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Foundations Act

Passed 15 November 1995

(RT¹ I 1995, 92, 1604)

entered into force 1 October 1996,

amended by the following Acts:

15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308;

16.12.2004 entered into force 07.01.2005 - RT I 2004, 89, 613;

17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591;

05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336;

14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565;

06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336;

20.06.2000 entered into force 12.07.2000 - RT I 2000, 55, 365;

20.01.1999 entered into force 01.01.2000 - RT I 1999, 10, 155;

17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941;

25.03.98 entered into force 01.05.98 - RT I 1998, 36/37, 552;

06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811.

Chapter 1

General Provisions

§ 1. Definition of foundation

- (1) A foundation is a legal person in private law which has no members and which is established to administer and use assets to achieve the objectives specified in its articles of association.
- (2) The passive legal capacity of a foundation commences as of entry in the non-profit associations and foundations register (register) and terminates as of deletion from the register.
- (3) Transformation of a foundation into a legal person of a different class is prohibited.

§ 2. Restrictions on activities

- (1) Restrictions on the economic activities of foundations may be provided by law.
- (2) A foundation shall not grant loans to or secure the loans of founders or members of the management board or supervisory board of the foundation, or of persons with an equivalent economic interest, unless otherwise provided by law.
- (3) A foundation may use its income only to achieve the objectives specified in its articles of association.
- (4) A foundation shall not be a partner of a general partnership or a general partner of a limited partnership or manage a general partnership or limited partnership.

§ 3. Name

(1) The name of a foundation shall clearly differ from the names of other non-profit associations and foundations entered in the register in Estonia.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565; 15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

(2) The name of a foundation shall not be misleading with regard to the objectives, scope of activity or legal form of the foundation.

(3) The name of a foundation shall contain the appendage "*sihtasutus*" [foundation].

(4) The documents of a foundation shall indicate the name, location and registry code of the foundation.

(5) (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(6) A foundation may have only one name.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(7) The name of a foundation shall be written in the Estonian-Latin alphabet.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(8) The name of a foundation shall not be contrary to good morals.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

§ 4. Location

The location of a foundation is the place where the management board of the foundation is located unless the articles of association prescribe otherwise.

Chapter 2

Foundation of foundation

§ 5. Founders and conditions of foundation

(1) A foundation is founded by one or several founders for an unspecified term, until stated objectives are achieved, or for a specified term.

(2) The founders of a foundation may be natural persons or legal persons.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) A foundation may be founded on the basis of a will.

(4) If a foundation is founded by several founders, they may only exercise the rights of founders jointly unless the foundation resolution prescribes otherwise.

(5) The rights of a founder do not transfer to a legal successor of the founder.

(6) A person who transfers assets to a foundation after it is founded does not acquire the legal status of a founder.

§ 6. Foundation resolution

(1) A foundation shall be founded by a foundation resolution which shall set out:

1) the name, location and address of the foundation;

2) the names and residences or locations and addresses of the founders and their personal identification codes or registry codes;

- 3) the sum of money or other assets, and their value, to be transferred to the foundation by the founders;
- 4) the names, residences and personal identification codes of the members of the management board and supervisory board.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

- (2) The founders shall also approve the articles of association of the foundation as an annex to the foundation resolution.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

- (3) All founders shall sign a foundation resolution and the articles of association approved thereby. A foundation resolution and the articles of association approved thereby shall be notarised. A representative of a founder may sign if the authorisation document granted to the representative therefor is notarised. Articles of association shall be amended after entry in the register of the foundation pursuant to the procedure provided for in §§ 41-42 of this Act and shall not require amendment of the foundation resolution.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

§ 7. Foundation of foundation on basis of will

- (1) A foundation may be founded on the basis of a notarised will which must contain a foundation resolution which complies with the requirements of § 6 of this Act.
- (2) If a will does not designate an executor of the will who must ensure the entry of the foundation in the register, the court shall designate an administrator therefor who has the rights and obligations of an executor of a will.

(3) If a foundation resolution contained in a will specified in subsection (1) of this section does not comply with the requirements provided for in § 6 of this Act, the executor or administrator of a will may, if necessary, appoint the members of the management board and supervisory board of the foundation and determine the conditions of the foundation resolution and articles of association which are not determined by the will.

(4) Until the appointment of the management board and supervisory board, an executor or administrator of a will has the right to exercise rights arising from the foundation resolution and to administer transferred assets pursuant to the articles of association of the foundation.

(5) The executor or administrator of a will has the right to demand reimbursement of necessary expenses incurred in the performance of his or her tasks and remuneration for the performance of tasks, the amount of which shall be determined by a court.

(6) The authority of the executor or administrator of a will terminates upon entry of the foundation in the register or if entry in the register is no longer possible.

§ 8. Articles of association of foundation

(1) The articles of association of a foundation shall be in writing. The articles of association shall set out:

- 1) the name of the foundation;
- 2) the location of the foundation;
- 3) the objectives of the foundation;
- 4) the procedure for transfer of assets to the foundation;

- 5) the set of beneficiaries, except if all persons who are entitled to receive disbursements pursuant to the objectives of the foundation are beneficiaries;
- 6) the term of the foundation if it is founded for a specified term;
- 7) the distribution of the assets of the foundation upon dissolution of the foundation;
- 8) the procedure for appointment and removal of members of the management board and their term of office;
- 9) the procedure for appointment and removal of members of the supervisory board and their term of office;
- 10) the procedure for appointment and removal of auditors and their term of office;
- 11) the procedure for amendment of the articles of association;
- 12) whether and under what conditions the founders have the right to dissolve the foundation;
- 13) the procedure for remuneration of the members of the management board and supervisory board;
- 14) the procedure for use and disposal of assets;
- 15) other conditions provided by law.

(2) The articles of association may also prescribe other conditions which are not contrary to law. If a provision of the articles of association is contrary to a provision of law, the provision of law applies.

(3) If the articles of association do not prescribe a term for the foundation, it shall be deemed to be founded for an unspecified term.

§ 9. Beneficiaries

A beneficiary is a person to whom disbursements from the assets of the foundation may be made pursuant to the articles of association of the foundation. If a set of beneficiaries is not determined by the articles of association, all persons who are entitled to receive disbursements pursuant to the objectives of the foundation shall be deemed to be beneficiaries.

§ 10. Foundation of foundation

(1) Upon foundation of a foundation, the founders shall use the proposed name of the foundation together with the appendage "*asutamisel*" [in foundation] in order to operate in the name of the foundation.

(2) If an immovable or a movable subject to registration is transferred to a foundation which is being founded, the foundation being founded shall be entered in the land register and other registers under the name and appendage specified in subsection (1) of this section.

(3) In order to transfer money to a foundation, the founders shall open a bank account in the name of the foundation being founded using the name and appendage specified in subsection (1) of this section, which may be disposed of in the name of the foundation after entry of the foundation in the register.

(4) If a foundation is not entered in the register, movables entered in the register and immovables entered in the land register in the name of the foundation, and bank accounts opened in the name of the foundation may be disposed of only pursuant to procedure specified by a court order. A court shall issue a ruling on the basis of an application of a founder or other interested person. The application shall set out the reason for failure to found, the persons who have made contributions, the amounts of the contributions and who has made contributions to what extent.

§ 11. Application for entry in register

(1) In order to enter a foundation in the register of its location, the management board of the foundation shall submit an application which sets out the information specified in clauses 14 (1) 2)-5), 8), 9) and 11) of this Act and is signed by all members of the management board. The following shall be appended to the application:

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565; 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

1) the foundation resolution and articles of association approved thereby;

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

2) (Repealed - 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941);

3) a bank notice concerning the money transferred to the foundation;

4) (Repealed - 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941);

5) notarised specimen signatures of the members of the management board;

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

6) telecommunications numbers (telephone, facsimile, etc.);

7) other documents provided by law.

(2) Any other application submitted to the register shall be signed by a member of the management board. If the members of the management board are only entitled to represent the foundation jointly, all members of the management board entitled to represent the foundation jointly shall sign the application.

(3) Transfers of assets to a foundation shall be certified by the members of the management board by their signatures. If an immovable or a movable subject to registration is transferred, an extract from the land register or other register shall be appended to the application.

§ 12. Refusal to enter in register

A registrar shall not enter a foundation in the register if its foundation resolution, articles of association or other documents do not comply with the requirements of law. Upon rejection of an application, the registrar shall indicate the reason for rejection.

§ 13. Liability for submission of incorrect information

If the management board submits incorrect information to the register, the members of the management board are solidarily liable for any damage caused thereby.

§ 14. Register and information to be entered therein

(1) The following information concerning a foundation is entered on the registry card of the foundation:

- 1) the registry code and consecutive numbers of registry entries;
- 2) the name;
- 3) the location and address;
- 4) objective;
- 5) information on the members of the management board;

- 6) information on the trustee in bankruptcy;
- 7) information on liquidators;
- 8) the right of representation of the members of the management board and the liquidators if such right differs from the general rule prescribed by the Act;
- 9) the time of making of the foundation resolution;
- 10) the time of amendment of articles of association and general description of the content of the amendment;
- 11) the term of operation if the foundation is founded for a specified term;
- 12) the dissolution;
- 13) the merger or division;
- 14) the declaration of bankruptcy and termination of bankruptcy proceedings;
- 15) the deletion from the register;
- 16) information on the depository of documents of the liquidated foundation;
- 17) the date of entry, and the signature, name and title of the person enforcing the ruling on entry and of the person competent to make the decision on entry;

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

- 18) references to earlier and later entries and other notations.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

- (2) Upon a change in the information entered in the register, the management board shall submit an application for entry of the change in the register.

(2¹) Minutes of the meeting of the body which decided on the change shall be appended to the application specified in subsection (2) of this section; such minutes shall contain information on the time and place of the meeting, voting results and adopted resolutions. The minutes shall be signed by all the members of the body who participated in the meeting. In order to enter a new member of the management board in the register, a notarised specimen signature of the new member shall be appended to the application.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

(3) The provisions of the Non-profit Associations Act apply to the register.

(4) A petition submitted to the registrar shall be notarised. The petition may be included in the foundation resolution.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

§ 15. Transactions entered into before entry in register

(1) Persons who enter into transactions in the name of a foundation being founded before entry of the foundation in the register are solidarily liable for performance of the obligations arising from the transactions.

(2) The obligations specified in subsection (1) of this section transfer to the foundation as of entry in the register if the persons who entered into the transaction had the right to enter into the transaction.

(3) If a person did not have the right to enter into a transaction, the obligations arising from the transaction transfer to the foundation if the supervisory board approves the transaction.

Chapter 3

Management of Foundation

§ 16. Bodies

The bodies of a foundation are the management board and the supervisory board.

§ 17. Management board

(1) A foundation shall have a management board which manages and represents the foundation. The management board may consist of one or several members.

(2) Members of the management board must be natural persons with active legal capacity.

(3) The residence of at least one-half of the members of the management board must be in Estonia or other Member State of the European Economic Area or in Switzerland.

(16.12.2004 entered into force 07.01.2005 - RT I 2004, 89, 613)

(4) If the management board has more than two members, the members of the management board shall elect a chairman of the management board from among themselves, who shall organise the activities of the management board.

(5) If the articles of association determine a set of beneficiaries, the beneficiaries or persons with an equivalent economic interest shall not be members of the management board.

(6) A member of the supervisory board or a bankrupt shall not be a member of the management board. The articles of association may prescribe other persons who cannot be members of the management board.

(7) In managing a foundation, the management board shall adhere to the lawful orders of the supervisory board. Transactions which are beyond the scope of everyday economic activities may only be entered into by the management board with the consent of the supervisory board.

(8) The management board shall present an overview of the economic activities and financial status of the foundation to the supervisory board at least once every four months and shall immediately give notice of any material deterioration of the financial status of the foundation or of any other material circumstances related to the economic activities of the foundation.

§ 18. Right of representation of management board

(1) Every member of the management board has the right to represent the foundation in all legal acts.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811)

(2) The articles of association may prescribe that all or some of the members of the management board may represent the foundation only jointly. Such restriction applies with regard to third persons only if it is entered in the register.

(3) The right of the management board to represent a foundation may be restricted by the articles of association or by a resolution of the supervisory board. A restriction on the right of representation does not apply with regard to third persons.

§ 19. Appointment of members of management board

- (1) The members of the management board shall be appointed by the foundation resolution.
- (2) Changes to the membership of the management board and removal of members of the management board shall be decided by the supervisory board.
- (3) Members of the management board shall not transfer performance of their duties to a third person unless this is prescribed by the articles of association or a resolution of the supervisory board.
- (4) The management board shall provide the members of the supervisory board with necessary information concerning management of the foundation and present a corresponding report at their request unless the articles of association prescribe otherwise.

§ 20. Substitute members of management board

With good reason, which above all is the temporary or extended inability of a member of the management board to perform his or her duties, a court may appoint a new member of the management board to replace a withdrawn member of the management board at the request of the supervisory board or an interested person. The authority of a court-appointed member of the management board continues until the appointment of a new member of the management board by the supervisory board. A court-appointed member of the management board has the right to compensation for reasonable expenses from the account of the foundation and a reasonable remuneration which, in the event of a dispute, a court shall specify by a ruling.

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

§ 21. Removal of member of management board

(1) The supervisory board may remove a member of the management board at any time regardless of the reason. Rights and obligations arising from contracts entered into with him or her terminate pursuant to the contracts.

(2) The articles of association may prescribe that a member of the management board may be removed only with good reason which is above all failure to perform his or her duties to a material extent or inability to manage the foundation.

§ 22. Remuneration and reimbursement of expenses of members of management board

(1) Remuneration corresponding to the tasks of a member of the management board and to the financial status of the foundation may be paid to members of the management board unless the articles of association prescribe otherwise.

(2) The amount and procedure for payment of remuneration shall be determined by the supervisory board.

(3) Members of the management board have the right to demand reimbursement of necessary expenses incurred in the performance of tasks unless the articles of association prescribed otherwise.

§ 23. Liability of members of management board

(1) Members of the management board who cause damage to the foundation by violation of their obligations shall be solidarily liable for compensation for the damage caused.

(2) A claim for payment of compensation to a foundation for damage specified in subsection (1) of this section may also be submitted by an obligee of the foundation if the assets of the foundation are not sufficient to satisfy the claims of the obligee.

(3) An obligee has the right to submit a claim specified in subsection (2) of this section also if the foundation has waived a claim against a member of the management board or has entered into a contract of compromise with such member.

(4) The limitation period for submission of claims against a member of the management board shall be five years as of violation of an obligation.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

§ 24. Tasks of supervisory board

The supervisory board shall plan the activities of the foundation, organise the management of the foundation and supervise the activities of the foundation.

§ 25. Competence of supervisory board

(1) The consent of the supervisory board is required for the management board to enter into transactions which are beyond the scope of everyday economic activities, in particular to enter into transactions which result in:

- 1) the acquisition or termination of participation in commercial undertakings;
- 2) the transfer or encumbrance with a real right of immovables and movables entered in the register.

(2) The articles of association may prescribe that the consent of the supervisory board is not required to enter into transactions specified in subsection (1) of this section or is

only required in the cases specified in the articles of association; the articles of association may also prescribe other transactions for entry into which the consent of the supervisory board is required.

(3) The restrictions specified in subsections (1) and (2) of this section do not apply with regard to third persons.

(4) The consent of the supervisory board specified in subsections (1) and (2) of this section is not required for entry into a transaction if a delay in entry into the transaction would bring about significant damage to the foundation.

(5) In order to perform its tasks, the supervisory board has the right to examine all documents of the foundation and to audit the accuracy of accounting, the existence of assets and the compliance of the activities of the foundation with law and the articles of association.

(6) The supervisory board has the right to obtain information concerning the activities of the foundation from the management board and to demand an activity report and preparation of a balance sheet from the management board.

(7) The supervisory board shall represent the foundation in disputes and upon entry into transactions with members of the management board.

(8) The supervisory board also has other rights provided by law.

§ 26. Members of supervisory board

(1) The supervisory board shall have three members unless the articles of association prescribe a greater number of members. Members of the supervisory board must be natural persons with active legal capacity.

(2) Member of the management board and auditors or persons with an equivalent economic interest, or bankrupts shall not be members of the supervisory board. The articles of association may prescribe other persons who cannot be members of the supervisory board.

(3) The members of the supervisory board shall elect a chairman from among themselves, who shall organise the activities of the supervisory board.

(4) Upon a change of the members of the supervisory board, the management board shall, within five working days, submit an application to the register and notify of the time of the change of the members and the basis therefor as specified in the articles of association. A complete list of the members of the supervisory board, including the names, personal identification codes and residences of the members, the dates of commencement of the authority of member and the consent of new members concerning membership.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

§ 27. Appointment and removal of members of supervisory board

The procedure for appointment and removal of members of the supervisory board shall be provided by the articles of association.

§ 28. Appointment and removal of members of supervisory board by court

(1) If the members of the supervisory board as prescribed by law or the articles of association do not exist, a court shall appoint them at the request of an interested person or on its own initiative.

(2) A court shall remove a member of the supervisory board at the request of an interested person or on its own initiative if this is prescribed by the articles of association or with other good reason, which above all is failure to perform his or her duties to a material extent, inability to participate in the work of the supervisory board or significant damaging of the interests of the foundation in any other manner, or upon the commencement of bankruptcy proceedings against the member of the supervisory board.

(3) During the proceedings specified in subsection (2) of this section, a court may issue necessary orders for the management of the foundation and suspend the authority of the member of the supervisory board for the duration of the proceedings.

(4) A member of a supervisory board removed by a court shall not be a member of the management board or supervisory board of any foundation for five years after removal.

§ 29. Meeting of supervisory board

(1) Meetings of the supervisory board shall be held as necessary but not less frequently than once a year. Meetings shall be called by the chairman of the supervisory board or by a member of the supervisory board substituting for the chairman.

(2) Meetings of the supervisory board have a quorum if over one-half of the members of the supervisory board participate. The articles of association may prescribe a greater representation requirement.

(3) A meeting of the supervisory board shall be called if this is demanded by a member of the supervisory board, the management board or an auditor.

(4) Minutes shall be taken of meetings of the supervisory board. The minutes shall be signed by the chairman of the supervisory board or by the member of the supervisory board substituting for the chairman, and the secretary unless the articles of association prescribe that the minutes must be signed by all members of the supervisory board who

participate in the meeting. The dissenting opinion of a member of the supervisory board shall be entered in the minutes, which shall be confirmed by his or her signature.

§ 30. Resolution of supervisory board

(1) Resolutions of the supervisory board are adopted if over one-half of the members of the supervisory board who participate in the meeting vote in favour. The articles of association may prescribe a greater majority requirement.

(1¹) In the election of a person, the candidate who receives more votes than the others shall be deemed to be elected. Upon an equal division of votes, lots shall be drawn unless the articles of association prescribe otherwise.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) A supervisory board may adopt a resolution without calling a meeting if all members of the supervisory board vote in favour of the resolution in writing unless the articles of association prescribe otherwise.

(3) Each member of the supervisory board has one vote. A member of the supervisory board does not have the right to abstain from voting or to remain undecided.

(4) A member of the supervisory board shall not participate in voting if approval of entry into a transaction between the member and the foundation is being decided, or if approval of entry into a transaction between a third person and the foundation is being decided if the interests of the member of the supervisory board arising from such transaction are in conflict with the interests of the foundation.

§ 30¹. Contesting and nullity of resolution of supervisory board

(1) On the basis of an action filed against the foundation, a court may declare invalid a resolution of the supervisory board which is in conflict with the law or the articles of association. The limitation period for a claim shall be three months as of adoption of the resolution of the supervisory board.

(2) The declaration of invalidity of a resolution of the supervisory board cannot be demanded if the supervisory board has approved the contested resolution by a new resolution and it has not been contested during the term for contestation or the action has been dismissed.

(3) The management board or a founder and every member of the management board can demand the declaration of invalidity of a resolution of the supervisory board if the implementation of the resolution would entail criminal offence or misdemeanour or it would apparently bring about an obligation to compensate for damage, and a member of the supervisory board who did not participate in the adoption of the resolution. A member of the supervisory board who participated in the adoption of the resolution may demand the declaration of invalidity of a resolution only if he or she has **had his or her objection to the decision recorded**.

(4) Upon receipt of an action to declare a resolution of the supervisory board invalid, the court shall not hear the matter before the term for contestation of the decision expires. Different actions for declaring the same resolution invalid shall be joined in one proceeding.

(5) A resolution of the supervisory board is void if the requirements of law or of the articles of association were violated in the calling of a meeting of the supervisory board, the resolution violates a provision of law established for the protection of creditors of the foundation or due to other public interest or is contrary to good morals and in other cases prescribed by law.

(6) The nullity of a resolution may be relied on in court proceedings by filing an action or an objection. The nullity of a resolution cannot be relied on if an entry has been

made in the non-profit associations and foundations register on the basis of the resolution and two years have passed from the making of the entry.

(7) A court judgment for repeal of or establishment of the nullity of a resolution of the supervisory board applies to all founders and members of the management board and supervisory board regardless of their participation in the court proceedings.

(8) In the case when an entry had been made to the non-profit associations and foundations register on the basis of the resolution which had been declared invalid or the resolution the nullity of which had been established by the court, the court shall send a copy of the court judgment to the registrar for amendment of the entry.

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

§ 31. Remuneration of members of supervisory board

Remuneration corresponding to the tasks of a member of the supervisory board and to the financial status of the foundation may be paid to members of the supervisory board unless the articles of association prescribe otherwise.

§ 32. Liability of member of supervisory board

(1) Members of the supervisory board who cause damage to the foundation by violation of their obligations shall be liable in the same manner as members of the management board.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) A member of the supervisory board shall be released from liability to the foundation if he or she maintained a dissenting opinion in the adoption of a resolution which was the basis for an illegal activity, and the dissenting opinion is entered in the minutes.

Chapter 4

Accounting and Supervision

§ 33. Accounting

The management board shall organise the accounting of the foundation pursuant to the Accounting Act.

§ 34. Annual report

(1) After the end of a financial year, the management board shall prepare the annual accounts and activity report pursuant to procedure provided by law.

(2) The management board shall submit the reports for approval to the supervisory board not later than four months after the end of the financial year. Before submission of the reports for approval to the supervisory board, the management board shall forward the reports to the auditor for audit.

(3) Approved annual reports shall be signed by all members of the management board.

(4) The management board shall submit approved annual reports to the register within six months after the end of a financial year.

§ 35. Auditor

A foundation shall have an auditor.

§ 36. Appointment of auditor

- (1) The number of auditors shall be specified and auditors shall be appointed by the supervisory board, which shall also specify the procedure for remuneration of auditors.
- (2) Persons to whom the right to be an auditor is granted pursuant to law may be auditors.
- (3) Members of the management board or supervisory board or employees of the foundation, or persons with an equivalent economic interest shall not be auditors. If a set of beneficiaries is determined by the articles of association, a beneficiary or a person with an equivalent economic interest shall not be an auditor.
- (4) The management board shall submit a list of auditors to the register. Upon a change of auditors, the management board shall submit a new list of auditors to the register within five days.

§ 37. Term of authority of auditor

An auditor may be appointed to conduct a single audit or for a specified term. The written consent of a person shall be required for appointment of the person as auditor and it shall be appended to a list of auditors submitted to the registrar.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

§ 38. Special audit

(1) The management board or supervisory board of a foundation, or a member of the management board or supervisory board or other interested person may request that conduct of a special audit on matters regarding the management or financial status of the foundation be decided and that an auditor for the special audit be appointed by a court. The court shall decide on conduct of a special audit only with good reason. The court shall also hear, if possible, the members of the management board and supervisory board of the foundation before designating a special audit.

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

(2) Only auditors may be the auditors for a special audit. The procedure for and amount of their remuneration shall be specified by a court.

(2¹) The court may replace an auditor for the special audit at the request of an interested person or on its own initiative if the person evidently does not have the necessary knowledge or experience for conduct of the special audit or if there are doubts as to his or her impartiality.

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

(3) The members of the management board and supervisory board shall enable the auditors for a special audit to examine all documents necessary to conduct the special audit and shall provide necessary information. The auditors for the special audit shall preserve the business secrets of the foundation.

In the case of refusal to allow to examine documents or to provide information, the auditor for special audit may submit an application in proceedings on petition to the court within two weeks as of receipt of the refusal or within four weeks as of the submission of

an application if there has been no response thereto requiring that the members of the management board and supervisory board provide information or allow to examine the documents.

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

(4) The division of expenses incurred in the conduct of a special audit between the person who requested the special audit and the foundation shall be decided by a court on the basis of the results of the special audit. If a request is made without basis due to the intent or gross negligence of the persons who requested the special audit, they shall be solidarily liable for damage caused to the foundation by the special audit.

(5) The auditors for a special audit shall prepare a report concerning the results of the special audit, which they shall present to the court.

(6) On the basis of the results of a special audit, a court shall decide whether and which measures must be applied to bring the activities of the foundation into compliance with the objectives of the foundation.

§ 39. Access to information on activities of foundation

(1) A beneficiary or other person with a legitimate interest may demand information from a foundation concerning the fulfilment of the objectives of the foundation. The beneficiary or other person with a legitimate interest may examine the annual accounts of the foundation and the activity report of the management board, the auditor's report, accounting documents, the foundation resolution and the articles of association.

(2) If a set of beneficiaries is not determined by the articles of association, all interested persons have the right specified in subsection (1) of this section.

(3) If a foundation does not comply with the demand specified in subsection (1) of this section, an entitled person may demand exercise of the entitled person's rights by a court proceeding.

Chapter 5

Amendment of Articles of Association of Foundation

§ 40. Annulment or amendment of foundation resolution and articles of association prior to entry of foundation in register

(1) Until a foundation is entered in the register, the founder may annul or amend the foundation resolution or amend the articles of association. If a foundation has several founders, the founders may annul or amend the foundation resolution or amend the articles of association only jointly.

(2) If one of several founders is deceased or dissolved or for another reason is not able or willing to exercise the rights of a founder (withdrawn), the other founders shall not annul the foundation resolution. The foundation resolution or articles of association may be amended by the other founders only in accordance with the objectives of the foundation.

(3) If all founders are withdrawn and impediments to entry in the register have become evident, the management board may amend the foundation resolution or articles of association in accordance with the objectives of the foundation in order to eliminate the impediments or take into account changed circumstances.

§ 41. Amendment of articles of association after entry of foundation in register

(1) After a foundation is entered in the register, the founder may amend the articles of association of the foundation only pursuant to the provisions of subsection (3) of this section. If a foundation has several founders, all founders may amend the articles of association only jointly.

(2) The supervisory board may amend the articles of association of the foundation only if:

- 1) all founders are withdrawn; or
- 2) the founders fail to agree on amendment of the articles of association; or
- 3) this right is granted to the supervisory board by the articles of association.

(3) A founder or the supervisory board may amend the articles of association only in order to take into account changed circumstances in accordance with the objectives of the foundation.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(4) If the articles of association of a foundation must be amended due to changed circumstances, but the persons entitled to amend the articles of association fail to do so, a court may decide on amendment of the articles of association at the request of a founder, the supervisory board or an interested person.

§ 42. Entry of amendment of articles of association

The amendment of articles of association is effective as of the entry of the amendment in the register. The resolution to amend the articles of association and the new text of the articles of association shall be appended to the application for entry of the amendment of the articles of association in the register. The new text of the articles of association shall be signed by at least one member of the management board or, if the members of the

management board are only authorised to represent the association jointly, by all the members of the management board authorised to represent the association jointly.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

Chapter 6

Dissolution

§ 43. Bases for dissolution

A foundation is dissolved:

- 1) by a resolution of the supervisory board;
- 2) by a resolution of the founders if this right is prescribed for founders in the articles of association;
- 3) if the objectives of the foundation are achieved;
- 4) due to the expiry of a term if the foundation has a specified term;
- 4¹) by the declaration of bankruptcy of the foundation or abatement of bankruptcy proceedings before the declaration of bankruptcy;

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

- 5) on another basis prescribed by law or the articles of association.

§ 44. Dissolution on basis of resolution of supervisory board

The supervisory board may decide the dissolution of the foundation only in the cases prescribed in the articles of association. A resolution is adopted if all members of the supervisory board vote in favour.

§ 45. Submission of bankruptcy petition

The management board shall submit a bankruptcy petition if it becomes evident that the foundation has less assets than assumed obligations. The members of the management board at fault are solidarily liable for damage caused to the foundation or to third persons by failure to submit a petition or by delay in submission of a petition.

§ 46. Compulsory dissolution

(1) A foundation is dissolved by a court ruling at the request of the Minister of Internal Affairs or another interested person if:

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

- 1) the objectives or activities of the foundation are contrary to law, the constitutional order or good morals;
- 2) the activities of the foundation do not comply with the requirements provided for in § 2 of this Act or with its objectives set out in the articles of association;
- 3) the assets of the foundation are clearly insufficient for the achievement of its objectives, and acquisition of sufficient assets in the immediate future is unlikely;
- 4) the supervisory board does not adopt a dissolution resolution in the cases prescribed in the articles of association, or the management board does not submit an application for dissolution prescribed by law;

5) in other cases provided by law.

(2) A court may set a deadline for elimination of deficiencies specified in subsection (1) of this section.

(3) A court may also decide the compulsory dissolution on its own initiative unless otherwise provided by law.

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

§ 47. Application for dissolution

(1) Upon dissolution of a foundation, the management board shall submit an application for entry of the dissolution in the register. Upon compulsory dissolution, bankruptcy or termination of bankruptcy proceedings, a corresponding entry shall be made pursuant to a court order.

(2) If a resolution of the supervisory board is the basis for dissolution, it shall be appended to the application.

(3) A court which issues a bankruptcy order shall notify the registrar of the declaration of bankruptcy of the foundation and of the termination of bankruptcy proceedings. A bankruptcy entry shall contain the name, personal identification code and residence of the trustee in bankruptcy.

§ 48. Liquidation

(1) A foundation is liquidated (liquidation proceeding) upon dissolution unless otherwise provided by law.

(2) In a liquidation proceeding, the notation "*likvideerimisel*" [in liquidation] shall be appended to the name of the foundation.

§ 49. Liquidators

(1) The liquidators of a foundation are the members of the management board unless the articles of association prescribe otherwise. Upon compulsory dissolution, a court shall appoint the liquidators, and shall specify the procedure for and amount of remuneration for the liquidators.

(2) Liquidators must be natural persons with active legal capacity.

(3) The residence of at least one-half of the liquidators must be in Estonia.

(4) A court may remove a liquidator with good reason at the request of a founder of the foundation, another liquidator or other interested person, or on the court's own initiative. In such case, the court shall appoint a new liquidator.

§ 50. Entry of liquidator

(1) A management board shall submit an application for entry of the liquidators in the register.

(2) If a liquidator is appointed by a court ruling, the court shall send the ruling to the registrar for entry.

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

(3) The names, residences and personal identification codes of the liquidators shall be entered in the register.

§ 51. Rights and obligations of liquidators

- (1) Liquidators have the rights and obligations of the management board and supervisory board which are not contrary to the objective of the liquidation.
- (2) Liquidators terminate the activities of the foundation, collect debts, sell assets, satisfy the claims of creditors and distribute the assets remaining after satisfaction of the claims of creditors among entitled persons.
- (3) Liquidators need not sell assets unless this is necessary for satisfaction of the claims of creditors or for distribution of remaining assets among the entitled persons.
- (4) Liquidators may only enter into transactions which are necessary for liquidation of the foundation.

§ 52. Right of representation of liquidators

- (1) If a foundation has several liquidators, they only have the right to represent the foundation jointly unless the articles of association or the resolution on appointment of the liquidators prescribe otherwise. Such restriction applies with regard to third persons only if it is entered in the register.
- (2) The liquidators may authorise one or several from among themselves to perform particular transactions or activities.

§ 53. Notification of creditors

(1) Liquidators shall promptly publish a notice of the liquidation proceeding of a foundation in the official publication *Ametlikud Teadaanded*². The liquidators shall send a notice of liquidation to the known creditors.

(20.01.1999 entered into force 01.01.2000 - RT I 1999, 10, 155)

(2) A notice of liquidation shall indicate that creditors are to submit their claims within two months after publication of the notice.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811; 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

§ 54. Submission of claims

(1) Creditors shall notify liquidators of all their claims against a foundation within two months after publication of the notice of liquidation. A notice shall set out the content, basis and amount of the claim, and documents substantiating the claim shall be appended thereto.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

(2) If a known creditor does not submit a claim, the money belonging to the creditor shall be deposited.

(3) If the due date for satisfaction of the claim of a creditor has not arrived or the creditor does not accept satisfaction, the money belonging to the creditor shall be deposited.

§ 55. Submission of bankruptcy petition upon liquidation

If the assets of a foundation being liquidated are insufficient for satisfaction of all claims of creditors, the liquidators shall submit a bankruptcy petition.

§ 56. Distribution of assets

(1) After satisfaction of all claims of creditors and the deposit of money, the remaining assets shall be distributed among the persons entitled by the articles of association. The assets shall be distributed among the entitled persons in equal shares unless the articles of association prescribe otherwise.

(2) If a foundation is dissolved by a resolution of founders who are natural persons, the assets remaining upon liquidation transfer to such founders unless the articles of association prescribe otherwise. The assets shall be transferred to founders who are natural persons in equal shares unless the articles of association prescribe otherwise.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) If the articles of association do not prescribe to whom the assets remaining upon liquidation transfer, the assets transfer to the state which shall use the assets to the extent possible according to the objectives of the foundation.

(4) Upon compulsory dissolution of a foundation on the basis that its objectives or activities are contrary to the constitutional order, criminal law or good morals, the assets remaining after satisfaction of the claims of creditors transfer to the state.

(5) Assets shall not be distributed among entitled persons within five months after publication of the notice of liquidation.

(06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

§ 57. Deletion from register and supplementary liquidation

(1) After the completion of liquidation, the liquidators shall submit an application for deletion of the foundation from the register.

(2) If after deletion of a foundation from the register it becomes evident that the foundation has remaining assets which were not distributed and supplementary liquidation measures are necessary, a court may, at the request of an interested person, order supplementary liquidation and restore the rights of the former liquidators or appoint new liquidators.

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

(3) At the request of a creditor of the foundation, liquidation may be conducted after the deletion of the foundation from the register only if the creditor substantiates that the claim of the creditor against the foundation was not satisfied in the liquidation proceeding, it is not possible for the creditor to satisfy the claim in any other manner and it is possible to satisfy the claim of the creditor upon restoration of the liquidation, or if the foundation should not have been deleted from the register due to a dispute over the claim. The application of a creditor for supplementary liquidation shall not be satisfied, among other things, if the creditor failed to submit a claim to the liquidator in time without good reason.

(15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308)

§ 58. Deletion of foundation from register

(1) Upon dissolution of a foundation, the foundation shall be deleted from the register on the basis of an application of the foundation or on another basis provided by law.

(2) If an application for deletion of a foundation from the register is not submitted upon completion of the liquidation of the foundation, the registrar has the right to delete the foundation from the register.

(3) A foundation shall not be deleted from the register without the written consent of the Tax and Customs Board unless the latter submitted the application for deletion of the foundation from the register. The Tax and Customs Board shall not refuse consent unless it has claims against the foundation. If consent is not received within twenty days after sending an application, the Tax and Customs Board shall be deemed to consent to deletion from the register.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

§ 59. Preservation of documents

(1) Liquidators shall deposit the documents of a foundation with a liquidator or an archives. If the liquidators do not appoint a depositary of documents, a court shall appoint one.

(25.03.98 entered into force 01.05.98 - RT I 1998, 36/37, 552)

(2) The name, personal identification or registry code and, residence or location of a depositary of documents shall be entered in the register on the application of the liquidators. In the case of a court-appointed depositary, the entry shall be made on the basis of the court judgment. Upon a change of depositary, the transferor shall notify the registrar before the transfer in order to allow for the entry of new information in the register.

(25.03.98 entered into force 01.05.98 - RT I 1998, 36/37, 552; 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) A foundation is responsible for the preservation of documents created or received as a result of its activities during the term prescribed by law. Upon liquidation of a foundation, the documents of the foundation which are to be preserved may be transferred to an archives upon agreement with the archives. Upon a transfer of

documents to an archives, the responsibility for preservation of the documents transfers to the archives.

(25.03.98 entered into force 01.05.98 - RT I 1998, 36/37, 552)

§ 60. (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

Chapter 7

Merger and division

Division 1

Merger

§ 61. Definition of merger

(1) A foundation (foundation being acquired) may merge with another foundation (acquiring foundation) in the cases prescribed in their articles of association. A foundation being acquired shall be deemed to be dissolved.

(2) Foundations may also merge such that they form a new foundation. In such case, the merging foundations shall be deemed to be dissolved.

(3) Merger is effected without a liquidation proceeding.

(4) Upon merger, the assets of a foundation being acquired transfer to the acquiring foundation. Upon foundation of a new foundation, the assets of the merging foundations transfer to it.

(5) A foundation may only merge with another foundation.

(6) In the cases provided by law, the permission of a competent agency is required for merger.

§ 62. Merger agreement

(1) In order to merge, the management boards of the foundations shall enter into a merger agreement which shall set out the names and locations of the foundations and the consequences of merger for the employees of the foundation being acquired.

(2) A merger agreement shall be notarised.

(3) If an approved merger agreement is conditional and the condition is not fulfilled within five years after entry into the agreement, a foundation may terminate it by giving at least six months' advance notice of termination unless the merger agreement prescribes a shorter term for advance notice.

§ 63. Merger resolution

(1) Rights and obligations arise from a merger agreement if the merger agreement is approved by the supervisory boards of all merging foundations. A merger resolution shall be in writing.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) A merger resolution is adopted if over two-thirds of the members of the supervisory board vote in favour unless the articles of association prescribe a greater majority requirement.

§ 64. Protection of creditors

(1) The management board of each merging foundation shall, within fifteen days after adoption of the merger resolution, send written notice concerning the merger to the known creditors of the foundation who have claims against the foundation which predate the adoption of the merger resolution.

(2) A management board shall publish two notices concerning a merger resolution with at least a fifteen day interval in a national newspaper, calling on creditors to submit their claims. The notice shall indicate that creditors are to submit their claims within two months.

(3) A foundation shall secure the claims of creditors if they are submitted within two months after publication of the last notice. If the due date for fulfilment of a claim has arrived or if a claim is not sufficiently secured, the creditor may demand satisfaction of the claim.

(4) A creditor of an acquiring foundation may demand security or satisfaction of the creditor's claim only if the creditor proves that the merger endangers satisfaction of the creditor's claim.

(5) If a creditor does not give notice of a claim during the term specified in subsection (3) of this section, the creditor shall be deemed to agree to the merger.

§ 65. Submission of application to register

(1) The management board of a foundation participating in a merger shall submit an application for entry of the merger in the register of the location of the foundation not earlier than three months after publication of the second merger notice. The following shall be appended to the application:

1) a notarised copy of the merger agreement;

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

2) the merger resolution;

3) the permission for merger, if required;

4) a reference to the issues of the *Ametlikud Teadaanded* in which the notices specified in subsection 64 (2) of this Act are published.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

(2) In an application, the members of the management board shall confirm that the claims of creditors who submitted their claims by the deadline or who opposed the merger are secured or satisfied.

§ 66. Name of acquiring foundation

An acquiring foundation may continue activities under the name of a foundation being acquired.

§ 67. Merger entry

(1) A merger shall be entered in the register of the location of the acquiring foundation if it is entered in the registers of the locations of all foundations being acquired. An entry in the register of the location of a foundation being acquired shall indicate that the merger is deemed to be effected as of its entry in the register of the location of the acquiring foundation.

(2) The registrar of the register of the location of an acquiring foundation shall notify the registrar of the location of the foundation being acquired of entry of the merger in the register. Upon receipt of notification, the registrar shall make a notation in the register regarding when the merger was entered in the register of the location of the acquiring foundation. The registrar of the location of the foundation being acquired shall send the documents of the foundation held by the registrar to the registrar of the location of the acquiring foundation.

§ 68. Legal effect of entry

(1) The assets of a foundation being acquired transfer to the acquiring foundation as of entry of the merger in the register of the location of the acquiring foundation. After entry of a merger in the register of the location of the acquiring foundation, entries regarding the transfer of assets shall be made in the land register and movable property registers on the basis of an application of the management board of the acquiring foundation.

(2) A foundation being acquired shall be deemed to be dissolved as of entry of the merger in the register of the location of the acquiring foundation. The registrar shall delete the foundation being acquired from the register.

§ 69. Merger whereby new foundation founded

- (1) The provisions of §§ 61–68 of this Act together with other complementary provisions prescribed by law apply to merger whereby a new foundation is founded.
- (2) The provisions regarding foundations being acquired apply to merging foundations, and the provisions regarding acquiring foundations apply to foundations being founded. Foundations shall be deemed to be merged as of entry of a new foundation in the register.
- (3) The provisions for foundation of foundations apply to foundation of new foundations unless the provisions of this chapter provide otherwise. The founders are the merging foundations.
- (4) In addition to the provisions of subsection 62 (1) of this Act, a merger agreement shall set out the name and location, and members of the management board of the new foundation. The articles of association of the foundation being founded which shall be approved by the merger resolution shall be appended to the merger agreement.
- (5) The management board of a merging foundation shall submit an application for entry of the merger in the register of the location of the foundation.
- (6) The management boards of merging foundations shall submit a joint application for entry of the new foundation in the register of its location.

Division 2

Division

§ 70. Definition of division

(1) Division is effected without a liquidation proceeding by distribution or separation. A foundation may participate in division only in the cases prescribed in the articles of association.

(2) Upon distribution, a foundation being divided transfers its assets to the recipient foundations. A recipient foundation may be an existing foundation or a foundation being founded. Upon distribution, a foundation being divided shall be dissolved.

(3) Upon separation, a foundation being divided transfers part of its assets to one or several recipient foundations. A recipient foundation may be an existing foundation or a foundation being founded.

(4) A foundation may only divide into foundations and may only participate in the division of a foundation.

(5) In the cases provided by law, the permission of a competent agency is required for division.

§ 71. Division agreement

(1) In order to divide, the management boards of the foundations participating in division shall enter into a division agreement. A division agreement shall set out:

- 1) the names and locations of the foundations participating in division;
- 2) a list of assets to be transferred to each recipient foundation;
- 3) the consequences of division for the employees.

(2) A division agreement shall be notarised.

(3) If an approved division agreement is conditional and the condition is not fulfilled within five years after entry into the agreement, a foundation may terminate it by giving

at least six months' advance notice of termination unless the division agreement prescribes a shorter term for advance notice.

§ 72. Division resolution

(1) Rights and obligations arise from a division agreement if the division agreement is approved by the supervisory boards of all foundations participating in the division. A division resolution shall be in writing.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) A division resolution is adopted if over two-thirds of the members of the supervisory board vote in favour unless the articles of association prescribe a greater majority requirement.

§ 73. Protection of creditors

(1) The management board of a foundations participating in division shall, within fifteen days after adoption of the division resolution, send written notice concerning the division to the known creditors of the foundation who have claims against the foundation which predate the adoption of the division resolution.

(2) A management board shall publish two notices concerning a division resolution with at least a fifteen day interval in the official publication *Ametlikud Teadaanded*, calling on creditors to submit their claims. The notice shall indicate that creditors are to submit their claims within two months.

(20.06.2000 entered into force 12.07.2000 - RT I 2000, 55, 365)

(3) A foundation shall secure the claims of creditors if they are submitted within two months after publication of the last notice. If the due date for fulfilment of a claim has

arrived or if a claim is not sufficiently secured, the creditor may demand satisfaction of the claim.

(4) A creditor of a recipient foundation may demand security or satisfaction of the creditor's claim only if the creditor proves that the division endangers fulfilment of the creditor's claim, except if the due date for fulfilment of the creditor's claim has arrived.

§ 74. Submission of application to register of foundations

(1) The management board of a foundation participating in division shall submit an application for entry of the division in the register of the location of the foundation not earlier than three months after publication of the second division notice. The following shall be appended to the application:

1) a notarised copy of the division agreement;

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

2) the division resolution;

3) the permission for division, if required;

4) a reference to the issues of the *Ametlikud Teadaanded* in which the notices specified in subsection 73 (2) of this Act are published.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

(2) In an application, the members of the management board shall confirm that the claims of creditors who submitted their claims by the deadline or who opposed the division are secured or satisfied.

§ 75. Name of recipient foundation

Upon distribution, a recipient foundation may continue activities under the name of the foundation being divided.

§ 76. Division entry

(1) A division shall be entered in the register of the location of the foundation being divided if it is entered in the registers of the locations of all recipient foundations. Entries in the registers of the locations of the recipient foundations shall indicate that the division is deemed to be effected as of its entry in the register of the location of the foundation being divided.

(2) The registrar of the register of the location of a foundation being divided shall notify the registrars of the locations of the recipient foundations of entry of the division in the register and shall send an extract from the register to them. Upon receipt of notification, the registrar shall make a notation in the register regarding when the division was entered in the register of the location of the foundation being divided.

§ 77. Legal effect of entry

(1) All assets of a foundation being divided or, upon separation, the separated assets pursuant to the distribution prescribed in the division agreement, transfer to the recipient foundations as of entry of the division in the register of the location of the foundation being divided. After entry of a division in the register of the location of the foundation being divided, entries regarding the transfer of assets shall be made in the land register and movable property registers on the application of the management board of the recipient foundation.

(2) Upon distribution, a foundation being divided is dissolved as of entry of the division in the register of the location of the foundation being divided. The registrar shall delete the foundation being divided from the register.

(3) Assets which are not divided upon distribution shall be divided among the recipient foundations in proportion to their share in the assets being divided.

§ 78. Liability for obligations of foundation being divided

(1) Foundations participating in division are solidarily liable for the obligations of the foundation being divided which arise before entry of the division in the register of the location of the foundation being divided. In relations between solidary debtors, only persons to whom obligations are assigned by the division agreement are obligated persons.

(2) A foundation participating in division to which obligations are not assigned by the division agreement is liable for the obligations of the foundation being divided if the due date for their fulfilment arrives within five years after entry of the division in the register of the location of the foundation being divided.

§ 79. Division whereby new foundation founded

(1) The provisions of §§ 70–78 of this Act together with other complementary provisions prescribed by law apply to division whereby a new foundation is founded.

(2) The provisions regarding recipient foundations apply to foundations being founded.

(3) The provisions for foundation of foundations apply to foundation of new foundations unless the provisions of this chapter provide otherwise. The founder is the foundation being divided.

(4) Upon division whereby a new foundation is founded, the management board of the foundation being divided or shareholders entitled to represent the foundation shall prepare a division plan which substitutes for the division agreement. In addition to the provisions of subsection 71 (1) of this Act, a division plan shall set out the name and location, and the members of the management board of the new foundation. The articles of association of the foundation being founded, which shall be approved by the division resolution, shall be appended to the division plan.

(5) The management board of a foundation being divided shall submit an application for entry of the new foundations in the registers of their locations and for entry of the division in the register of the location of the foundation being divided.

(6) The registrar of the register of the location of each new foundation shall notify the registrar of the location of the foundation being divided of entry of the new foundation in the register. Upon receipt of notification concerning all new foundations, the registrar of the register of the location of the foundation being divided shall enter the division in the register, notify the registrar of the location of each new foundation of the entry and send an extract from the register to them. Upon receipt of notification, the registrar shall make a notation in the register regarding when the division was entered in the register of the location of the foundation being divided.

Chapter 8

Implementation of Act

§ 80. Application of the Foundations Act to non-profit organisations the objective of which is accumulation and distribution of assets for specific purposes

(1) As of 1 October 1996, foundations may only be founded pursuant to the procedure provided for in the Foundations Act and the provisions of the Foundations Act apply to them.

(2) The provisions of subsection 1 (1), § 2, subsection 3 (5), §§ 4 and 17, subsection 18 (1), the first sentence of subsection 18 (2), subsection 18 (3), §§ 20-23, § 33, subsections 34 (1) and (3), § 38, §§ 43-51, the first sentence of subsection 52 (1), subsection 52 (2), §§ 53-60 of this Act apply to non-profit organisations founded before 1 October 1996 the objective of which is the accumulation and distribution of assets for specific purposes and which have no members until entry in the register as foundation, upon entry in the register, this whole Act applies. If the articles of association of a non-profit organisation the objective of which is the accumulation and distribution of assets for specific purposes specified in the first sentence of this subsection is contrary to the Foundations Act, the provisions of the Act apply. The provisions of §§ 16–32 and 40–42 apply to non-profit organisations the objective of which is the accumulation and distribution of assets for specific purposes and which have no members in so far as their articles of association do not provide otherwise.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811; 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) The provisions of §§ 91-96 of the Non-profit Associations Act apply to non-profit organisations founded before 1 October 1996 the objective of which is the accumulation and distribution of assets for specific purposes and which have members.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811)

(4) The annual report of non-profit organisations specified in subsection (2) of this section shall be approved by the competent body set out in the articles of association. The provisions of § 24 of the Accounting Act do not apply to such organisations.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811)

(5) Until the entry into force of a corresponding Act, the bases and procedure for the activities of auditors and the requirements set for auditors shall be specified pursuant to procedure established by the Government of the Republic.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811)

§ 81. Merger and division

(1) Merger and division of foundations entered in the register shall be effected pursuant to procedure provided for in this Act. A foundation entered in the register shall not merge with a non-profit organisation the objective of which is the accumulation and distribution of assets for specific purposes and which is not entered in the register.

(2) Merger and division of non-profit organisations the objective of which is the accumulation and distribution of assets for specific purposes and which are not entered in the register as foundations is prohibited.

§ 82. Application for entry in register

(1) Non-profit organisations founded before 1 October 1996 and registered in the register of enterprises, agencies and organisations of the Republic of Estonia (hereinafter enterprise register) the objective of which is the accumulation and distribution of assets for specific purposes and which comply with the requirements of the Foundations Act shall be entered as foundations in the non-profit associations and foundations register on the basis of their application.

(2) An application for entry in the register shall set out information concerning the foundation as provided by law, and the documents provided by law, and the certificate of

registration of the foundation in the enterprise register shall be appended to the application.

(3) For entry in the register as foundations, the articles of association of non-profit organisations the objective of which is the accumulation and distribution of assets for specific purposes shall be brought into accordance with the provisions of this Act.

(4) Amendments to the articles of association of non-profit organisations specified in subsection 80 (2) and to information subject to registration in the enterprise register shall be effected pursuant to the procedure effective before 1 October 1996.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811)

§ 83. Notations in registers

(1) Upon entry in the register as a foundation of a non-profit organisation the objective of which is the accumulation and distribution of assets for specific purposes and which is entered in the enterprise register, a corresponding notation shall be made in the entry of the enterprise register on the basis of a notice from the registrar.

(2) Upon entry in the register as a foundation of a non-profit organisation founded before 1 October 1996 the objective of which is the accumulation and distribution of assets for specific purposes, a notation concerning the earlier registration of the foundation in the enterprise register shall be made in the register, indicating the former registration number.

§ 84. Deletion from register

The provisions of § 95 of the Non-profit Associations Act (RT I 1996, 42, 811; 1998, 96, 1515; 1999, 10, 155; 23, 355; 67, 658; 2000, 55, 365; 88, 576; 2001, 24, 133; 56, 336; 93,

565; 2002, 53, 336) apply to non-profit organisations entered in the enterprise register the objective of which is the accumulation and distribution of assets for specific purposes which by 1 October 1998 are not entered as foundations in the register or for which no application for entry in the register has been submitted to the registrar or whose application for entry in the register has been denied.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

§ 85. Name of foundation

(1) Upon entry of a foundation in the register, the registrar shall make an inquiry to the registrar of the enterprise register concerning registration of the same or a similar name in the enterprise register.

(2) A name being applied for shall not be entered in the register if the name or a misleadingly similar name is registered in the enterprise register by another non-profit organisation the objective of which is the accumulation and distribution of assets for specific purposes before the applicant.

§ 86. Amendments to Accounting Act (RT I 1994, 48, 790; 1995, 26-28, 355; 92, 1604; 1996, 40, 773; 42, 811; 1998, 59, 941)

(1) Subsection (9) is added to § 2 worded as follows:

"(9) Foundations are not required to comply with the requirement provided for in clause 22 (2) 4) of this Act."

(2) Clause 4¹) is added to subsection 23 (1) worded as follows:

"4¹) all members of the management board and supervisory board of the foundation;"

§ 87. Implementation regulations

The Minister of Justice may issue regulations for organisation of the activities of the registration departments.

§ 88. Entry into force of Act

This Act enters into force on 1 October 1996.

¹ RT = *Riigi Teataja* = *State Gazette*

² *Ametlikud Teadaanded* = *Official Notices*