Nevisian entity as a multiform foundation or, as the case may be, by consolidation or merger of the surviving entity as a multiform foundation.

(5) On the date shown in the certificate of establishment by conversion or, as the case may be, consolidation or merger—

- (a) the existing Nevisian entity or surviving entity becomes a multiform foundation to which this Ordinance applies and as if the existing Nevisian entity or, as the case may be, the entities existing prior to the consolidation or merger had been established under this Ordinance and were for all purposes the same entity or, as the case may be, the same entities that had existed prior to conversion or consolidation or merger;

- (b) the constitution of the existing Nevisian entity or, as the case may be, the surviving entity becomes the constitution of the multiform foundation under this Ordinance; and
- (c) the certificate of establishment by conversion or, as the case may be, consolidation or merger is evidence of the establishment of the existing Nevisian entity or surviving entity as a multiform foundation.

#### **Certificate of discontinuance.**

**76.** (1) A certificate of discontinuance under section 72(2)(b) shall not be issued unless the laws of that other jurisdiction provide that—

- (a) the property of the multiform foundation continues to be the property of the surviving entity;
- (b) the surviving entity continues to be liable for the obligations of the multiform foundation;
- (c) any existing cause of action, claim or liability to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the multiform foundation may be continued by or against the surviving entity; and
- (e) a conviction, ruling, order or judgment against or in favour of the multiform foundation may be enforced by or against the surviving entity.

(2) Upon receipt of a notice in the prescribed form satisfactory to the Registrar that a multiform foundation that has made an application under section 72(2)(b) has complied with subsection (1), the Registrar must file the notice and issue a certificate of discontinuance in accordance with this Ordinance.

(3) After a certificate of discontinuance is issued under subsection (2) in respect of a multiform foundation, the multiform foundation's name shall be removed from the Register, but such removal does not affect the provisions of Part X.

#### **Effect of conversion or consolidation or merger.**

**77.** Following the issuance of a certificate of conversion or, as the case may be, the certification of consolidation or merger, with respect to the existing Nevisian entity or the entity or entities which are not the surviving party or parties—

- (a) the property, real and personal, of such entity or entities becomes the property of the multiform foundation;
- (b) the multiform foundation continues to be liable for the obligations of such entity or entities;
- (c) an existing cause of action, claim or liability to prosecute of or against such entity or entities is unaffected and assumed by the multiform foundation;
- (d) a civil, criminal or administrative action or proceeding pending by or against such entity or entities may be continued by or against the multiform foundation; and
- (e) a conviction against, or ruling, order or judgment against or in favour of, such entity or entities may be enforced against or by the multiform foundation,



and in each case without further act or deed.

### PART XIII

#### DISSOLUTION AND REVOCATION

##### **Grounds for dissolution.**

**78.** (1) A multiform foundation shall be dissolved where—

- (a) the multiform is revoked in accordance with powers of revocation provided for in its constitution;
- (b) the multiform foundation is established for a definite period and that period expires;
- (c) the purpose of the multiform foundation is fulfilled or becomes incapable of fulfillment as determined—
  - (i) by ordinary resolution of the management board and by ordinary resolution of the supervisory board and absolute beneficiaries (if any); or
  - (ii) by unanimous resolution of the absolute beneficiaries (if any); or
  - (iii) in the absence of absolute beneficiaries, by unanimous resolution of the supervisory board (if any) and ordinary resolution of the subscribers;
- (d) any provision of the constitution of the multiform foundation so requires;
- (e) the multiform foundation is unable to pay its debts as they fall due; or
- (f) the Court orders that the multiform foundation be dissolved.

(2) Where a multiform foundation is dissolved pursuant to the provisions of subsection (1), a person shall be appointed by ordinary resolution of the management board or otherwise under the constitution of the multiform foundation to supervise the dissolution of the multiform foundation (and such person is referred to in this Ordinance as the “liquidator”), and who shall have all authority, powers and discretions to do all things that are necessary or desirable for the orderly supervision of the dissolution of the multiform foundation and the winding up of its business and affairs, and shall collect the assets and property of the multiform foundation and, after discharging or making adequate provision for the discharge of the liabilities or obligations of the multiform foundation, shall distribute the remaining assets and property of multiform foundation in the manner provided in section 80.

(3) Notice of dissolution shall be given by the secretary or registered agent to the Registrar in the prescribed form and which shall be filed on the Register.

##### **Court dissolution.**

**79.** (1) A multiform foundation may, upon application, by an order of Court be dissolved if the Court is of the opinion that it is just and equitable that the multiform foundation be dissolved.

(2) An application for the dissolution of a multiform foundation may be made to the Court by any member of the management board or supervisory board, an absolute beneficiary or by a creditor of the multiform foundation.

(3) Where the Court orders that a multiform foundation be dissolved under this section, the Court may appoint a person to supervise the dissolution of the multiform foundation and act as liquidator and may, from time to time, direct the manner in which the dissolution is to be conducted by the liquidator.

#### **Distribution of assets.**

**80.** (1) Subject to subsection (2), where a multiform foundation is dissolved and there remains some assets or property after its dissolution those assets shall be the assets or property of the beneficiary or other person who, according to the constitution, is entitled to receive any assets or property remaining after the dissolution of the multiform foundation.

(2) In the event that—

- (a) there is no person entitled to receive the remaining assets or property of the multiform foundation as provided in subsection (1);
- (b) the person entitled to receive the remaining assets or property refuses to accept the transfer of the assets or property; or
- (c) there is no relevant provision in the constitution providing for who in such circumstances shall be entitled to receive such assets or property, the remaining assets or property shall vest in the Government and shall be dealt with accordingly.

#### **Dissolution by Registrar.**

**81.** (1) Subject to subsection (2), the Registrar may dissolve a multiform foundation where the multiform foundation fails to file its annual return pursuant to section 95, or fails to pay the prescribed annual fees within the time specified by this Ordinance, or fails to comply with any other provision of this Ordinance and provide notice on the Register to that effect.

(2) A multiform foundation shall not be dissolved under subsection (1) unless—

- (a) the Registrar gives the multiform foundation not less than 90 days' notice of the proposed dissolution, stating the reasons for the proposed dissolution, and addressed to its registered office; and
- (b) the multiform foundation has failed prior to the dissolution to correct the omission.

#### **Revival.**

**82.** (1) A multiform foundation that has been dissolved under section 81 may be revived upon application to the Registrar by any interested person in the prescribed form and on payment of the prescribed fees.

(2) Upon receipt of the application referred to in subsection (1), the Registrar may, if the circumstances justify, approve the application for the revival of the multiform foundation, in which case the applicant shall deliver to the Registrar a copy of the constitution and prescribed fee, together with a statement in the prescribed form and made by a former member of the management board or the secretary signed and legally acknowledged, or signed by the registered agent on his behalf and duly

witnessed, requesting the reinstatement of the multiform foundation on the Register and thereafter the Registrar shall issue a certificate of revival confirming the revival of the multiform foundation and which shall take effect from the date of dissolution as if the multiform foundation had not been dissolved.

(3) The Minister may, for the purposes of this Part, make such regulations as may be necessary for the dissolution and revival of multiform foundations.

### **Creditor's rights.**

**83.** (1) Every creditor before bringing any action or proceeding against any multiform foundation under section 79(2) shall first deposit with the Minister a bond in the sum of 50,000 dollars from a financial institution in Nevis for securing the payment of all costs as may become payable by the creditor in the event of his action or claim not succeeding or prevailing against the multiform foundation.

(2) On application to a court of competent jurisdiction by any judgment creditor of a beneficiary of a multiform foundation, the court may charge the beneficiary's beneficial entitlement as security for payment of the unsatisfied amount of the judgment debt (together with interest) and to the extent so charged the judgment creditor has only the rights of an assignee of the beneficiary's beneficial entitlement.

(3) Unless otherwise provided for in the constitution, the beneficiary's beneficial entitlement charged under subsection (2) may, but need not, be redeemed at fair market value at any time—

- (a) by any beneficiary or beneficiaries whose interests are not charged from that beneficiary; or
- (b) by the multiform foundation from the assets or property of the multiform foundation for the benefit of any one or more of the beneficiaries whose interests are not charged, unless the constitution provides otherwise—
  - (i) by ordinary resolution of the management board and by ordinary resolution of the supervisory board and absolute beneficiaries (if any); or
  - (ii) by unanimous resolution of the absolute beneficiaries (if any); or
  - (iii) in the absence of absolute beneficiaries, by unanimous resolution of the supervisory board (if any) and ordinary resolution of the subscribers.

(4) Notwithstanding the provisions of any other law, the remedies provided by subsection (2) shall be the sole remedies available to any creditor with respect to a beneficiary's beneficial entitlement.

(5) For the purposes of subsection (3), the fair market value of the beneficial entitlement shall be determined by the auditor of the multiform foundation or, if there is no auditor, an auditor appointed by the management board for the purposes of making such a determination.

## PART XIV

## REGISTRAR

**Registrar and Registry.**

**84.** (1) For the purposes of the registration of multiform foundations under this Ordinance, there shall be appointed by the Minister a person to be known as the Registrar of Foundations and such other officers as may be necessary to assist the Registrar in the exercise of his functions under this Ordinance who shall establish in Nevis a principal registry for the registration of multiform foundations.

(2) The Registrar, with the approval of the Minister, who may impose such terms and conditions as he may consider appropriate, shall be entitled to establish a sub-registry of the principal registry in any country or jurisdiction if the Registrar considers it necessary or desirable in furtherance of the purposes and objects of this Ordinance.

(3) Any functions of the Registrar under this Ordinance may, to the extent authorised by the Registrar, be exercised by any of the officers referred to in subsection (1).

(4) The Minister may, at any time and from time to time, by Order, require that the Registrar of Companies appointed pursuant to the Corporation Ordinance shall also be the Registrar of Foundations for such period as the Minister may determine.

(5) In this section, “**officer**” means a person on the staff of the Registrar or a duly appointed representative agent of the Registrar as approved by the Minister and whether for engagement in the principal registry or any sub-registry established under subsection (2).

**Official seal.**

**85.** The Minister shall direct that a seal or seals to be known as the Official Seal be prepared for use by the Registrar in the authentication or other issue of documents required for or in connection with the registration of foundations under this Ordinance and whether for use in the principal registry or any sub-registry established under section 84(2).

**Register and Registration.**

**86.** (1) The Registrar, upon registration, shall allocate to every multiform foundation a number which shall be its registration number.

(2) The registration numbers of multiform foundations shall be in such form and consisting of one or more sequences of figures or letters or any combination thereof as the Registrar may, from time to time, determine.

(3) A register shall be maintained by the Registrar of all multiform foundations registered under this Ordinance and their respective registration numbers, names, multiforms and all and every other particulars required to be notified to or filed with the Registrar under this Ordinance; and such register shall be open to public inspection, save where any particulars are not made available for public inspection as a result of notice being given in the prescribed form pursuant to the provisions of this Ordinance.

(4) The register maintained by the Registrar under subsection (3) shall be divided into such parts as the Registrar may determine for the purposes of registration

and shall include a part for multiform foundations established under Part II, or, as the case may be, establishment by continuation or transformation under Part XI, or conversion or consolidation or merger under Part XII.

#### **Documents delivered.**

**87.** (1) For the purpose of ensuring that documents delivered to the Registrar are of standard size, durable and easily legible, the Minister may prescribe such requirements as the Minister considers appropriate, and different requirements may be prescribed for different documents or classes of documents.

(2) Where a document is delivered to the Registrar, whether an original document or a copy, which in the Registrar's opinion does not comply with the prescribed requirements, the Registrar shall serve on a person by whom the document was delivered a notice stating his opinion to that effect and indicating the requirements with which in his opinion the document does not comply.

(3) Where the Registrar serves a notice under subsection (2), then for the purposes of any enactment, law or ordinance which enables a penalty to be imposed in respect of a failure to deliver to the Registrar a document required to be delivered and, in particular where the penalty imposed may be by reference to each day during which the failure continues, a duty to deliver a document to the Registrar shall be treated as having been discharged by the delivery of that document, except that no account is to be taken of days beginning with the day on which the document was delivered to the Registrar and ending with the fourteenth day after the date of service of the notice under subsection (2).

#### **Form of documents.**

**88.** (1) Where this Ordinance requires a document to be delivered to the Registrar, and the form of the document has not been prescribed, it shall be sufficient compliance with that requirement if—

- (a) the document is delivered in a form which is acceptable to the Registrar; or
- (b) the information in question is delivered in material other than a document, being material which is acceptable to the Registrar; and
- (c) the document or information, as the case may be, is accompanied by the prescribed fee.

(2) In this section, any reference to delivering a document includes, in the case of a notice, the giving of such notice.

#### **Good standing certificate.**

**89.** The Registrar shall, on request by any person and on payment of the prescribed fee, certify that a multiform foundation registered under this Ordinance is of good standing, if the Registrar is satisfied that—

- (a) the name of the multiform foundation is on the Register;
- (b) the multiform foundation has filed with the Registrar all documents required by this Ordinance to be filed; and
- (c) the multiform foundation has paid all fees and penalties required by this Ordinance to be paid.

**Regulations.**

**90.** (1) The Minister may, by regulations made under this Ordinance, require the payment to the Registrar of such fees as may be prescribed in respect of—

- (a) the performance by the Registrar of such functions under this Ordinance as may be specified in the regulations, including the receipt by the Registrar of any document under this Ordinance which is required to be delivered to the Registrar; and
- (b) the inspection of documents or other material held by the Registrar under this Ordinance.

(2) Where a fee is provided for or charged under this section, no action need be taken by the Registrar until the fee is paid and, where the fee is payable on the receipt by the Registrar of a document required to be delivered to the Registrar, the Registrar shall be deemed not to have received the document until the fee is paid.

(3) The Minister may prescribe forms to be used for any of the purposes of this Ordinance and the manner in which any document to be delivered to the Registrar is to be authenticated.

(4) Unless otherwise provided in this Ordinance, any document required to be delivered to the Registrar by a multiform foundation shall be signed by a member of the management board or the secretary or the registered agent of the multiform foundation.

(5) Fees paid to the Registrar shall be paid to such fund or funds as shall be specified by the Minister for the benefit of the Nevis Island Administration.

**Inspection.**

**91.** (1) Subject to the provisions of this section, no inspection or production of documents kept by the Registrar under this Ordinance shall be permitted unless those documents have been made available for public inspection under and subject to the provisions of this Ordinance, except that any of the members of the management board or the supervisory board of a multiform foundation may, by notice in writing to the Registrar, authorise the person named in the notice—

- (a) to inspect a document of the multiform foundation delivered to the Registrar under this Ordinance or, if the Registrar thinks fit, obtain a copy thereof; or
- (b) to require a certificate of establishment or, as the case may be, the certificate of establishment by continuance or transformation or conversion, consolidation or merger of the multiform foundation or a copy, certified or otherwise, of any other document or part of any other document referred to in paragraph (a),

and a certificate given under paragraph (b) shall be signed by the Registrar and sealed with the Official Seal.

(2) A copy of or an extract from a record kept by the Registrar, certified in writing by the Registrar to be an accurate copy, shall in all legal proceedings be admissible in evidence as of equal validity with the original record and as evidence of any fact stated in the copy or extract of which direct evidence would be admissible.

**Failure to deliver documents.**

**92.** (1) Where a multiform foundation which fails to comply with a requirement to deliver to the Registrar any document or to give notice to the Registrar of any matter, and does not make good the failure within 14 days after the service of a notice on the multiform foundation requiring it so to do by the Registrar, the Court may, on an application made to it by a member of the supervisory board (if any) or any beneficiary of the multiform foundation or by the Registrar, make an order directing the multiform foundation to make good the failure within a time specified in the order.

(2) The order of the Court may provide that all or any part of the costs of and incidental to the application shall be borne by the multiform foundation or by any member of the management board or secretary responsible for the failure or shall be apportioned between the multiform foundation and any member of the management board or secretary so responsible.

(3) Nothing in this section shall prejudice the application of any provision imposing penalties on the multiform foundation or its management board or secretary in respect of a failure mentioned in subsection (1).

## PART XV

## GENERAL PROVISIONS

**Taxation.**

**93.** (1) Subject to subsection (2), notwithstanding any provision to the contrary in any law of Nevis, a multiform foundation shall not be subject to assessment or liable for any tax in Nevis, and the beneficiaries of a multiform foundation shall similarly be exempt from all income, capital gains and withholding taxes which may arise out of their beneficial entitlement in or to the multiform foundation or any of its assets or property.

(2) Unless the multiform foundation is a tax resident foundation, the provisions of subsection (1) shall only apply to a multiform foundation which effects transactions exclusively with persons who are not resident in Nevis, provided that a multiform foundation and its beneficiaries shall not lose their exemption under subsection (1) by reason only that the multiform foundation—

- (a) effects transactions with, or buys or sells or otherwise deals in any securities issued or created by, any person resident in Nevis who is exempt from all income, capital gains and under any law of Nevis;
- (b) effects or concludes in Nevis any contract or arrangement, including contracts or arrangements with any person resident in Nevis for employment with, or of the supply of goods and services to, the multiform foundation, and exercises in Nevis all other powers, so far as may be necessary for their proper performance;
- (c) carries on any part of its administration within Nevis, and holds meetings in Nevis;
- (d) owns or leases property in Nevis for the carrying on of any part of its administration or as a residence for its management board, supervisory board or beneficiaries; or

- (e) transacts banking business with any person resident in Nevis who is authorised to carry on banking business under any law of Nevis.

(3) A multiform foundation may apply to the Minister for a tax resident certificate and elect to pay such tax or taxes as the Minister may by regulations made under this Ordinance prescribe at a rate of not greater than one percent, and upon issue of such a certificate the provisions of subsection (1) shall apply, except with respect to any of the prescribed taxes payable, and the multiform foundation shall be tax resident in Nevis for all purposes.

(4) Notwithstanding any provision to the contrary in any law of Nevis, no estate, inheritance, succession or gift tax, rate, duty, levy or other charge shall be assessed on or be payable by any person with regard to any assets or property transferred to or held by or securities issued or created by or relating to a multiform foundation to which the provisions of this section shall apply.

(5) In this section—

- (a) “person” includes an individual or an entity; and
- (b) “resident in Nevis” means a person (other than a beneficiary of a multiform foundation) who ordinarily resides within Nevis or carries on business from an office or other fixed place within Nevis and “not resident in Nevis” shall be construed accordingly.

#### **Stamp duties.**

**94.** Notwithstanding any provision to the contrary in any law of Nevis, no stamp duties shall be payable by any person with regard to any transaction in any securities issued or created by or relating to transfer of assets or property to a multiform foundation.

#### **Annual return.**

**95.** (1) A multiform foundation shall, in each year, before the end of the month following the month in which the anniversary of its registration took place—

- (a) complete an annual return in the prescribed form containing the information current as at the anniversary of its registration in that year; and
- (b) deliver to the Registrar a copy of the return signed by the secretary or the registered agent of the multiform foundation together with the prescribed filing fee.

(2) The annual return shall state, with respect to the multiform foundation—

- (a) the name of the registered agent;
- (b) the registered address of the multiform foundation;
- (c) its multiform;
- (d) whether the multiform foundation is a tax resident foundation;
- (e) the full name and address of each member of the management board or, in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered office;
- (f) the full name and address of the secretary or, in the case of a body corporate, its full name, the place where it is incorporated and the address of its registered office; and



- (g) that the information contained in the annual return is current as at the anniversary of its registration in the year in which it is required to be delivered.

(3) If default is made in compliance with subsection (1) or (2) every member of the management board and the secretary is in default commits an offence and shall be liable to a fine not exceeding four times the prescribed filing fee and, in the case of an offence under subsection (1)(b), to a fine not exceeding one half of the prescribed filing fee for each day in respect of which the offence continues.

#### **Records.**

**96.** (1) The records which a multiform foundation is required by this Ordinance to keep, may be kept in the form of a bound or loose-leaf book or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device which is capable of reproducing the required information in intelligible written form within a reasonable time.

(2) A multiform foundation shall take reasonable precautions—

- (a) to prevent loss or destruction of;
- (b) to prevent falsification of entries in; and
- (c) to facilitate detection and correction of inaccuracies in,

the records required by this Ordinance to be kept.

(3) A multiform foundation which fails to comply with the provisions of subsection (2) and any member of the management board or the secretary responsible for such failure commits an offence and shall be liable to a fine not exceeding 2,500 dollars.

#### **Admission of evidence.**

**97.** (1) If any record referred to in section 96(1) is kept otherwise than in intelligible written form, any duty imposed on the multiform foundation by this Ordinance to allow examination of, or to furnish extractions from, that record shall be treated as a duty to allow examination of, or to furnish a copy of the extractions from, the record in intelligible written form.

(2) The records kept by a multiform foundation in compliance with this Ordinance shall be admissible as evidence in the form in which they are made intelligible under subsection (1) as *prima facie* evidence of all facts and other matters stated in the records.

#### **Order to produce records.**

**98.** If on an application by the Legal Adviser there is shown to be reasonable cause to believe that a person has whilst a member of the management board or the supervisory board committed an offence in connection with the management of the multiform foundation's affairs and that evidence of the commission of the offence may be found in any records of or under the control of the multiform foundation, the Court may make an order—

- (a) authorizing the person named in the order to inspect the records in question, or any of them, for the purpose of investigating and obtaining evidence of the offence; or

- (b) requiring any member of the management board or the supervisory board named in the order to produce and make available the records or any of them to a person at a place and by a time specified in the order.

### **Professional privilege.**

**99.** Where any proceedings are instituted under this Ordinance against any person, nothing in this Ordinance is to be taken to require any person to disclose any information which that person is entitled to refuse to disclose on grounds of legal professional privilege.

### **Right to silence.**

**100.** A person may refuse to answer any question put to him pursuant to any provision of this Ordinance if that person's answer would or might tend to expose that person, or the spouse of that person, to proceedings under the law of Nevis or elsewhere for an offence or for the recovery of any penalty.

### **Relief of Court for liability.**

**101.** (1) If in any proceeding for negligence, default or breach of duty against a member of the management board or supervisory board or the secretary, it appears to the Court that the person is or may be liable in respect of the negligence, default or breach of duty, but that the person acted honestly and that having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach of duty, the Court may relieve that person, either wholly or partly, from liability on such terms as the Court thinks fit.

(2) If a member of the management board or supervisory board or the secretary has reason to believe that a claim will or might be made against him in respect of negligence, default or breach of duty he may apply to the Court for relief, and the Court shall have the same power to relieve him as it would have had if proceedings for negligence, default or breach of duty had been brought against him.

### **False statements.**

**102.** (1) A person who—

- (a) makes a statement in any form or document required to be filed, furnished or delivered under this Ordinance or any regulations made thereunder which, at the time and in the light of circumstances under which it is made, is false or misleading with respect to any material fact, or omits to state any material fact the omission of which makes the statement false or misleading; or
- (b) fails to disclose any fact or information required to be disclosed for the purposes of this Ordinance or any regulations made under this Ordinance; or
- (c) being in charge of, or having possession of or control over any information records, books or other documents referred to in section 98 refuses or wilfully neglects to comply with any lawful direction given under that section,

commits an offence and shall be liable on summary conviction to a fine of not more than 10,000 dollars or to imprisonment for a term not exceeding 6 months, or both.

(2) It shall be a defence for a person accused of committing an offence under subsection (1)(a) to prove that he did not know that the statement was false or misleading, and could not reasonably have known that the statement was false or misleading at the time of making it.

**Aiding and abetting offence.**

**103.** Any person who knowingly or wilfully aids, abets, counsels, causes or procures the commission of an offence under this Ordinance shall be liable to be dealt with, tried and punished as a principal offender.

**Court order to comply.**

**104.** (1) Where, on the application of the Legal Adviser or the Registrar, the Court is satisfied that any person has failed to comply with any requirement made by or pursuant to this Ordinance, or committed any breach of duty as a member of the management board or the supervisory board or as a secretary, the Court may order the multiform foundation or that person to comply with the requirement or, so far as the breach of duty is capable of being made good, to make good the breach.

(2) The Court shall not make an order against any person under this section unless that person is given the opportunity of adducing evidence and being heard in relation to the matter to which the application relates.

**General power to make regulations.**

**105.** (1) The Minister may generally make regulations to give effect to the provisions of this Ordinance as may appear to the Minister to be necessary or expedient for the purpose of giving full effect to the provisions of this Ordinance and for the due administration thereof and, without prejudice to the generality of the foregoing, the Minister may make regulations prescribing any matter which is required to be prescribed under this Ordinance.

(2) The power conferred on the Minister by subsection (1) may, except in so far as this Ordinance otherwise provides, be exercised—

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases; and
- (b) so as to make in relation to the case with respect to which it is exercised—
  - (i) the full provision to which the power extends or any less provision, whether by way of exception or otherwise; or
  - (ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class for different purposes of this Ordinance; or
  - (iii) any such provision either unconditionally or subject to any specified conditions.

(3) Without prejudice to any provision of this Ordinance, regulations made under this Ordinance may contain such transitional, consequential, incidental or supplementary provisions as may appear to the Minister to be necessary or expedient for the purposes of the regulations.

(4) Without limiting the general powers conferred by subsections (1), (2) and (3), the Minister may make regulations for all or any of the following purposes—

- (a) prescribing fees payable under this Ordinance;
- (b) designating or varying a class or classes of multiform;
- (c) prescribing the contents of the constitution for an ordinary foundation or, as the case may be, a stated multiform;
- (d) prescribing the content of form or forms required to be filed or completed with respect to any matter under this Ordinance;
- (e) generally with respect to the formation and administration of any sub-registry established under section 84(2); or
- (f) generally with respect to the administration of this Ordinance and for carrying the intent and purposes of its provisions into effect.

**Direction to furnish information.**

**106.** For the purposes of discharging his duties under this Ordinance and the regulations made thereunder and without prejudice to the provisions of Part X, the Registrar or any person acting under his authority may, at all reasonable times, in writing direct any person to whom this Ordinance applies or is subject—

- (a) to furnish information; or
- (b) to provide access to any records, books or other documents,

relating to the business or affairs of that person being carried out under or by virtue of any of the provisions of this Ordinance which, in the opinion of the Registrar, are necessary to enable him to ascertain compliance with the provisions of this Ordinance or any regulations made thereunder.

**Immunity from suits.**

**107.** (1) No liability shall be incurred by and no suit, action or proceeding shall be brought against the Government, the Regulator, the Financial Services Commission, the Financial Intelligence Unit, the Registrar or any person acting under his or its authority for any act done or omitted to be done in good faith—

- (a) in the performance or intended performance of any function or duty; or
- (b) in the exercise or intended exercise of any power, under this Ordinance or the regulations made thereunder.

(2) The Registrar may bring an action and institute proceedings in his name of office for the enforcement of any provision of this Ordinance or any regulation made thereunder, or for the recovery of fees or other sums payable under this Ordinance or any regulations made thereunder.

**Avoidance for fraud.**

**108.** (1) Where it is proved beyond reasonable doubt by a creditor that a multiform foundation was subscribed to—

- (a) by or on behalf of a subscriber with principal intent to defraud the creditor of the subscriber; and

- (b) did at the time such subscription take place render the subscriber insolvent or without property by which that creditor's claim (if successful) could have been satisfied,

then such subscription shall not be void or voidable and the multiform foundation shall be liable to satisfy the creditor's claim but such liability shall only be to the extent of the interest that the subscriber had in the property representing or comprising the subscription prior to subscription and any other accumulation to the property (if any) subsequent thereto.

(2) In determining whether the subscription has rendered the subscriber insolvent or without property by which a creditor's claim (if successful) may be satisfied, regard shall be had to the fair market value of the subscriber's property (not being property of or relating to the multiform foundation) at the time immediately after the subscription referred to in subsection (1)(b) and in the event that the fair market value of such property exceeded the value of the creditor's claim, at that time, after the subscription, then the subscription made shall for the purposes of this Ordinance be deemed not to have been so subscribed, or the property disposed of with intent to defraud the creditor.

(3) A subscription shall not be deemed to have been subscribed with principal intent to defraud a creditor of a subscriber—

- (a) if subscribed after the expiration of one year from the date that such creditor's cause of action accrued; or
- (b) where the subscription takes place before the expiration of one year from the date that the creditor's cause of action accrued, that creditor fails to commence such action before the expiration of six months from the date such subscription took place.

(4) A subscription to the foundation shall not be fraudulent as against a creditor of a subscriber if the subscription of property took place before that creditor's cause of action against the subscriber accrued or had arisen.

(5) A subscriber shall not have imputed to him an intent to defraud a creditor, solely by reason that the subscriber—

- (a) has subscribed to such foundation within one year from the date of that creditor's cause of action accruing; and
- (b) has retained, possesses or acquires with respect to the foundation or the administration of its affairs any of the powers or benefits as a result of being a beneficiary, or member of the management board or supervisory board, as the case may be.

(6) Where a foundation is liable to satisfy a creditor's claim in the manner provided for in subsection (1), that creditor's rights to recovery shall be limited to the property referred to in subsection (1), or to the proceeds of that assets or property, to the exclusion of any claim right or action against the foundation or any other assets or property of the foundation.

(7) For the purpose of this section, the onus of proof of the subscriber's intent to defraud the creditor lies on the creditor.

(8) For the purpose of this section—

- (a) the date of the cause of action accruing shall be, the date of that act or omission which shall be relied upon either partly or wholly to establish the cause of action, and if there is more than one act or the omission shall be a continuing one, the date of the first act or the date that the

omission shall have first occurred, as the case may be, shall be the date that the cause of action shall have accrued;

- (b) the term “cause of action” means the earliest cause of action capable of assertion by a creditor against the subscriber or, as the case may be, against the subscription on which the creditor has established (or may establish) an enforceable claim; and
- (c) the entry of judgment in the proceedings shall not constitute a separate cause of action.

(9) The provisions of this section shall apply to all actions and proceedings brought in any court, however described, against any person (whether a party to the proceedings or not) with regard to a subscription to a foundation, or receipt of property by or for such a foundation and the remedy conferred by subsection (1) shall be the sole remedy available in such an action or proceeding to the exclusion of any relief or remedy against any party to the action or proceeding.

(10) Failure by a creditor to present all claims arising out of any controversy and join all parties with a material interest shall prevent that creditor from presenting such claims and bringing an action against such parties in a subsequent proceeding.

(11) For the purposes of this section, the term “creditor” means a creditor of the subscriber, including a judgment creditor and an assignee from such creditor of any claim and includes any person who alleges a cause of action against a subscriber.

#### **Invalidity of subscriptions.**

**109.** (1) Nothing in this Ordinance shall validate any subscription of assets or property which is neither owned nor the subject of a power in that behalf vested in the subscriber.

(2) This Ordinance shall not affect the recognition of any foreign laws in determining whether the subscriber is the owner of such assets or property or the holder of such power referred to in subsection (1) of this section.

(3) No subscription shall be invalid or questioned on the grounds that it is at an undervalue, unless being a subscription in respect of which the provisions of section 108 apply.

#### **Foreign judgments.**

**110.** (1) Notwithstanding the provisions of any treaty or convention or the provisions of any statute or any rule of law or equity to the contrary, no proceedings for or in relation to the enforcement or recognition of a judgment obtained in a jurisdiction other than Nevis against—

- (a) a multiform foundation;
- (b) a subscriber;
- (c) a member of the management board;
- (d) a member of the supervisory board;
- (e) a beneficiary;
- (f) a person appointed or instructed in accordance with the express or implied provisions of the constitution or an instrument to undertake any act, matter or thing in connection with a multiform foundation; or

- (g) the assets or property of the multiform foundation or any beneficiary thereof,

shall be entertained by the Court if the judgment is based upon the application of any law inconsistent with the provisions of this Ordinance, or if that judgment relates to a matter or particular aspect that is governed by the law of Nevis.

#### **Filing of documents.**

**111.** (1) Whenever any provision of this Ordinance requires any form or instrument to be filed with the Registrar, such form or instrument shall comply with the provisions of this section, unless otherwise expressly provided for under this Ordinance or by any regulation made by the Minister thereunder.

(2) Every form or instrument referred to herein, filed or required to be filed, shall be in English language, except that the corporate name may be in another language if written in English letters or characters.

(3) All forms or instruments shall be signed by a member of the management board or the secretary or the registered agent or a person otherwise authorised on behalf of the multiform foundation.

(4) Whenever any provision of this Ordinance requires a form or instrument to be “legally acknowledged”, such requirement means in the case of execution of a form or instrument within Nevis that—

- (a) the person signing the form or instrument shall acknowledge that it is his act and deed or that it is the act and deed of the multiform foundation, as the case may be; and
- (b) the form or instrument shall be acknowledged before a notary public, commissioner for oaths or other person authorised to take acknowledgments, who shall attest that he knows the person making the acknowledgment to be the person who executed the form or instrument.

(5) In the case of the execution of a form or instrument outside of Saint Christopher and Nevis, an acknowledgment for the purposes of subsection (4) shall mean—

- (a) the person signing the form or instrument shall acknowledge that it is his act and deed or that it is the act and deed of the multiform foundation, as the case may be;
- (b) the form or instrument shall be acknowledged before a notary public or any other person authorised to take acknowledgments according to the laws of the place of execution, or a consul or vice-consul of Saint Christopher and Nevis or other governmental official of Saint Christopher and Nevis authorised to take acknowledgments or, in their absence, a consular official of another government having diplomatic relations with Saint Christopher and Nevis, and such notary, person, consul or vice-consul shall attest that he knows the person making the acknowledgment to be the person who executed the form or instrument; and
- (c) when the acknowledgment shall be taken by a notary public or any other person authorised to take acknowledgments pursuant to subparagraph (b), except a governmental official of Saint Christopher and Nevis or foreign consular official, the signature of such person who has authority shall be attested to by a consul or vice-consul of

Saint Christopher and Nevis or, in his absence, by a consular official of another government having diplomatic relations with Saint Christopher and Nevis, or a government official of the place of execution who is authorised to make such attestation, or an Apostille according to the Convention de la Haye de 5 Octobre 1961.

(6) Whenever any provision of this Ordinance requires any form or instrument to be filed with the Registrar, subject to any regulations made under this Ordinance, such requirement means that—

- (a) an appropriate receipt evidencing payment of all appropriate fees shall be delivered to the office of the Registrar and, within 10 days of the date of the receipt, the original instrument together with a duplicate instrument, both duly signed and legally acknowledged (if appropriate);
- (b) upon delivery of the original signed and legally acknowledged (if appropriate) for an instrument with the required receipt and an exact signed and duly acknowledged copy (if appropriate), the Registrar shall certify that the form or instrument has been filed in his office by endorsing the word “Filed” and the date of the required receipt upon the original instrument and said date shall be the filing date;
- (c) the Registrar shall compare the duplicate signed and acknowledged copy with the original signed and legally acknowledged (if appropriate) form or instrument, and if he finds that the text is identical, shall affix on the duplicate copy the same endorsement of filing as he affixed on the original; and the said original, as endorsed, shall be returned to the multiform foundation; and the endorsement constitutes the certificate of the Registrar that the document is a true copy of the form or instrument filed in his office and that it was filed as of the date stated in the endorsement;
- (d) any instrument filed in accordance with subsection (b) shall be effective as of the filing date stated thereon; and
- (e) upon the filing of any form or instrument the Registrar may issue a certificate of endorsement under his hand and seal certifying that the form or instrument is filed.

(7) Any form or instrument relating to a multiform foundation and filed with the Registrar under this Ordinance may be corrected with respect to any error apparent on the face or defect in the execution thereof by filing with the Registrar a certificate of correction, executed and acknowledged in the manner required for the original form or instrument. The certificate of correction shall specify the error or defect to be corrected and shall set forth the portion of the form or instrument in correct form; and the corrected form or instrument when filed shall be effective as of the date the original form or instrument was filed.

(8) Whenever any provision of this Ordinance requires a form or instrument to be signed by a registered agent and “duly witnessed”, the signature of the registered agent may be either duly witnessed by the Registrar or any of his officers (as defined in section 84(5)) or by any other person who is a registered agent or a duly appointed representative of a registered agent or otherwise as may be prescribed in regulations made under this Ordinance.



**Certified copies.**

**112.** All certificates issued by the Registrar in accordance with the provisions of this Ordinance and all copies of documents filed in his office in accordance with the provisions of this Ordinance shall, when certified by him, be taken and received in all courts, public offices and official bodies as *prima facie* evidence of the facts therein stated and of the execution of such instruments.

**Confidentiality.**

**113.** (1) The Confidential Relationships Act, Cap. 21.02 of Saint Christopher and Nevis shall apply to every multiform foundation established under this Ordinance.

(2) All judicial proceedings, other than criminal proceedings, relating to foundations shall be heard in camera and no details of the proceedings shall be published by any person without leave of the Court.

(3) Subject to the provisions of this section, the Registrar, the Regulator and every other person having any official duty in the administration of this Ordinance shall regard and deal with all documents and information filed with or notified to the Registrar or any officer under the provisions of this Ordinance as confidential, unless made available for public inspection in accordance with the provisions of this Ordinance.

(4) A person having possession of or control over—

- (a) any document relating to a multiform foundation which is registered and retained by the Registrar, but not available for public inspection;
- (b) information relating to a multiform foundation which is not contained—
  - (i) in the entry in the Register in respect of that multiform foundation; or
  - (ii) in a document retained by the Registrar,

shall regard that document and information as confidential and shall not communicate that document, or anything contained in that document, or that information, or any part of that information, to any person, other than a person referred to in subsection (5).

(5) The person referred to in subsection (4) is a person—

- (a) who by virtue of any provision of this Ordinance or any other statute or law is entitled to inspect that document or receive that information;
- (b) to whom the person who is in possession of or control over any document is authorised by the subscriber, the members of the management board or secretary or members of the supervisory board to disclose the document or information for attaining the purpose or object of the multiform foundation; or
- (c) subject to subsection (6), to whom the person who is in possession of or control over any document is required to disclose that information by order of a court of competent jurisdiction.

(6) A person who acts in contravention of—

- (a) subsections (4) and (5) shall be guilty of an offence punishable on conviction on indictment by a fine not exceeding \$50,000 dollars, or up to 6 months imprisonment, or both; and

(b) subsections (4) and (5)—

- (i) where he is a member of the management board or supervisory board or is an auditor of the multiform foundation, is in default; or
- (ii) otherwise is in breach of his statutory obligations and the multiform foundation may proceed against him.

(7) No person employed in carrying out the provisions of this Ordinance shall be required to produce in any court or before any authority or person for any purpose whatsoever any document made in pursuance of this Ordinance or to divulge or communicate to any court any matter or thing coming to his notice in the performance of his duties under this Ordinance, except as may be necessary for the purpose of—

- (a) carrying into effect the provisions of this Ordinance and discharging his duties and responsibilities thereunder; or
- (b) any criminal proceedings in which such document, matter or thing is material.

#### **Remedy for default.**

**114.** (1) Where a multiform foundation or an officer is in default of any duty or obligation imposed upon him under this Ordinance, an application may be made to the Court by another officer or a beneficiary or a subscriber specifying the default and seeking a remedy.

(2) Where the Court is satisfied that it is just and equitable in the circumstances to do so, it may order the remedy sought, or may make such other order as it sees fit—

- (a) for the attainment of the purposes or objects of this Ordinance; and
- (b) to obtain compliance with this Ordinance.

(3) Where the order of the Court under subsection (2) has the effect of granting the application, it shall order that the costs of bringing the application as well as the costs of the action shall be met—

- (a) where the application and the order is in respect of default by the multiform foundation; and
- (b) where the application and the order is in respect of default by the multiform foundation but, in the opinion of the Court, the default was the responsibility of an officer, by that officer.

#### **Statute of Elizabeth.**

**115.** The enactment entitled 13 Elizabeth 1 Ch 5 (1571) shall have no application to any multiform stated to be a trust, nor any provision thereof nor to any subscription to such a multiform foundation in consequence that the multiform is stated to be a trust.

#### **Notices.**

**116.** (1) Where there is provision in this Ordinance for the service of notice on any person, the notice shall be in writing and may be served in person, by post, by fax or electronically.

(2) In respect of service—

- (a) in person, the date of service shall be the date on which the notice was deposited at the address last notified to the secretary of the multiform foundation by the person entitled to receive service as his address for service or, where no address has been so notified, the last known address of that person for the receipt of written communications;
  - (b) by post, the date of service shall be the fifth day following the day upon which the properly addressed and stamped envelope containing the notice was delivered into the postal service and service shall be at the address last notified to the secretary of the multiform foundation by the person entitled to receive service as his address for service or, where no address has been so notified, the last known address of that person for the receipt of written communications; or
  - (c) by fax or electronic means, the date of service shall be the date of transmission recorded by the transmitter and the address shall be the fax number or electronic address last notified to the secretary by the person entitled to receive service as his number and address for receipt of fax or electronic communications.
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