

Model By-laws

(Foundations Law 2018)

**Notes:**

1. Although Article 20(5) of the Foundations Law, DIFC Law No. 3 of 2018 (the “Law”) provides for the making of Regulations which amongst other things specify the terms of Standard By-laws, these Standard By-laws have not been promulgated pursuant to such Regulations. However it may be used as a basic template and guide for the standard By-laws of a Foundation and if properly completed, would be accepted as satisfactory by the Registrar of Companies for the purpose of registering a Foundation.
2. The Law provides that a Foundation must have a Charter (Article (19(1) of the Law) and may have By-laws (Article 20(4) of the Law). If the Foundation does not have By-laws, the matters contained in these Standard By-laws, must be included in the Foundation Charter. In such cases please use the Standard Charter (where there are no By-laws). The following matters are included in the Standard By-laws, but could be included in the Charter instead, in which case they could be deleted from the By-laws:
   1. Name of Default Recipient
   2. Name(s) of Qualified Recipient
   3. Name(s) Guardian
3. If a Foundation has a Registered Agent in the DIFC its By-laws do not need to be registered (Articles 17(2)(g) and 20(6) of the Law).

**THE [insert name] FOUNDATION**

**BY-LAWS**

**INTERPRETATION**

1. In these By-laws:

(a) the Rules of Interpretation in the Charter of the Foundation apply to these By-laws, including those related to defined terms.

(b) in addition, the following terms shall have the meanings given below:

‘**Default Recipient”** [[1]](#footnote-1) is [insert name].

**[‘Guardian’**[[2]](#footnote-2) is [insert name]].

**‘Qualified Recipients’** are [insert name][[3]](#footnote-3).

**THE COUNCIL**

1. *ESTABLISHMENT OF COUNCIL*

The Foundation shall have a Council consisting of the Chairman of the Council, and not less than one and no more than [specify maximum number] other members.

1. *POWERS AND FUNCTIONS OF THE COUNCIL*
2. Subject to the Law and the Charter, the Foundation shall be managed by the Council. No subsequent amendment to the Charter shall invalidate any act of a Member of the Council or the Council.
3. The Council may appoint a person to be the agent of the Foundation.
4. The Council may delegate any of its functions or powers to an attorney-in-fact or to a committee of the Council, provided that the extent of such delegation shall be clearly stated.
5. The Council shall be in charge of the day-to-day administration of the Foundation and shall have full powers to represent the Foundation in the pursuit of its Objects. Such powers include but are not limited to the power to:

(i)   negotiate, sign, execute all contracts, transactions, arrangements, and deals of whatever kind or nature with third parties, and any authority whatsoever, in the name of the Foundation with right to terminate and amend such contracts and agreements as required from time to time;

(ii)   open, close and manage all bank accounts pertaining to the Foundation, to carry out all banking transaction on behalf of the Foundation including without any limitation the right to issue, sign, endorse cheques, drawing voucher letters of credit, transfer, obtain loans with or without security, bank facilities, bank guarantees and bank performance bonds and to complete and sign all applications and documents necessary for the performance of the Foundation’s corporate objectives;

(iii)   employ all persons required for the Foundation’s business, to define their salaries, benefits, remunerations and the rules and provisions related to their employment as well as the right to terminate their services;

(iv)   sign memoranda of association in terms and conditions as it may deem fit;

(v)   claim on behalf of the Foundation, to attach the properties of debtors, refer cases to arbitration, to appoint lawyers; and

(vi) take all legal proceedings for the protection of the Foundation’s interests as plaintiff or defendant or as party to arbitration or otherwise.

1. [Notwithstanding the preceding provisions of this By-law 3, the Council shall not dispose of, mortgage or assign the property transferred to the Foundation by the Founder as its initial capital].[[4]](#footnote-4)
2. The Council may accept further contributions to the Foundation from the Founder or any other persons, and shall hold such property on such terms as may be agreed between the Foundation and the Founder or other contributor which terms shall, if different from those set out in By-law 16, be specified in an amendment to these By-laws.

4. *APPOINTMENT AND RETIREMENT OF MEMBERS OF THE COUNCIL*

1. The Founder shall appoint[[5]](#footnote-5) the first members of the Council and the Chairman at the time of the establishment of the Foundation, and if the number of members of the Council falls below two, shall appoint replacement Councillors so that there are at least two Councillors.
2. Subject to the preceding clause, additional members of the Council may be appointed by the Council of the Foundation by [an ordinary resolution passed by the majority of existing Council members / a special resolution passed by 75% of existing Council members / a unanimous resolution of all existing Council members[[6]](#footnote-6)] with the consent in writing of the Founder(s)[[7]](#footnote-7) during their lifetime or its existence or, if the Founder(s) are no longer alive or in existence, the Guardian provided that the total number of members of the Council does not exceed any maximum number of Council members stipulated by the Law, Regulations or these By-laws.
3. Any vacancy in the position of Chairman shall be filled by election conducted by the members of the Council in such manner as they shall determine.

5. *DISQUALIFICATION AND REMOVAL OF MEMBERS OF THE COUNCIL*

The office of a member of the Council is automatically vacated if the member:

(i)   is prohibited by the Law or Regulations from being a Member of the Council;

(ii) becomes bankrupt;

(iii)   is, by virtue of any disability, incapable of fulfilling the functions or duties required by the office;

(iv)   without permission, does not attend three successive meetings of the Council;

(v)   resigns his or her office by notice to the Foundation;

(vi) is removed by the Founder in accordance with By-law 16; or

(vii) is removed by the Court pursuant to Article 46(1) of the Law.

1. *ALTERNATE MEMBERS OF THE COUNCIL*
2. Any member of the Council may, and a member of the Council which is a body corporate shall, appoint another member of the Council or any other natural person approved by the Council to act as his, her or its alternate and may remove the alternate member of Council so appointed. The alternate member of Council shall perform all the functions of his or her appointor as a Member of the Council but is not entitled to remuneration for his or her services.
3. An alternate member of the Council shall be given notice of all meetings of which his or her appointor is entitled to receive notice and is entitled to attend and vote at such meetings in the absence of his appointer.
4. An alternate member of the Council holds office for as long as his or her appointor holds office unless he or she is removed by written instrument by his or her appointor.
5. Any appointment or removal of an alternate member of the Council shall be given to the Secretary (if any) or the Chairman.
6. Unless otherwise provided, an alternate member of the Council (other than one appointed by a body corporate) shall not be regarded as the agent of his or her appointor but shall be responsible for his or her own acts or omissions.
7. *REMUNERATION AND EXPENSES OF MEMBERS OF THE COUNCIL*

The members of the Council shall receive such remuneration as the Council with the approval in writing of the Founder or, if there is no Founder living or in existence, the Guardian (if any) determines by resolution and shall receive payment of all expenses incurred in association with the carrying out of their duties as members of the Council.

1. *REQUISITION AND NOTICE OF MEETINGS OF THE COUNCIL*
2. Any Member of the Council may call a meeting of the Council.
3. Subject to the Law, a meeting of the Council shall be called by at least 14 days’ notice to all the Council members.
4. Such notice of meeting shall specify the time and place of the meeting and the general nature of the matters to be considered.
5. The members of the Council may unanimously waive notice of any meeting.

E. The proceedings of a meeting are not invalid solely because of the inadvertent failure to give notice of the meeting to, or the failure to receive notice of a meeting by any person entitled to receive such notice.

9. *PROCEEDINGS OF THE COUNCIL*

1. Subject to the provisions of these By-laws, members of the Council may regulate their proceedings as they think fit.
2. No meeting shall take place unless a quorum is present. The majority of persons entitled to vote shall constitute a quorum.
3. If a quorum is not present within half an hour from the time stated for the meeting, the meeting shall be adjourned to a place and time determined by the Chairman. If during the meeting a quorum ceases to be present the meeting shall be adjourned to a place and time determined by the members of the Council who are present.
4. The Chairman shall chair the meeting. If the Chairman is not present or willing to act within fifteen minutes of the stated time for commencement of the meeting, and in the absence of a nominee, another member of the Council elected by the rest of the Council present shall chair the meeting.
5. The Chairman may adjourn the meeting with the consent of the majority of the votes at the meeting. No matters shall be considered at an adjourned meeting other than matters that might have been considered at the meeting had the adjournment not taken place. It is not necessary to give notice of the adjourned meeting unless the meeting was adjourned for fourteen days or more, in which case at least seven days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the matters to be considered.
6. Any matters arising at a meeting shall be decided by a majority of votes with the Chairman having a second or casting vote in the case of equality of votes.
7. The quorum for the transaction of the business of the Council shall be two or any other number fixed by the Council.
8. If the number of members of the Council is less than the number fixed as the quorum, the continuing Council members may act only for the purpose of filling vacancies.
9. All acts done by a meeting of the Council, or of a committee of Council, or by a person acting as a member of the Council shall be valid, notwithstanding any defect in his appointment or his disqualification from holding office, or that he was not entitled to vote, being discovered afterwards.
10. A resolution in writing signed by all the Council entitled to receive notice of the meeting shall be as valid and effectual as if it had been passed at a meeting of the Council. The resolution may consist of several documents in the like form each signed by one or more members of the Council.
11. A member of the Council shall not vote at a meeting on any resolution concerning a matter in which he has a direct or indirect conflict of interest. For the purposes of this clause, an interest of a member of the Council includes an interest of any person who is connected to the member of the Council.
12. A member of the Council shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.
13. The Foundation may by resolution suspend or relax any provision of these By-laws prohibiting a member of the Council from voting at a meeting.
14. The chairman of the meeting shall rule on any question arising at a meeting on the right of a member of the Council, other than himself, to vote and his ruling shall be final and conclusive.
15. No objection may be raised to the right of any member of the Council to vote except at the meeting at which the voter is to vote.
16. *MINUTES*

The Council shall cause minutes to be kept for recording:

1. all appointments of officers made by the Council; and
2. all proceedings at meetings of the Council, and of committees of Council, including the names of the Council present at each such meeting.

**OTHER OFFICERS AND PERSONNEL**

1. *SECRETARY*

Subject to the Law, the Council may (but need not) appoint and remove a secretary and shall decide on the terms, remuneration and conditions of appointment.

12. *INDEMNITY*

The Foundation shall indemnify each Council or other officer or auditor of the Foundation in respect of any liability incurred in defending any proceedings to the extent allowed by applicable law.

1. *THE FOUNDER*

The Founder shall have the following powers exercisable in accordance with Article 26(2) of the Law (but subject to Article 19(10) of the Law, if applicable):

(a)   power to amend, revoke or vary the terms of the Charter or these By-laws, or both of them, in whole or in part;

(b) power by notice under his hand delivered to the Foundation to remove any member of the Council and appoint a replacement member of the Council in his or her place;

(c) power by notice under his hand delivered to the Foundation to remove any Guardian and appoint a replacement Guardian in the place of the former Guardian; and

(d)   power to terminate the Foundation.

*14. [THE GUARDIAN[[8]](#footnote-8)*

A. The Guardian named in Article 1 of the Charter shall have the powers specified in Article 23 of the Law. The following powers of the Council require the approval of the Guardian in accordance with Article 23(9) of the Law if the Founder is not then living:

1. the making of any application of property of the Foundation; and
2. the appointment of further members of the Council of the Foundation pursuant to By-law 4.B.

B. The office of Guardian is automatically vacated if the Guardian:

(a)   is prohibited by the Law or Regulations from being the Guardian;

(b)  becomes bankrupt or insolvent;

(c)   resigns the office of Guardian by notice to the Foundation provided that a replacement Guardian will be appointed to take office as and from the date of such resignation;

(d) is removed by the Founder in accordance with By-law 13(c); or

(e) is removed by the Court pursuant to Article 46(1) of the Law.]

15. *DEFAULT RECIPIENT*

The Default Recipient named in Article 1 of the Charter shall have the entitlements specified in Article 21(1) of the Law.

16. APPLICATION OF FOUNDATION PROPERTY AND INCOME

A. The assets and property of the Foundation shall be under the control of the Council. The Council may subject to the approval of the Founder (if living) or the Guardian (if the Founder is not living)[[9]](#footnote-9) and in either case the remaining provisions of this By-law[[10]](#footnote-10):

(a) determine how the property of the Foundation is applied or distributed amongst the Qualified Recipients;

(b) determine whether or not the net income of the Foundation in any year shall be distributed amongst the Qualified Recipients;

(c) subject to the Charter, add or remove a person or class of persons as Qualified Recipients or provide for the exclusion from the category of Qualified Recipient of a person or class of persons, either revocably or irrevocably.

1. In each year the Council of the Foundation shall determine the net income of the Foundation after taking into account all the expenses of the Foundation for that year. The net income shall be applied as follows:[[11]](#footnote-11)

(a) [insert details];

(b) [insert details];

(c) [insert details]; and

(d) [insert details].

1. Upon the termination of the Foundation, the whole of the property then held by the Foundation shall be applied, after discharge of any outstanding liabilities of the Foundation, as follows[[12]](#footnote-12):
2. [insert details];
3. [insert details];

(c) [insert details]; and

(d) [insert details].

1. The Council may in any year resolve by a two-thirds majority that the proportion of the net income which may be distributed in any year may exceed the proportions specified in By-law 16B[, but not so that the proportion accumulated is less than 30% of the net income[[13]](#footnote-13)].
2. In the exercise of its powers and functions under this By-law, the Council:
3. may invite or call for applications from Qualified Recipients in whatever manner it may prescribe;
4. may act on its own motion in respect of any Qualified Recipient which has not submitted an application;
5. may rely upon assessments of applications by employees or others engaged by the Foundation; and
6. shall be guided by the Founder’s desire that [insert details[[14]](#footnote-14)].

**MISCELLANEOUS**

17. *NOTICES*

1. Any notice required to be given under these By-laws shall be in writing.
2. The Foundation may give any notice to a Member of the Council either personally or by sending it by post in a prepaid envelope addressed to the Member at his registered address or by leaving it at that address.
3. A document may only be given in electronic form where the recipient has agreed (specifically or generally) that the document or information may be sent in that form, and this agreement has not been revoked.

D. A person present at any meeting shall be deemed to have received notice of the meeting.

1. Proof that an envelope containing a notice was properly addressed, prepaid and posted is conclusive evidence that the notice was given 48 hours after it was posted. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted.
2. A notice may be given by the Foundation to a person entitled to become a Qualified Recipient in consequence of the death or bankruptcy of a Qualified Recipient by sending or delivering it, at the address, supplied for that purpose by the persons claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

18. *ARBITRATION[[15]](#footnote-15)*

Any dispute or Administration Question arising between any of the parties in relation to the Foundation shall be submitted to arbitration pursuant to Articles 51 and 52 of the Law.

19. *PROVISION OF INFORMATION*

The supply of information about the Foundation, including the matters listed in Article 53(1) of the Law, is prohibited unless the obligation to make such disclosure arises under or for the purposes of Article 23(8) of the Law or by Order of the Court under Article 53(3) of the Law.

20. *AMENDMENT OF THESE BY-LAWS*

Subject to Article 6 of the Charter and Articles 19(11) and 26(2) of the Law, these By-laws may be amended by[[16]](#footnote-16):

1. the Founder (if living or in existence) at any time by notice in writing to the Foundation containing the terms of the amendment to the By-laws;
2. at any time when the Founder is not living, by the Council if its members are unanimous and have the consent of the Guardian; or
3. by the Court pursuant to Article 41 of the Law.

**DECLARATION BY FOUNDER(S)**

The Founder(s) by signing these By-laws declare(s) that [it/he/she/they[[17]](#footnote-17)] request(s) the Council to comply with the terms of these By-laws.

[Signature(s) of Founder(s)]

[Date]

1. **Note:** The Default Recipient may be named in the Charter instead of these By-laws [↑](#footnote-ref-1)
2. A Foundation which does not have Charitable objects, or specified non-charitable objects, may but need not appoint a Guardian: Articles 23(1) and (2) of the Law. **Note:** The Guardian may be named in the Charter instead of these By-laws but irrespective will be listed in the public register maintained by the Registrar of Companies [↑](#footnote-ref-2)
3. **Note:** The Qualified Recipients may be named in the Charter instead of these By-laws [↑](#footnote-ref-3)
4. If this limitation is not desired, it can be deleted. [↑](#footnote-ref-4)
5. This is done on the DIFC portal. [↑](#footnote-ref-5)
6. Select 1 of the 3 options [↑](#footnote-ref-6)
7. Amend as required to deal with single or multiple Founders and body corporate Founders. [↑](#footnote-ref-7)
8. There is no need to appoint a Guardian for a Foundation if the Foundation does not have a charitable or a specified non-charitable purpose. The Guardian cannot be a member of the Council – see Article 23(6) of the Law. The Guardian may be a body corporate. or more than one person – see Schedule 1 Item (1)(i) of the Law. If the Guardian is to be paid, provision should be made in this By-law – see Article 20(1)(c). Other persons may be appointed to exercise powers in relation to the Foundation, if so these By-laws should be amended accordingly to detail such person’s powers in relation to the Foundation – see Article 20(2)(d) [↑](#footnote-ref-8)
9. The words “subject to the approval of the Founder (if living) or the Guardian (if the Founder is not living) and in either case” can be deleted if this restriction is not required. [↑](#footnote-ref-9)
10. If the Council is to have the power to impose conditions on recipients, these should be included here - see Articles 20(2)(e) and (f). [↑](#footnote-ref-10)
11. Insert details which may include a requirement for retention of part of the income. [↑](#footnote-ref-11)
12. Insert details. [↑](#footnote-ref-12)
13. This would be deleted if there is no accumulation requirement or could be varied. [↑](#footnote-ref-13)
14. Insert details or omit if reference to wishes of Founder not desired. [↑](#footnote-ref-14)
15. This can be deleted if not required. [↑](#footnote-ref-15)
16. To be aligned with Charter provisions [↑](#footnote-ref-16)
17. [delete as applicable] [↑](#footnote-ref-17)