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State Assets Act

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27.02.2013	RT I, 15.03.2013, 26	20.03.2013
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18.02.2015	RT I, 23.03.2015, 3	01.07.2015
11.06.2015	RT I, 30.06.2015, 4	01.09.2015, in part 01.07.2015
07.06.2016	RT I, 28.06.2016, 1	01.07.2016, in part01.01.2017
15.12.2016	RT I, 31.12.2016, 2	01.01.2017, in part01.02.2017
14.06.2017	RT I, 04.07.2017, 1	01.01.2018
19.06.2017	RT I, 06.07.2017, 3	16.07.2017
10.01.2018	RT I, 22.01.2018, 1	01.02.2018
21.03.2018	RT I, 28.03.2018, 1	07.04.2018
06.06.2018	RT I, 29.06.2018, 1	01.07.2018
15.04.2020	RT I, 21.04.2020, 1	01.05.2020
06.05.2020	RT I, 19.05.2020, 2	29.05.2020
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12.05.2021	RT I, 22.05.2021, 2	01.06.2021

Chapter 1 GENERAL PROVISIONS

§ 1. Scope of application

(1) This Act governs the administration of State assets.

(2) Administration of State assets means the receiving, on behalf of the Republic of Estonia (hereinafter, the 'State'), of assets for use, as well as the acquisition, possession, use and disposition of assets on behalf of the State, and the participation of the State in a legal person or community property regime registered in Estonia, and in legal persons in private law with limited liability registered abroad.
[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

(3) State assets constitute a set of monetarily appraisable rights and obligations that belong to the State.

§ 2. Exceptions to the application of this Act

(1) Subsection 2 of § 77 of this Act and the provisions of this Act regarding the acquisition and transfer of shares do not apply to the management, in accordance with the State Budget Act, of liquid financial assets and stabilisation reserve of the State, or to any shares acquired for the purposes of such management.
[RT I, 13.03.2014, 2 – entry into force 23.03.2014]

(2) The provisions set out in clauses 1 and 2 of subsection 1 of § 17, in subsections 2 and 3 of § 19, in clauses 1 and 2 of subsection 1 of § 30, in subsection 3 of § 30, in subsections 2–5 of § 37, as well as in §§ 50, 57–62, 66–74, and 95–100 of this Act do not apply to State assets administered by security authorities.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) State assets in whose respect special rules are provided in another Act are subject to the rules set out in this Act without prejudice to those special rules.

(3¹) Transactions with State assets located in a foreign state are subject to the law and custom of that state, having regard to the principles set out in this Act insofar as they do not contradict the law of the country of location.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) The administration of State assets in the possession of a profit-making State agency is subject to the provisions of this Act without prejudice to the special rules set out in the Act governing that profit-making State agency.

(5) The provisions of this Act do not apply to the transfer of State assets into the ownership or use of a foreign state, international organization or any other institution created on the basis of a treaty, or to the receiving of assets for use on the basis of an international agreement.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(6) The provisions of this Act which concern decision-making in, or the granting of consent by, the Government of the Republic, do not apply to constitutional institutions.

(7) The provisions of this Act do not apply to the transfer of publications and informative materials concerning or promoting the principal activity of an administrator of State assets, as well as to the transfer of souvenirs. The procedure for the transfer of such assets is established by the administrator of State assets.

(8) The provisions of this Act do not apply to the participation of the State in the financial institutions created on the basis of a treaty and in foreign legal persons in private law if the participation of the State is required by EU legislation or a treaty.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(9) In the case of a partially State-owned company whose securities are listed in a regulated securities market or the listing of whose securities has been applied for, the provisions of this Act that are incompatible with the requirements applicable in the regulated securities market concerning the management of companies, the dissemination of information and the carrying out of special audits, are not applied.
[RT I, 28.03.2018, 1 – entry into force 07.04.2018]

§ 3. Definitions

(1) The terms in this Act are defined as follows:

- 1) *State-owned company* – a public or private limited company in which the State owns all the shares;
- 2) *partially State-owned company* – a public or private company in which the State owns at least one share;
- 3) *majority interest* – an interest in a company conferred by the share which represents or shares which represent the majority of votes required for passing decisions at the general meeting of the company to amend the company's articles of association, increase or decrease the share capital, wind up, merge, divide or transform the company;
- 4) *required interest* – an interest in a company conferred by the share which represents or shares which represent the number of votes required for passing decisions at the general meeting of the company which are not listed in clause 3 of this subsection;
- 5) *precluding interest* – an interest in a company conferred by the share which represents or shares which represent the number of votes required for stopping decisions listed in clause 3 of this subsection at the general meeting of the company;
- 6) *minority holding* – a holding in a company that does not amount to a precluding interest;
- 7) *foundation established by the State* – a State foundation or a foundation whose founders include the State;

- 8) *State foundation*– a foundation whose sole founder is the State;
 - 9) *foundation whose founders include the State*– a foundation whose several founders include the State;
 - 10) *constitutional institutions*– the *Riigikogu*, President of the Republic, the National Audit Office, the Chancellor of Justice and the Supreme Court;
 - 11) *authorised agency*– a state institution into whose possession the administrator of State assets has entrusted the assets it administers;
 - 12) *use agreement*– an agreement governed by the Law of Obligations Act or the Law of Property Act on the basis of which the State receives an asset or part thereof for use or releases it for use.
- [RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) The provisions governing immovable property apply to any land unit which is owned by the State and which has not been registered as an immovable property, and to any construction work or any legal or physical share in a construction work, until the land supporting the construction work and the land required to service the construction work is registered in the Land Register, as well as to any ship which belongs to the State and which has not been registered as an immovable property in accordance with the Ensign Law and Register of Ships Act.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) The provisions of this Act concerning movable property also apply to monetarily appraisable rights, with the exception of State software where such software is gratuitously released for use to the public following the rules provided in Subchapter 2 of Chapter 3 of this Act.

[RT I, 22.05.2021, 2 – entry into force 01.06.2021]

(4) Unless otherwise provided by law, the provisions concerning securities in this Act also apply to shares in private limited companies and to units of common funds or monetarily appraisable rights and obligations of common funds. The provisions in this Act concerning the participation of the State in legal persons in private law as a shareholder apply to the participation of the State in common funds.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(5) The provisions governing agreements concerning the use of State assets in this Act also apply to limited real rights on the basis of which the person in whose favour the limited real right is created or the person who owns the immovable property in whose favour the real right is created acquires the right to use the property or a part thereof.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 4. Administrator of State assets

(1) An administrator of State assets arranges, on behalf of the State, the acquisition of assets for the State, the possession, use and disposition of State assets, the use of immovable property in accordance with the agreement on the use of the property or with the agreement on encumbering the property with a limited real right, and the participation of the State as a shareholder, founder or member in a private or public limited company, foundation or non-profit association registered in Estonia and in legal persons in private law with limited liability abroad, and exercises any rights and performs any obligations which arise in relation to aforementioned activities following the procedure established in this Act.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

- (2) Administrators of State assets are:
- 1) the Chancellery of the *Riigikogu*;
 - 2) the Office of the President of the Republic;
 - 3) the National Audit Office;
 - 4) the Office of the Chancellor of Justice;
 - 5) the Supreme Court;
 - 6) the Government Office;
 - 7) the ministries.

(3) In the cases provided by law or a regulation of the Government of the Republic, the functions of administrator of State assets may be performed by a profit-seeking State agency and, in the cases provided in the Land Reform Act and in the regulations enacted on its basis, the Land Board.

[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

(3¹) Where the functions of administrator of State assets are performed by a profit-seeking State agency, it is subject to the provisions of this Act concerning ministries. In order to decide on issues that this Act reserves to the Government of the Republic, proposals are submitted to the Government of the Republic via the Minister in charge of the policy sector.

[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

(4) An administrator of State assets enjoys the rights and is subject to the obligations which the law vests and imposes on an owner, shareholder, founder of a company, member of a building association, apartment owner

participating in the community of apartment owners, co-successor, founder of a foundation or member of a non-profit association.

(5) Unless otherwise provided by law or regulation, the person or persons to perform the functions of administrator of State assets in the name of the administrator of State assets are appointed internally in the agency.

§ 5. Administration of securities and of founder's rights in a company

(1) Shares owned by the State are administered and the founder's rights in a company are exercised by the ministry or profit-making State agency (hereinafter, 'holding administrator') designated by the Government of the Republic who, in making the designation, must consider the competence and fitness of the ministry or profit-making State agency with respect to the best performance of the rights and obligations relating to the administration of the shares and the objective to avoid conflicts of interest between different functions of state.

(2) The Ministry of Finance is designated as the administrator of the securities which are owned by the State and which are not named in subsection 1 of this section.

(3) The administrator of a minority holding of the State in a company is the Ministry of Finance. Where the State's holding in a company is reduced to a minority holding, the holding administrator submits a draft resolution to the Government of the Republic for the transfer of the holding into the administration the Ministry of Finance. The draft is submitted within one month from the registration of the increase or decrease in the share capital or from the share transfer transaction or from any other transaction which resulted in the decrease in the State's holding.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) The administrator of the State's holding in one and the same company may only be one ministry or profit-making State agency.

(5) At the founding of a company or at a general meeting of the shareholders, the State is represented by the Minister of Ministry which administers the State's holding in the company. Where the shares are administered by a profit-making State agency, for the purposes of this Act, the minister's function is performed by the supervisory board of the profit-making State agency, represented by the chair of the board in accordance with the corresponding power of attorney.

(6) Where the State's holding in a company does not amount to a precluding interest, the Minister of the ministry administering the holding may authorise a ministry official to participate in a general meeting of shareholders.

(7) The provisions set out in subsections 1, 2 and 5 of this section apply when exercising the rights and performing the obligations arising from membership in a building association.

§ 6. Agency exercising founder's and membership rights in a foundation or non-profit association

(1) The exercise of founder's and membership rights in a land improvement association is subject to the provisions of the Land Improvement Act.

[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

(2) Membership rights in an apartment association or any other non-profit association whose membership is related to the administration of State assets are exercised by the administrator of State assets or an agency authorised by the administrator of State assets. The same applies to arrangements in which legal relationships in respect of an apartment which is the subject matter of apartment ownership are dealt with by means of the community of apartment owners, as well as by means of the community of co-successors. If the State assets which the membership relates to is administered by several administrators:

1) any decisions concerning the exercise of membership rights require the endorsement of other administrators of State assets;

2) in designating the agency to exercise the membership rights or resolving any disagreements between the administrators of State assets, the provisions set out in subsection 6 or 7 of § 7 of this Act apply.

(3) The state's founder's rights in a foundation and membership rights in a non-profit association not named in subsections 1 and 2 of this section are exercised by the ministry designated by the Government of the Republic or the Government Office (hereinafter, the 'agency exercising founder's or membership rights'); the designation must be made having regard to the competence and suitability of the designee to the task. A ministry designated by the Government of the Republic may authorize an authorised agency to exercise founder's or membership rights.

[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

(4) Only one administrator of State assets may exercise the founder's rights in one and the same foundation. The same applies to the exercise of membership rights in a non-profit association.

(5) The agency exercising founder's rights enjoys all rights and is subject to all obligations which follow from the law in respect of the founder of a foundation. In performing the tasks related to such rights and obligations, the State is represented by the Minister or State Secretary.

(6) The agency exercising membership rights enjoys all rights and is subject to all obligations which follow from the law in respect of the member of the non-profit association, and in the performance of the tasks related to which, the State is represented by the minister, the State Secretary, or the head of the agency authorised to exercise the membership rights.

[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

(7) [Repealed – RT I, 04.07.2017, 1 – entry into force 01.01.2018]

(8) The Minister or the State Secretary representing the exerciser of membership rights, or the head of the agency authorised to exercise membership rights, may authorize a subordinate official to participate in the general meeting (meeting of representatives).

[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

§ 7. Designation of the administrator of State assets

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(1) The assets that are being acquired by the State is regarded to be under the administration of that administrator of State assets who is to receive that assets pursuant to law or in accordance to the transaction, or who is entitled or obligated to receive that assets.

(2) The administrator of an immovable acquired by the State in accordance with § 126 of the Law of Property Act is designated by the Government of the Republic. Until such designation is made, the State assets concerned are administered by the Ministry of Finance.

[RT I, 30.06.2015, 4 – entry into force 01.09.2015]

(3) The occupation of a movable by the State is organized by the administrator of State assets who is entitled to occupy the movable.

(4) On behalf of the State, the agency that arranges the succession to the estate of a deceased person is the Ministry of Finance if the succession proceedings take place in Estonia. If succession proceedings take place abroad, the agency that, on behalf of the State, arranges the succession to the estate of the deceased person is the Ministry of Foreign Affairs. The administrator of any immovable property inherited by the State is designated by the Government of the Republic.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(5) Unless otherwise provided by legislation, any assets confiscated (hereinafter, 'confiscated assets') in a criminal case by court judgment or ruling or in a misdemeanour case by court judgment or ruling or by decision or ruling of the body that conducted the corresponding extra-judicial proceedings is administered by:

1) the Ministry of Finance, if the proceedings concerning the offence were conducted by the Tax and Customs Board, or if the confiscated assets represent an immovable property or a security;

2) in any case not falling under clause 1 of this subsection, the Ministry of the Interior.

[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

(6) Where the administrator of the State assets or the property that is being acquired or the authorised agency cannot be directly determined on the basis of the law or transaction or where there is a dispute, the administrator of State assets is determined by the Government of the Republic.

(7) If one party to the dispute is a constitutional institution, the dispute is to be resolved by an agreement between the administrators of State assets.

(7¹) [Repealed - RT I, 29.06.2018, 1 – entry into force 01.07.2018]

§ 8. Principles of administration of State assets

(1) An administrator of State assets must administer State assets in accordance with the aims of its administration, expediently, sustainably and prudently.

(2) A right or physical object which is part of the State assets which constitutes a single whole has a single administrator of State assets.

(3) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) In carrying out any acts or transactions with State assets, the administrator of State assets must, as a principle, strive to increase any gains and avoid any losses that the State stands to make from these acts and transactions.

(5) An administrator of State assets must carry out any transactions with State assets in conformity with legislation and in a transparent and verifiable manner.

(6) An administrator of State assets establishes the requirements for possession and use of State assets for public servants within their area of government.

(7) An authorised agency must, in respect of the State assets entrusted into its possession, fulfil the requirements imposed by this Act on administrators of State assets. An authorised agency exercises the rights of administrator of State assets to the extent determined by the administrator of State assets.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(7¹) The extent of the authorised agency's rights and obligations, and of its discretion, in relation to the State assets may be established by a regulation or directive of the administrator of those assets.

[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

(8) The state may not be a partner in a general partnership or a limited partnership or a member in a commercial association, except in a building association, and may not be a member of a non-profit-seeking association of persons which has not been entered into a register, except for a community of apartment owners and a community of co-successors. The state may not participate in a foreign legal person in private law if this entails the State's unlimited liability.

§ 9. Obligations of administrators of State assets in relation to participation in a legal person in private law

A holding administrator and an agency exercising founder's or membership rights must ensure the exercise of rights vested in and performance of obligations imposed on shareholders of a company, founders of a foundation or members of a non-profit association by virtue of the Commercial Code, the Foundations Act, the Non-Profit Associations Act and other legislation, define the strategic objectives of the company, foundation or non-profit association on the basis of national development plans and other documents and assess the progress made towards achieving these objectives.

§ 10. Purpose of the administration of State assets

(1) State assets are administered:

- 1) for the purpose of exercising state authority;
- 2) for any other public purpose determined by the administrator of State assets;
- 3) for the purpose of earning revenue;
- 4) for the purpose of preservation of the assets as a reserve.

(2) Where the primary purpose of the administration of a holding in a company is the performance of a function which is based on public interest and which is set out in legislation or stipulated in the company's articles of association or in an administrative contract, such as the pursuit of a specific business activity, its purpose is also the earning of revenue by way of the sale of goods or provision of services for a fee that ensures a reasonable profit.

(3) The state acquires assets in accordance with legislation and by means of a transaction, provided the acquisition is required for a purpose listed under subsection 1 of this section or if the obligation to acquire the assets arises from Acts of the *Riigikogu*.

(4) [Repealed – RT I, 13.03.2014, 3 – entry into force 23.03.2014]

(5) In cases not named under subsection 3 of this section, the State may acquire the assets only with the consent of the Government of the Republic.

[RT I, 13.03.2014, 3 – entry into force 23.03.2014]

(6) An administrator of State assets must, having regard to subsections 1 and 2 of this section, determine the purpose of administration of the assets in its administration.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(7) An administrator of State assets must arrange the ceding of State assets that it has no need of to another administrator of State assets who requires the assets in question or arrange the transfer or destruction of such assets or make a proposal to carry out the corresponding operations.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

Chapter 2

CEDING THE ADMINISTRATION OF STATE ASSETS TO ANOTHER ADMINISTRATOR OF STATE ASSETS

§ 11. Justifiability of ceding the administration of State assets

(1) The administration of State assets may be ceded by one administrator of State assets to another if this results in a more expedient administration of State assets or for other reasons, considering public interest.

(2) An administrator of State assets may request that another administrator of State assets cede to it the administration of a State assets if the State assets concerned is required for the performance of functions which are imposed by legislation and if the other administrator of State assets does not require that State assets for the performance of the functions imposed on itself by legislation.

§ 12. Deciding on the ceding of the administration of State assets

(1) If the ceding administrator is an administrator of State assets falling under clauses 6 and 7 of subsection 2 of § 4 of this Act, the ceding of the administration of an immovable property or of a limited real right by one administrator of State assets to another takes place by mutual agreement.
[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

(2) Where an administrator of State assets falling under clauses 6 and 7 of subsection 2 of § 4 of this Act, who has requested the ceding to itself of the administration of an immovable property or limited real right, fails to reach agreement with the administrator of the immovable property or limited real right, the requesting administrator may bring the matter of the ceding before the Government of the Republic.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) If the agency to cede the administration of State assets is a constitutional institution and the receiving agency is an administrator of State assets named in subsection 1 of this section, the ceding takes place in accordance with their mutual agreement.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) Constitutional institutions decide matters concerning the ceding of the administration of State assets by mutual agreement.

(5) The administration of movables, except for securities, may be ceded by one administrator of State assets to another by mutual agreement.

(6) State assets, except for securities, may be ceded pursuant to the procedure established by the administrator of the State assets if:

- 1) the assets to be ceded represent movable property whose usual value is less than 30,000 euros;
 - 2) the State assets are ceded within the government area of a single administrator of State assets.
- [RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 13. Formalisation and effective date of the ceding of State assets

(1) An instrument of delivery and receipt must be drawn up concerning the ceding of State assets. The instrument sets out at least the particulars of the party ceding and the party receiving the assets, the time of the ceding and a description of the assets, the acquisition cost and residual value of the assets.

(2) The instrument of delivery and receipt drawn up when ceding an immovable property which includes a construction work as an essential part of the property must set out, in addition to the information listed in subsection 1 of this section, information regarding the accessories, condition, designated purpose and defects of the property.

(3) The effective date of the ceding of movable property is the date determined in the instrument of delivery and receipt. Within 30 days from the execution of the instrument, the receiver of any movable property subject to the registration requirement submits an application to amend the information concerning the administrator of the State assets in the relevant database. The ceding of immovable property becomes effective on the date of validation of the entry regarding the change of the administrator of the property or the authorised agency in the State's register of immovable property.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

Chapter 3

RELEASE OF STATE ASSETS FOR USE

Subchapter 1

Release of State Assets for Use under Regular Procedure

[RT I, 22.05.2021, 2 - entry into force 01.06.2021]

§ 14. Release for use

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(1) Release of State assets for use means the passing of State assets into the use of another person (hereinafter, 'the user') under a use agreement.

(2) Release for use of State assets by way of encumbering the assets with a limited real right is subject to the provisions governing the release of State assets for use without prejudice to the special rules established in subsection 2 of § 22 and §§ 26–28 of this Act in respect of limited real rights.

(3) For the purposes of this Act, granting a loan is not regarded as release of State assets for use.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) The provisions of this Subchapter do not apply to gratuitous release of State software for use to the public and to the use of such software by another administrator of State assets, as provided for in Subchapter 2 of this Chapter.

[RT I, 22.05.2021, 2 – entry into force 01.06.2021]

§ 15. Grounds for and restrictions on release for use

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(1) State assets may be released for use in the following cases:

- 1) when the administrator of the assets temporarily does not need to use the assets;
- 2) in the cases listed in subsection 2 of § 18 of this Act;
- 3) when the purpose of administration of the assets is the earning of revenue;
- 4) when the purpose of administration of the assets is their preservation as a reserve;
- 5) in other cases specified by law.

(2) State assets may not be released for use where releasing the assets for use significantly complicates the intended use of State assets linked to the assets or renders it impossible.

(3) State assets may not be encumbered by a pledge.

(4) In the case of immovable property, the administrator of State assets, before opening the proceedings for releasing State assets for use, must ascertain whether the property has utility for the State, having regard to the provisions of § 96 of this Act.

(5) The administrator of State assets must stipulate in the use agreement that the user may pass the assets into the use of a third party on the basis of a sub-use agreement only with the written consent of the administrator of the assets and provided the agreement with the third party contains a requirement to make the agreement public in accordance with the Public Information Act. The administrator of the assets records the sub-use agreement in the State register of immovable property and renders it publicly accessible by means of that register, except where under the Public Information Act such agreement or part thereof is not subject to the publication requirement.

(6) The state must not suffer harm as a result of releasing State assets for use.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 16. Use of State assets between administrators of State assets

(1) As a rule, an administrator of State assets does not release assets for use by another administrator of State assets in their entirety. In such a case, the decision is made to cede the administration of the assets to the other administrator.

(2) If another administrator of State assets needs to use a part of the assets or temporarily the assets in their entirety, an agreement on the use of the assets is concluded between the administrators of State assets.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) The agreement on the use of the assets stipulates the conditions of the use and the procedure for reimbursement of the expenses related to the use.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 17. Methods of release for use

(1) State assets are released for use by the following methods:

- 1) by public auction;
 - 2) by selective tender;
 - 3) by a discretionary decision made without holding a public auction or selective tender (hereinafter, 'by discretionary decision').
- [RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) A constitutional institution may release immovable property for use only by public auction or selective tender.

§ 18. Use fee

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(1) When State assets are released for use by another person, this must be subject to the payment of at least a market-based use fee. A market-based use fee is a fee which corresponds to the use fees stipulated in agreements concerning the use of similar assets on similar terms and conditions in the relevant market.

(2) State assets may be released for use for a fee that falls below the market-based use fee or may be released for use free of charge if these assets are required:

- 1) by a local authority for the performance of functions mandated by law;
- 2) to be encumbered with a superficies interest in favour of a local authority in the case referred to in § 74¹ of this Act;
- 3) by a legal person in public law for the performance of functions provided by law;
- 4) by a legal person in private law for the performance of a public function mandated by law or an administrative contract;
- 5) by a non-profit organization or foundation founded or to be founded by the State for the performance of functions provided in the articles of association;
- 6) by a non-profit organization or foundation for the performance of functions which are provided in the articles of association and are related to rescue, education, research, culture, language or youth work, or for the provision of healthcare and social services or for other public purposes;
- 7) in other cases provided by law.

(3) Where State assets are released for use for a fee that falls below the market-based use fee or are released for use free of charge, the use fee must at least ensure the economic preservation of the assets, or the use agreement must assign responsibility for the economic preservation of the assets to the user.

(4) The manner of assessment of a movable property use fee is determined by the administrator of State assets.

(5) The administrator of State assets must stipulate in the use agreement that any ancillary expenses, taxes or encumbrances in relation to the assets are borne by the user of the assets in proportion to the extent of the user's right to use the assets, or must take such expenses into consideration when determining the use fee.

(6) In any use agreement which is concluded for a term exceeding three years, the administrator of the assets must stipulate conditions for adjusting the use fee.

(7) By decision of the person releasing the assets for use, set-offs may be made to reimburse the expenses incurred by the user in order to improve the assets, provided this is stipulated in the use agreement and provided the improvements have been made with the consent of the person who released the assets for use. For any set-offs to be made, the agreement stipulates the time, extent and conditions of the set-off.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 18¹. Assessment of immovable property use fee

(1) When an immovable property is released for use for a market-based use fee, an assessment report is drawn up, taking into account the following:

- 1) the report is drawn up by an assessor holding a corresponding professional certificate;
- 2) the report is drawn up in accordance with the good practices of property assessment;
- 3) the report is drawn up having regard to the terms and conditions of the use agreement to be concluded.

(2) The assessment report may be drawn up without complying with the requirement specified in clause 1 of subsection 1 of this section and the market-based use fee may be established by means of a market analysis or on other valid grounds if:

- 1) the immovable property is used for up to 100 calendar days or, if the use time is calculated in hours, for up to 1,000 hours in a calendar year;
- 2) the area used does not exceed 100 square metres;
- 3) the estimated use fee including value-added tax does not exceed 1,000 euros for a calendar year;
- 4) the use of the immovable property is linked to a utility network or structure or to a public road;
- 5) the immovable property or superficies interest is encumbered by a right of pre-emption or easement;
- 6) the market-based use fee is established by the Land Board on the basis of market analysis and the particulars of the use agreements recorded in the State register of immovable property;
- 7) a market-based use fee cannot be determined due to the lack of an active market or insufficient data for comparison, and the assessor holding a corresponding professional certificate has issued a certificate in writing to confirm this.

(3) The assessment report may not predate the decision to release State assets for use by more than six months.

(4) The Government of the Republic makes regulations to establish the procedure for assessing immovable property use fees and the requirements for assessment reports and for the commissioning of such reports.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 19. Deciding to release State assets for use

(1) The release of State assets for use is decided by the administrator of the assets.

(1¹) The release for use, for the building of a utility network or structure or any other construction work, of a public national road and the land required to service the road is decided by the Ministry of Economic Affairs and Communications or, with the authorization of the Ministry, by the Estonian Transport Administration.
[RT I, 10.12.2020, 1 – entry into force 01.01.2021]

(2) Consent of the Government of the Republic is required for the Minister in charge of the policy sector or the State Secretary to be able to decide the release for use of an item of immovable property in the following cases:
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

- 1) by discretionary decision, unless otherwise provided by law;
- 2) when the decision stipulates a term exceeding 10 years;
- 3) [repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016].

(3) Where the usual value of a movable property amounts to 1,000,000 euros or more and the property is to be released for use for a term exceeding one year, a Minister or the State Secretary may decide to release the property for use only with the consent of the Government of the Republic.

(4) State assets are released for use following the procedure established by the administrator of State assets:

- 1) in the case of immovable property, when residential premises are released for use and in the cases provided in clauses 1–3 of subsection 2 of § 18¹ of this Act;
- 2) in the case of movable property, if the usual value of the movable property is less than 30,000 euros.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(5) The consent of the Government of the Republic referred to in clauses 1 and 2 of subsection 2 of this section is not required when residential premises are released for use and in the cases provided in clauses 4–5 of subsection 2 of § 18¹ of this Act.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(6) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 20. Terms for which State assets are released for use

(1) State assets may be released for use for an unspecified or specified term.

(2) When releasing State assets or use, the administrator of the assets must reserve to itself the right to terminate the agreement without observing normal procedure in a situation where the assets in question are required for the purpose of exercising state authority or for other public purposes.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) Where movable property is released for use for a specified term, that term may not exceed 10 years.

(4) The administrator of the assets must stipulate in the use agreement that the term of the agreement is not to be extended unless the Law of Obligations Act or a treaty contains a provision that is mandatory for the parties and that provides otherwise.

§ 21. Decision to release State assets for use

- (1) A decision to release State assets for use must set out at least:
- 1) a description of the assets which are released for use;

- 2) a designation of the body to arrange the release for use of the assets by means of a public auction or selective tender;
 - 3) the term for which the assets are released for use or a notice to the effect that the assets are released for use for an unspecified term;
 - 4) the method of releasing the assets for use;
 - 5) the conditions under which the use fee is determined and the reasons for the amount of the fee;
 - 6) rules for adjusting the fee;
 - 7) additional conditions for releasing the assets for use by means of a selective tender;
 - 8) where the release takes place by discretionary decision, the name and the registration number or personal identification code of the user.
- [RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) In the cases referred to in subsections 2 and 3 of § 19 of this Act, the draft decision that is to be submitted to the Government of the Republic must include at least the information listed in clauses 1, 3 and 6 of subsection 1 of this section.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) The explanatory memorandum for the draft decision referred to in subsections 2 and 3 of § 19 of this Act is to set out:

- 1) the reasons for the facts listed in the draft decision;
 - 2) the reason for releasing the assets for use by discretionary decision;
 - 3) the reason for releasing the assets for use for a term exceeding 10 years;
 - 4) information regarding the terms and conditions of the use agreement to be concluded;
 - 5) the expenses that will be incurred by the State as a result of the agreement to be concluded;
 - 6) other important terms and conditions and facts pertaining to the release for use of the assets.
- [RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) The explanatory memorandum referred to in subsection 3 of this section must enclose, as an annex:

- 1) a draft use agreement;
 - 2) documents to prove the information submitted and other documents which have significance for the making of the decision.
- [RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(5) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016] s

§ 22. Modifications to the terms and conditions of the release of State assets for use

(1) Modifications to the terms and conditions of the release of State assets for use may not contradict the terms and conditions of the public auction or selective tender.

(2) The proceedings to modify the terms and conditions of a use agreement or of an agreement on encumbering an immovable property with a limited real right are decided by the administrator of the assets.

(3) Where the decision to release State assets for use requires the consent of the Government of the Republic, the conditions stipulated in such consent may be modified only with the consent of the Government of the Republic.

§ 23. Arranging the release of State assets for use

(1) The release of State assets for use is arranged by the administrator of the assets or by another agency authorised by the administrator.

(2) The body to decide the release of State assets for use or an agency that such a body has authorised to arrange the release may authorise third parties to perform operations which are preparatory to releasing the assets for use or which represent steps in the process of releasing the assets for use, having regard to requirements mandated by legislation. For the purposes of this Act, such third parties are deemed conductors of the proceedings of releasing the assets for use.

§ 24. Use agreement

(1) The use agreement must be in writing and, in the cases provided by law, authenticated by a notary.

(2) State assets are delivered to the user and returned to the administrator of the assets in accordance with the agreement and the parties sign a written instrument of delivery and receipt which sets out the essential parameters that characterise the nature and condition of the assets.

§ 25. Performance of the use agreement and the liability of the parties

(1) If, upon the expiration of the term of the agreement, the user fails to return the assets voluntarily, the administrator of the assets is obligated to take steps to reassert direct possession of the assets.

(2) The agency releasing the assets for use is obligated to order the user to pay compensation for any harm it has caused to the State as a result of its failure to perform the agreement or failure to perform it in the required manner, or as a result of cancelling the agreement.

§ 26. Decision to encumber State assets with a limited real right

(1) The decision to encumber State assets with a limited real right must, in addition to the information specified in § 21, set out the substance of the limited real right.

(2) If the State concludes a use agreement with a superficiary, the decision to encumber the assets with a superficies interest must, in addition to the information specified in § 21 and subsection 1 of this section, set out the information regarding the use agreement to be concluded with the State.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) A decision to encumber State assets with a personal right of use or usufruct must, in addition to the information specified in subsection 1 of this section, set out the following particulars regarding the person in whose favour the immovable property is to be encumbered:

- 1) in the case of a natural person – name, personal identification code or date of birth and residence;
 - 2) in the case of a legal person – name, registry code and registered office.
- [RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) The decision to encumber State assets with an easement or personal right of use encloses, as an annex, a drawing or sketch which shows the area to be encumbered and, where necessary, the access route to the area.

§ 27. Agreement on encumbering State assets with a limited real right

(1) In the agreement on encumbering State assets with a limited real right the administrator of the assets may agree only to such terms and conditions as do not contradict the legislation in force and the decision to encumber the assets with a limited real right.

(2) In the agreement on the superficies interest to be created, the administrator of the assets stipulates that in order to transfer the superficies interest to a third party or to encumber it with a mortgage, easement, real encumbrance or the right of pre-emption, or to enter into agreements with third parties concerning the use of the building, the superficiary must seek the consent of the administrator of the assets. These obligations are recorded in the Land Register when the superficies interest is created.

(3) In the case provided in subsection 2 of § 18 of this Act, the administrator of the assets stipulates a clause in the agreement on the superficies interest to be created under which the superficies interest may be terminated if the superficiary uses the subject matter of the superficies interest for a purpose other than that which was previously agreed upon.

(4) Having regard to sections 252 and 253 of the Law of Property Act, the administrator of the assets stipulates a clause in the agreement on the superficies interest to be created in which the grantor of the superficies interest and the superficiary agree a course of action concerning the construction works on the assets after the expiration of the term of the superficies interest.

§ 28. Fee for encumbering State assets with a real right

In the agreement on encumbering State assets with a limited real right, the administrator of the assets stipulates a clause with respect to the fee for encumbering the assets with a limited real right by which the parties agree that:

- 1) the fee for encumbering the assets with a limited real right is paid by way of periodic payments or as a one-off payment;
- 2) periodic payments are to be paid in advance for the following period twice a year, as a rule by 1 July and 1 January;
- 3) the obligation to pay the fee arises when the limited real right is recorded in the Land Register and is extinguished when the corresponding entry is removed from the register;
- 4) the obligation to pay a periodic fee for encumbering the assets with a limited real right is recorded as a real encumbrance in favour of the State in part 3 of the entry concerning the dominant immovable in the main register of the Land Register;
- 5) an adjustment of the fee for encumbering State assets with a limited real right may be demanded after three years have passed since the limited real right was created and again when three years have passed since the last adjustment of the fee. In order to secure the right to request an adjustment of the fee, a corresponding notice must be entered in the Land Register with the same rank as that of the real encumbrance.

Subchapter 2

Gratuitous Release of State Software for Use by the Public and Use of State Software by another Administrator of State Assets

[RT I, 22.05.2021, 2 - entry into force 01.06.2021]

§ 28¹. Gratuitous release of State software for use

(1) Gratuitous release of State software for use is deemed to occur when, in accordance with the rules provided in this Subchapter, an administrator of State assets makes the source code of State software available to an unlimited number of persons under a use agreement for an unspecified period of time.

(2) For the purposes of this Act, 'State software' means a computer programme in respect of which the State holds all or a part of the author's pecuniary rights.

[RT I, 22.05.2021, 2 – entry into force 01.06.2021]

§ 28². Method of gratuitous release of State software for use to the public; taking a decision concerning such a release

(1) Gratuitous release of State software for use to the public is decided by discretionary decision.

(2) A decision to release State software for use must contain at least:

- 1) a description of the software that is being released for use;
- 2) the terms of use for the software that is being released.

(3) When gratuitously releasing State software for use to the public, an administrator of State assets includes a link on their website providing access to the source code of the software and to the particulars provided for in subsection 2 of this section.

[RT I, 22.05.2021, 2 – entry into force 01.06.2021]

§ 28³. Limitations that apply when State software is gratuitously released for use to the public

(1) State software is not gratuitously released for use to the public if this would entail an adverse effect on the State. Among other things, consideration is given to the cybersecurity risks that accompany the release, the specifics of the software's field of use and the potential threats to public order and national security that result from the release.

(2) If the State only holds a part of the author's pecuniary rights in respect of State software, gratuitous release for use, following the rules of this Subchapter, of such software to the public is only made to the extent of the rights held by the State.

(3) When gratuitously releasing State software for use to the public, and when laying down the terms of such use, consideration is given to moral rights of the author of the software.

(4) Where any grounds mentioned in subsection 1 of this section turn out to be present, an administrator of State assets may cancel a use agreement concluded in respect of gratuitous release of State software for use to the public.

[RT I, 22.05.2021, 2 – entry into force 01.06.2021]

§ 28⁴. Use of State software by another administrator of State assets

(1) Where State software has not been gratuitously released for use to the public under the rules of this Subchapter, an administrator of State assets gratuitously releases such software to another administrator of State assets on a corresponding application of the latter, except in a situation mentioned in subsection 1 of § 28³ of this Act.

(2) In a situation mentioned in subsection 1 of this section, an agreement concerning gratuitous use of State software is concluded between the administrators of State assets, stipulating the terms of use of the software.

[RT I, 22.05.2021, 2 – entry into force 01.06.2021]

Chapter 4 TRANSFER OF STATE ASSETS

Subchapter 1

General Provisions

§ 29. Grounds for the transfer

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(1) State assets may be transferred when:

- 1) the administrator of the assets does not require the assets;
- 2) the assets are required in the cases specified in subsection 1 of § 33 of this Act;
- 3) the assets are required by a legal person in private law in the case specified in § 51 of this Act.

(2) The administrator of the assets assesses the utility of the assets, having regard to § 10(1) of this Act, and in the case of an immovable property, before commencing the transfer of the assets, ascertains whether the property has utility for the State, having regard to § 96 of this Act.

(3) Unless otherwise provided by law, State assets are primarily transferred by way of sale for a payment in money that corresponds at least to the usual value of the assets.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 30. Methods of transferring State assets

(1) Unless otherwise provided by law, the transfer of State assets by way of sale is carried out by the following methods:

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

- 1) by public auction;
- 2) by selective tender;
- 3) by discretionary decision.

(2) A constitutional institution may transfer an immovable property or a superficies interest only for a payment and by way of public auction or selective tender.

(3) Except for a security or claim or work of artistic value or excavated ore or other movable property whose value cannot be appraised, the administrator of State assets may transfer a movable property whose usual value amounts to 30,000 euros or more only by way of public auction or selective tender. This requirement does not apply in the cases specified in sections 33 and 34 of this Act.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 31. Special rules regarding the methods of transfer of securities

(1) In addition to the methods listed in subsection 1 of § 30 of this Act, State-owned securities may be transferred:

- 1) by way of a public sale, including by way of a public tender or sale in a regulated securities market following the procedure specified in § 74 of this Act;
- 2) when making a takeover bid for shares in accordance with § 165 of the Securities Market Act;
- 3) when effecting a takeover of shares within the meaning of Chapter 29¹ of the Commercial Code;
- 4) when redeeming or repurchasing units in an investment fund;
- 5) when exchanging shares, convertible debentures or other securities for different securities;
- 6) in the acquisition of own shares by a company;
- 7) in an offer of shares to the other shareholders of the company;
- 8) by means of a sale of the right of pre-emption to subscribe for shares in a public limited company;
- 9) under other conditions provided by legislation or in the emission of the securities.

(2) The provisions governing public sales which are set out under clause 1 of subsection 1 of this section do not apply to transfers of shares in a private limited company.

§ 32. Transfer of excavated ore

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

Excavated ore is transferred following the procedure established by the administrator of State assets, without prejudice to the special rules established in the Earth's Crust Act.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 33. Transfer of State assets without charge or below the usual value

(1) State assets, except for securities, may be transferred without charge or for a fee that falls below the usual value of the assets where:

- 1) a local authority requires the assets for the performance of functions mandated by law;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

1¹) the assets are transferred to a local authority as an immovable property that is suitable for developing the business environment or for use as residential land in accordance with the conditions set out in § 34(1) of this Act;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

1²) the assets are transferred to a local authority for the purpose of developing the business environment on the basis of § 74¹ of this Act;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

2) a legal person in public law, a non-profit association or foundation established or to be established by the State requires the assets for the performance of functions mandated by law or the articles of association;

3) a non-profit association or foundation requires the assets for the performance of functions which are stipulated in the articles of association and which relate to rescue, education, research, language or youth work, or for the provision of healthcare or social services or for other public purposes;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016];

4) [repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

5) a movable property is required in order to participate in international cooperation or to implement a development cooperation project;

6) a movable property is required in order to provide humanitarian aid;

7) this is directly required by law.

(2) [repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) Where an immovable property acquired under clause 1, 1², 2 or 3 of subsection 1 of this section is transferred or encumbered with a superficies interest within 10 years after the immovable property was acquired, the person transferring the property or the grantor of the superficies interest must compensate to the State 65 per cent of the usual value that the property had at the time of its acquisition by that person, except in the case provided in subsection 10 of this section. In the case of transfer of the property, the compensation must be paid into the State's receipts account within five years from the transaction, and in the case of granting a superficies interest within ten years from the transaction.

[RT I, 22.01.2018, 1 – entry into force 01.02.2018]

(4) Where a local authority transfers an immovable property it has acquired from the State without charge or for a fee that falls below the usual value of the property to a legal person in private law which is subject to the dominant influence of the local authority, or creates a superficies interest in favour of that person, subsection 3 of this section does not apply, except where the legal person in private law transfers the acquired property or superficies interest or grants a superficies interest on the property to another.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(5) The state retains the right to require any persons falling under clauses 1, 1², 2 or 3 of subsection 1 of this section to use the immovable property transferred to them according to its designated purpose. If the person who has acquired the immovable property from the State fails to use it according to its designated purpose, the State is entitled to demand from that person the payment of a contractual penalty at the rate of at least 25 per cent but not more than 100 per cent of the value of the property at the time of its transfer.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(6) The administrator of State assets monitors the observance of the requirements listed in subsections 3–5 of this section.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(7) In the agreement on the transfer of the assets, the administrator of the assets stipulates the obligation of the person falling under clauses 1, 1², 2 or 3 of subsection 1 of this section to give notice of the ceding of the immovable property or superficies interest referred to in subsection 3.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(8) If a person falling under clauses 1, 1², 2 or 3 of subsection 1 of this section acquired the immovable property for a payment that falls below its usual value, the sum paid is deducted from the compensation to be paid in accordance with subsection 3 of this section.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(9) The Minister in charge of the policy sector may decide not to require payment of the compensation referred to in subsection 3 of this section if the immovable property acquired from the State is transferred to a State-owned company, State foundation, State-owned non-profit organization or legal person in public law, or is encumbered with a superficies interest in favour of said persons for serving the purpose, or for the performance of functions, for which the immovable property had been transferred by the State to the person falling under clauses 1, 1², 2 or 3 of subsection 1 of this section.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(10) When granting consent for the transfer of immovable property or a limited real right, the Government of the Republic may decide that the compensation referred to in subsection 3 of this section is not to be paid provided the property is transferred together with an obligation to perform a public task and provided the payment of the compensation would be contrary to the arrangements underlying the acquisition of the immovable property acquired from the State.

[RT I, 22.01.2018, 1 – entry into force 01.02.2018]

§ 34. Special rules governing the transfer to a local authority of immovable property that is suitable for developing the business environment or for use as residential land

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(1) The selling price for a local authority of immovable property is 65 per cent of its usual value if:

- 1) the local authority requires the immovable property as residential land;
- 2) the local authority requires the immovable property for developing the business environment.

(2) The selling price referred to in subsection 1 of this section must be paid within five years as of the execution of the agreement and it is to be agreed upon in the agreement on the transfer of the property.

(3) The immovable property that is required for developing the business environment is transferred to a local authority without charge if the transfer takes place in accordance with § 74¹ of this Act.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 35. Barter

(1) State assets may be transferred by way of barter by discretionary decision:

- 1) when acquiring, including expropriating, property on the basis of the Acquisition of Immovables in the Public Interest Act;

[RT I, 29.06.2018, 1 – entry into force 01.07.2018]

- 2) where the barter is required for a public purpose and is advantageous for the State;
- 3) in other cases provided by law.

(2) When the State acquires an immovable property by way of barter, the difference in the usual value of the relevant properties is compensated to the owner of the acquired property. Where the obligation to pay compensation falls on the owner of the property to be bartered for a property belonging to the State, the usual value of the properties to be bartered may not differ by more than 10 per cent. The usual value of any movable property to be bartered may not differ by more than 30 per cent. The difference in the value is compensated in money.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) The requirement established in subsection 2 of this section concerning the difference in the usual value of movables is not applied in the case of State assets transferred for the use of a foreign mission and of the public servants working there.

§ 36. Persons acquiring State assets

State assets may be acquired by anybody if the law provides no restrictions on the acquisition of the assets.

§ 37. Deciding the transfer of State assets

(1) The transfer of State assets is decided by the administrator of the assets.

(2) Consent of the Government of the Republic is required for a Minister or the State Secretary to decide the transfer of an item of immovable property or a limited real right in the following cases:

- 1) where the transfer is by discretionary decision or by selective tender;
- 2) where the assets are to be ceded as a non-monetary contribution to a legal person in private law;
- 3) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) Consent of the Government of the Republic is required for a Minister or the State Secretary to decide the transfer of an item of movable property in the following cases:

- 1) the transfer of a security;
- 2) the transfer, by discretionary decision, of claims in the amount of 30,000 euros or more;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

- 3) the ceding of assets as a non-monetary contribution to a legal person in private law;
- 4) where the value of the property cannot be assessed and the transaction is of national importance.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) It is not necessary to seek the consent of the Government of the Republic if:

- 1) the State's holding in a company to be transferred is less than 10 per cent of the company's share capital and the nominal value of that holding is less than 1,000,000 euros;

2) the State assets are ceded to a State-owned company within the calendar year as a non-monetary contribution whose usual value does not exceed 10 per cent of the nominal value of the total share capital and falls below 30,000 euros;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

2¹) a built-up immovable property is ceded to a State-owned company referred to in § 92(1) of this Act as a non-monetary contribution;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

3) the subject matter of the transfer is an easement, right of pre-emption or real encumbrance;

4) a mortgage created in favour of the State is ceded when the obligation secured by the mortgage has been performed;

5) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

6)) immovable property in a reallocation area is transferred on the basis of the Land Consolidation Act.

[RT I, 29.06.2018, 1 – entry into force 01.07.2018]

(5) With regard to State assets that are administered by state agencies, the Government of the Republic is entitled to specify, by type or value, classes of assets whose transfer is to be decided by the Government of the Republic in each particular case.

(6) Where the usual value of a movable property is less than 30,000 euros, the decision to transfer the assets may, in cases not listed in subsections 3–5 of this section, be made following the procedure established by the administrator of the assets, having regard to the principles set out in § 8 of this Act.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(7) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 38. Decision to transfer State assets

(1) A decision to transfer State assets must set out at least:

1) a description of the assets to be transferred;

2) the legal basis for the transfer of the assets, including a reference to the relevant provisions in this Act;

3) the type of procedure employed when transferring the assets;

4) in the case of a public auction or selective tender, the body arranging the transfer of the assets;

5) the starting price of the sale if one has been set;

6) in the case of a selective tender, additional conditions of the sale;

7) where the transfer is by discretionary decision, information regarding the entitled person and the method used to determine the price;

8) where the transfer is by discretionary decision, information regarding any use agreements to be concluded with the State.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) In the cases referred to in subsections 2, 3 and 5 of § 37 of this Act, the decision of the Government of the Republic must include at least the information listed in points 1–3, 6 and 7 of subsection 1 of this section.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) The transfer may take place in several stages, during each of which important circumstances are determined in relation to the transfer.

(4) Any decision to transfer securities is subject to the provisions set out in this section together with the special rules set out in § 39.

§ 39. Special rules regarding the decision to transfer securities

(1) With respect to the subject matter of the transfer, the decision to transfer securities sets out at least the name of the issuer and the type, number and, where it exists, the nominal value of the securities to be transferred. In the case of the transfer types listed in points 5 and 9 of subsection 1 of § 31 of this Act, the decision to sell must also set out the amount or the minimum amount of the compensation to be paid for a share.

(2) In the case of a public sale of securities, the decision to transfer the securities must set out:

1) the procedure of public sale (a public offering or sale in a regulated market);

2) the sale conditions listed in subsections of 3–5 of this section;

3) where necessary, the conditions for postponing or stopping the public sale and for changing the time-limits and conditions related to the sale;

4) other important circumstances related to the public sale or important circumstances concerning the preparation of the sale.

(3) In the case of a public offering of securities, the decision to transfer securities must set out:

1) in the case of a public offering at a predetermined price, the offering price;

- 2) in the case of a public offering at an equilibrium price to be determined in the course of the offering, the principles based on which the offering price is determined;
- 3) the principles of establishing the results of the offering;
- 4) the rules governing the distribution of the securities between the investors;
- 5) the procedure for submitting and considering offers.

(4) The body deciding the transfer may stipulate, as a condition of the public offering, an obligation to register the securities for trading in a regulated market, in this case also determining the regulated markets in which registration for trading must be sought.

(5) Where securities are to be transferred in a regulated market, the decision to transfer securities must also set out the minimum selling price of the securities and, if necessary, the schedule of the sale.

(6) Where shares are transferred as part of a takeover bid, the decision to transfer securities must, in addition to the information specified in subsection 1 of this section, set out:

- 1) a reference to the takeover bid and the essential conditions of the bid;
- 2) the takeover price of the shares and the manner of payment for the shares;
- 3) reference to acts (acceptance or offer) performed in the course of the takeover bid.

(7) Where securities are exchanged for other securities, the decision to transfer securities must, in addition to the information specified in subsection 1 of this section, set out information regarding the securities received and the number of securities received per each security given in the exchange.

(8) Where shares in a public limited company are transferred by way of a targeted offer to another shareholder of the company or other shareholders of the company, the decision to transfer shares must, in addition to the information specified in subsection 1 of this section, set out:

- 1) the price or starting price (minimum price) of the offer, where it is practical to determine such a price;
- 2) the name of the shareholder or the names of the shareholders whom the offer targets or the criteria for targeting the shareholders;
- 3) the procedure and time-limit for submitting offers.

(9) Where shares in a public limited company are transferred subject to preferential rights to subscribe for the shares, the decision to transfer the securities must, in addition, set out:

- 1) the subscription price of shares or the starting price, where it is practical to determine such a price;
- 2) if necessary, the requirements which the subscribers need to meet.

§ 40. Transfer of shares in a public limited company in response to a takeover bid

(1) Shares in a public limited company may be transferred as part of a takeover bid described in § 165 of the Securities Market Act if the person attempting the takeover has made a takeover bid to acquire the shares. The administrator of the shares submits the takeover bid to the body deciding the transfer together with a recommendation to accept or refuse the takeover bid.

(2) Where the consent of the Government of the Republic is required for the transfer of the shares, if the maker of the takeover bid has amended the proposed price such that the new price is more advantageous than the original one, or if the maker of the bid has agreed to waive the suspensive conditions contained in the original bid, or if a competing takeover bid has been made, the body deciding the transfer makes a decision, with the consent of the Government of the Republic, concerning revocation of the offer or acceptance made previously.

(3) In order to transfer shares in a public limited company as part of a takeover bid, the relevant operations required by legislation and the takeover prospectus must be performed.

§ 41. Exchange of securities for other securities

(1) State-owned securities may be exchanged for other securities in accordance with the decision to transfer securities if:

- 1) in the case of a transfer referred to in clause 2 of subsection 1 of § 30 and in points 1, 2, 7 and 9 of subsection 1 of § 31, the securities are partially or wholly paid for with other securities whose usual value is at least equal to the amount of money to be paid or to the usual value of the securities that are being transferred;
- 2) this is in accord with the conditions of emission of the securities to be exchanged.

(2) In order to exchange securities, the operations described in the conditions of emission of the securities and in the legislation applicable to such conditions must be performed.

§ 42. Transfer of shares to other shareholders of the company

(1) By decision of the body deciding the transfer, shares belonging to the State in a public limited company may be transferred to another shareholder or other shareholders of the company, provided this type of transfer of the shares is expedient in the light of the conditions emanating from the articles of association of the company, the structure of the company's shareholders, the agreements concluded between the shareholders, the conditions of emission of the shares or on the basis of other facts which warrant the presumption that resorting to another

type of transfer would not be expedient from the point of view of the protection of the State's interests, or that resorting to those other types of transfer would entail additional risks.

(2) The provision made in this section in regard to shares and shareholders in a public limited company, and to public limited companies, also applies to shares and shareholders in a private limited company, and to such companies.

Subchapter 2 Arranging the Transfer

§ 43. Initiating the transfer

(1) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) When initiating the transfer of an immovable property, the administrator of the property decides the conditions of the transfer in accordance with its discretionary authority, having regard to, among other things, the economical use of real property, the continuing use of the land for the same purpose, the possibilities of implementing spatial plans and any other circumstances of importance to the future use of the land or of any construction works on the land, and, where necessary, makes provision for the joint transfer of several immovable properties.

(5) Within the meaning of this Act, the joint transfer of several immovable properties means the transfer of several such properties for a single price. In selecting the properties to be transferred, the administrator of State assets has regard to the territorial location of the immovable properties, the tied relationship of the properties when used for their designated purpose, the expected higher value of the properties when transferred jointly, in comparison to their value when transferred separately, and to any other circumstances which, when present, make it expedient to transfer several properties jointly.

§ 44. Draft decision of the Government of the Republic, its explanatory memorandum and documents

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(1) In the cases described in subsections 2, 3 and 5 of § 37 of this Act, the administrator of State assets prepares a draft decision of the Government of the Republic and its explanatory memorandum. The explanatory memorandum must set out at least the following:

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

- 1) information regarding the State assets, including any encumbrances on the assets;
- 2) a justification of the expediency of the transfer and the impact of the transfer on the national budget;
- 3) the reasons related to selecting the particular method of transfer and to other important circumstances pertaining to the transfer;
- 4) the reasons for deciding to transfer for no charge or for a fee that falls below the usual value of the assets;
- 5) an assessment concerning the usual value of the assets;
- 6) information regarding the detailed spatial plan concerning the assets;
- 7) other reasons in relation to the circumstances described in sections 38 and 39 of this Act.

(2) The explanatory memorandum must enclose, as an annex, documents which prove the information presented in the memorandum.

§ 45. Special rules regarding the explanatory memorandum and documents in the case of transfers of securities

(1) When transferring securities, the explanatory memorandum of the draft decision of the Government of the Republic sets out at least the following particulars:

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

- 1) information regarding the securities, their issuer and, in the case of a takeover, information regarding the person who made the takeover bid;
- 2) a justification of the expediency of the transfer, which separately sets out factors related to economic policy and factors related to financial economy;
- 3) the reasons behind the choice of the transfer procedure and other important circumstances pertaining to the transfer;
- 4) the opinion of the administrator of the securities regarding the usual value of the securities as indicated in the assessment report.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) The following documents must be enclosed, as an annex, to the explanatory memorandum:

- 1) documents which prove the information specified in subsection 1 of this section;
- 2) in respect of a foreign issuer, where they exist, documents regarding its registration in the country in which it is located;
- 3) when exercising a takeover bid for shares in a public limited company, the notice and prospectus of the takeover bid;
- 4) in the case of a takeover bid for shares under Chapter 29¹ of the Commercial Code, the takeover report and the auditors' report, and the draft resolution of the general meeting of the shareholders by which the takeover of the shares of minority shareholders is decided;
- 5) in the case of the transfer of units in an investment fund, the fund rules;
- 6) the resolution of the general meeting of the shareholders of the public limited company by which the convertible debentures were issued;
- 7) the resolution of the supervisory board or the general meeting of the shareholders of the public limited company by which the acquisition of the company's own shares was decided;
- 8) the resolution of the shareholders of the private limited company whereby the acquisition of the company's own shares was decided;
- 9) the document determining the price of the securities or the compensation to be paid for each share in the public limited company.

(3) If the documents cannot be accessed using the information in the central database of the registry department of Tartu District Court, the explanatory memorandum must also enclose the following:

[RT I, 21.06.2014, 8 – entry into force 01.01.2015]

- 1) the articles of association of the issuer and its memorandum of association;
- 2) the latest audited annual accounts of the issuer or, in the case of a takeover bid, the audited annual accounts for the last two financial years;
- 3) in the case for paying for securities with other securities or exchanging securities for other securities, the reports referred to in clause 2 of this subsection in respect of the issuers of the securities to be taken as payment or exchange.

(4) Where legislation or the conditions established in the emission of the securities make it impossible or inexpedient to transfer the securities using the methods referred to in sections 30(1) or 31(1) of this Act, the explanatory memorandum must refer to the relevant legislation or the documents proving the special conditions in the terms and conditions of the emission.

(5) Where the transfer takes place in several stages, the administrator of the assets at first submits to the Government of the Republic a draft of the decision to be recorded in the minutes of the meeting of the Government of the Republic, its explanatory memorandum and the endorsement letter of the Ministry of Finance.

§ 46. Assessing the usual value of State assets

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(1) When the usual value of an immovable property is assessed, an assessment report is drawn up, taking into account the following:

- 1) the report is drawn up by an assessor holding a corresponding professional certificate;
- 2) the report is drawn up in accordance with the good practices of property assessment.

(2) The assessment report may be drawn up without complying with the requirement specified in clause 1 of subsection 1 of this section if:

- 1) the usual value is assessed by the Land Board on the basis of market analysis and the particulars of the transactions recorded in the database of transactions maintained in accordance with § 9(2¹) of the Land Cadastre Act, relying on the methods approved on the basis of the Land Valuation Act, Nature Conservation Act or any other relevant Act;
- 2) the usual value cannot be assessed due to the lack of an active market or insufficient data for comparison, and the assessor holding a corresponding professional certificate has issued a certificate in writing to confirm this, and the fee for transfer is agreed upon on other valid grounds;
- 3) the corresponding special rule emanates from legislation.

(3) The procedure for determining the usual value of a movable property to be transferred is decided by the administrator of the property.

(4) The assessment report may not predate the decision to transfer the assets by more than six months.

(5) The Government of the Republic makes regulations to establish the procedure for assessing the usual value of immovable property and the requirements for assessment reports and for the commissioning of such reports.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 47. Determining the usual value of securities

(1) To determine the usual value of the securities to be transferred, including the securities received in the course of an exchange of securities, the administrator of the securities commissions an assessment report of the usual value of the securities from a generally recognized expert.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) The commissioning of an assessment report is not required where:

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

1) the Government of the Republic has agreed to waive this;

2) the cost of the assessment report is disproportionate to the revenue to be received from the transfer of the securities;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

3) the transfer method referred to in clauses 3, 4 or 6 of subsection 1 of § 31 is used;

4) the securities transferred or received in the course of an exchange of securities are the securities referred to in subsection 1 of § 249¹ of the Commercial Code.

(3) Where an assessment report is not commissioned, it is substituted by an assessment of the usual value of the securities drawn up by the administrator of the securities, which takes into consideration the trading price of the securities, the amount of compensation paid for each share in the public limited company, the net asset value of the share or unit, the book value of the securities and other relevant information.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) The assessment report may not predate the decision to transfer the assets by more than six months.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 48. Transfer arrangements

(1) The transfer of State assets is arranged by the administrator of the assets or by an agency authorised by the administrator.

(2) The body to decide the transfer of State assets or the agency that such a body has authorised to arrange the transfer may authorize third parties to perform operations which are preparatory to the transfer of the assets or which represent steps in the process of transferring the assets, having regard to the requirements emanating from legislation. For the purposes of this Act, such third parties are deemed conductors of transfer proceedings.

§ 49. Terms and conditions of transfer agreement

(1) Before executing the transfer agreement, the agency arranging the transfer of State assets must require the person acquiring the assets to provide each security required, in regard to the performance of the agreement, by the decision to transfer the assets, by other documents relating to the transfer and by legislation.

(2) The administrator of the assets must set out in the transfer agreement at least the following particulars:

1) the names of the parties, their registration information and, in the case of a natural person, the personal identification code or date of birth;

2) the subject matter of the transfer agreement;

3) the price of the transfer and the terms of payment;;

4) the time and procedure for the passing of ownership of the assets;

5) the securities in regard to the performance of the agreement;

6) additional terms and conditions of the agreement;

7) the terms of covering the expenses;

8) if the assets are transferred without charge or for a fee which is below the usual value of the assets, the terms and conditions of specific-purpose use of the assets, the time-limit for performing the tasks undertaken as obligations and the terms and conditions listed in sections 33 and 34 of this Act.

(3) It is permitted to modify the transfer agreement provided the following requirements are observed:

1) the terms and conditions of the agreement may be modified, provided this does not harm the interests of the State as a party to the agreement;

2) the modification of the terms and conditions of the agreement does not contradict the terms and conditions of the public auction or selective tender;

3) the consent of the administrator of the assets is required to modify the terms and conditions of the agreement and to terminate an agreement containing an additional condition of the selective tender;

4) Where the decision to transfer the assets requires the consent of the Government of the Republic, the conditions stipulated in such consent may be modified only with the consent of the Government of the Republic.

§ 50. Notice of the transfer agreement

(1) The person arranging the transfer of State assets is under an obligation, within 10 days of the day on which the transfer of an immovable property, superficies interest or securities becomes conclusive, to publish a notice of the transfer in the publication *Ametlikud Teadaanded*. The notice must set out the name of the person who acquired the assets, the price and the additional conditions. In the case of a public sale of securities to several buyers, the notice includes the names of those persons who acquired 10 per cent or more of the securities sold.

(2) The requirement in subsection 1 of this section does not apply to a public sale of securities accepted for trading in a regulated market.

Subchapter 3 Special Rules Regarding Transfers of State Assets by way of Ceding the Assets as a Non-Monetary Contribution to a Legal Person in Private Law

§ 51. Ceding of State assets as non-monetary contribution to a legal person in private law

State assets which are administered by a ministry or the Government Office may be ceded to a legal person in private law as a non-monetary contribution in the following cases:

- 1) as payment into the share capital of a company in which the State participates or in which the State wishes to acquire a holding, or when founding a company or increasing a company's share capital;
- 2) into the ownership of a foundation or non-profit association to be established by the State;
- 3) into the ownership of a foundation established by the State;
- 4) when paying the membership fee to a non-profit association.

§ 52. Proposal to cede State assets to a legal person in private law

(1) Where the ceding of the assets is subject to the consent of the Government of the Republic, the holder of the shares of the company or the person exercising the founder's or membership rights, or the person who seeks the holder's or founder's or membership rights, submits the proposal to cede the assets, which is drawn up as a draft decision of the Government of the Republic and which encloses the explanatory memorandum described in § 53 of this Act and, in accordance with subsection 2 of this section, the following documents, unless those documents are accessible by using the information in the central database of the Registry Department of Tartu District Court:

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

- 1) the draft articles of association and the draft memorandum of association;
- 2) other agreements related to the founding, including the shareholders' agreement, provided these have been concluded, or their drafts;
- 3) a list of the assets to be ceded together with information concerning the residual book value of the assets and the acquisition cost of the same;
- 4) the assessment of the usual value of the assets to be ceded;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

- 5) in the case of the existence of a second founder who is a legal person in private law, the audited annual accounts of that second founder;
- 6) the auditors' report regarding whether the usual value of the non-monetary contribution corresponds to that stated in the assessment report, the auditors' report may not predate the decision to transfer the assets by more than six months;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

- 7) an extract from the Land Register or from the register in which the movable property is registered, if the non-monetary contribution consists in an immovable property or a movable property subject to the registration obligation;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

- 8) the articles of association of the foundation or non-profit association and the memorandum of association;
- 9) the articles of association of the company and the memorandum of association, as well as the draft resolution to increase the company's share capital.

(2) The following documents listed in subsection 1 of this section must be annexed to the proposal to cede State assets:

- 1) in the case of a company, foundation or non-profit association which is being founded, the documents listed in clauses 1–7 of subsection 1 of this section;
- 2) in the case of a foundation established by the State, or when paying the State's membership fee in a non-profit association, the documents listed in clauses 3,4,7 and 8;
- 3) in the case of increasing the share capital of a company, the documents listed in clauses 2–4, 6, 7 and 9.

§ 53. Explanatory memorandum concerning the ceding of State assets to a legal person in private law

(1) The explanatory memorandum sets out at least the following particulars:

- 1) the purpose of the State's participation in a legal person in private law or of the founding of such person, and the relationship to the strategic plan for the relevant policy area, together with a reference to the particular strategic aim or measure;
- 2) the opinion of the ministry in charge of the area of government which includes the matters that the legal person in private law to whom the assets are to be ceded deals with, or will deal with;
- 3) the company's four-year business plan together with a four-year financial plan;
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]
- 4) the action plan for achieving the aims set to the foundation or non-profit association, together with a four-year financial plan;
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]
- 5) in the case of increasing the share capital of a company, the reason for the increase and the relevant financial and cost-benefit calculations;
- 6) in the case of seeking an authorization to waive the preferential right of acquiring new shares when the share capital of a partially State-owned company is being increased, or to exercise such a right to an extent which falls below that which is possible, a justification for such course of action, and the relevant financial and cost-benefit calculations;
- 7) an explanation of how the ceding of the assets to a foundation established by the State or to a non-profit association contributes to the attainment of the objectives set to those persons, including a cost-benefit analysis;
- 8) when the ceding of the assets is accompanied by transactions involving other State assets, information concerning the subject matter of such transactions and the terms and conditions of the corresponding agreements.

(2) The submission of a financial plan referred to in clauses 3 and 4 of subsection 1 of this section is not required if the assets are ceded several times as a non-monetary contribution to a legal person in private law within one calendar year and the value of the particular ceded assets does not exceed 10 per cent of the share capital, of the foundation capital or of the assets of the non-profit organization and the financial plan has once in the current calendar year already been submitted enclosed in the explanatory memorandum referred to in subsection 1 of this section.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 54. Formalising the ceding of State assets to a legal person in private law

(1) The agreement on ceding State assets to a legal person in private law is executed by the Minister who administers the assets, or by the State Secretary.

(2) The Minister may authorize the Secretary-General or Deputy Secretary-General of the ministry to execute the agreement.

[RT I, 29.06.2014, 109 – entry into force 01.07.2014]

Subchapter 4 Certification of State Assets as Unserviceable

§ 55. Conditions for certifying State assets as unserviceable

(1) State assets are certified as unserviceable and written off, provided:

1) the assets are not required by the administrator of the assets and, in the assessment of the administrator of the assets, the expenses related to releasing the assets for use or to transferring the assets would exceed the revenue from such release for use or transfer, for which reason it is not economically expedient to release the assets for use or transfer them;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

2) the assets have been partially or completely destroyed, damaged, stolen, lost or otherwise rendered unusable or untransferable.

(2) The administrator of State assets establishes a procedure for certifying State assets as unserviceable, and for writing off and destroying such assets.

(3) State assets whose usual value is 30,000 euros or more may be certified as unserviceable only with the consent of the administrator of the State assets. The procedure for assessing the usual value of the assets to be certified as unserviceable is decided by the administrator of the State assets.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) The decision to certify the assets as unserviceable must list the essential conditions related to the assets which are certified as unserviceable and, in the case of the destruction of the assets, the conditions of destroying the same.

§ 56. Writing off and destroying State assets

(1) Any State assets which are certified as unserviceable are written off from the balance sheet and, where this is necessary, destroyed or, in the case of a construction work, demolished.

(2) A physical object which has been certified as unserviceable is destroyed in a manner which involves the lowest possible cost and is environmentally the most sound.

Chapter 5 PROCEDURE FOR RELEASING STATE ASSETS FOR USE AND FOR TRANSFERRING STATE ASSETS

Subchapter 1 Conducting the Procedure

§ 57. Basic principles of procedure

(1) This Chapter provides the basic requirements of the procedure for releasing State assets for use and for transferring State assets. Detailed procedures for releasing State assets for use and for transferring State assets are established by the administrators of State assets.

(2) This Chapter does not apply to gratuitous release of State software for use to the public as provided for in Subchapter 2 of Chapter 3 of this Act and to transfers of State assets to legal persons in private law provided for in Subchapter 3 of Chapter 4 of this Act.

[RT I, 22.05.2021, 2 – entry into force 01.06.2021]

§ 58. Publication of the notice of auction

(1) In accordance with the decision to release State assets for use or to sell State assets and with the terms established in respect of the public auction or selective tender by the body arranging the release of the assets for use or the transfer of the assets (subsequently in this Chapter, 'the arranging body'), a notice concerning the public auction or selective tender is published in the publication *Ametlikud Teadaanded* not less than two weeks before the time-limit for submission of written bids for the auction or selective tender and, in other cases, before the holding of the auction.

(2) The notice sets out essential information concerning the assets which are to be released for use or which are to be transferred, including information concerning the draft of the corresponding agreement and the accessibility of the terms of the auction.

(3) The time-limit within which bids in a public auction or selective tender may be submitted, and the place at which they are to be submitted, must be such as to ensure for the State the optimum result of the bidding process.

(4) Notices and advertisements of the public auction or selective tender may also be disseminated in another manner. In the cases referred to in sections 66(6) and 66(7) the notice of the public auction is published in at least one newspaper of nation-wide circulation and a notice is transmitted to the entitled person by regular post to the address of the residence or registered office which appears in the Population Register or Commercial Register in respect of that person.

§ 59. Inspection of the assets

After publication of the notice of a public auction or selective tender, any interested person may, at the time and place previously determined by the arranging body, inspect the assets which are to be released for use or which are to be transferred, and peruse the essential terms and conditions of the offer and of the corresponding agreement.

§ 60. Starting price

(1) In releasing State assets for use by way of public auction the body deciding the transfer or release for use (hereinafter in this Chapter, the 'deciding body') sets a starting price. In setting the starting price, the deciding body takes guidance from sections 18¹ and 46 of this Act.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) In the second public auction, the deciding body may set a starting price which is by up to 20 per cent lower than the starting price of the first auction.

(3) The setting of a starting price is not required in selective tenders and in the third or subsequent public auction.

§ 61. Participation fee

(1) In a public auction or selective tender, the deciding body may set a fee in the amount of up to two per cent of the starting price of the auction or tender for participating with an offer in that auction or tender.

(2) When setting the amount of the participation fee, the deciding body bases its decision on the estimated expenses related to the holding of the public auction or selective tender and on the expected number of tenderers.

(3) When no starting price has been set and the deciding body does not decide otherwise, the setting of the participation fee is based on the market-based use fee in the case of release of assets for use and on the usual value of the assets in the case of their transfer.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) The participation fee is paid by the time and at the place established by the arranging body.

§ 62. Security

(1) The security to be given for complying with the rules of the procedure or for performing the agreement may take the form of:

- 1) a mortgage or a movable property security interest, preferably a first-ranked mortgage or registered security interest in movable property;
- 2) a guarantee issued by a credit or financial institution or an insurance undertaking;
- 3) a cash deposit;
- 4) a deposit with a notary;
- 5) when residential premises are being transferred, the loan agreement concluded between the person who acquires the premises and the bank.

(2) The deciding body determines the security to be given in relation to release for use or sale of an item of immovable property or a superficies interest by means of a public auction or selective tender.

(3) The deciding body may set the amount of the security referred to in points 2 and 3 of subsection 1 of this section at up to 10 per cent of the starting price of the public auction or selective tender. When State assets are released for use, the amount of the security may be set as the equivalent of the use fee payable for one to three months' use.

(4) When no starting price has been set and the deciding body does not decide otherwise, the setting of the amount of the security is based on the market-based use fee in the case of release of assets for use and on the usual value of the assets in the case of their transfer.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 63. Expenses of the person acquiring State assets

(1) Unless otherwise provided in a treaty, the administrator of the assets stipulates a clause in the use agreement or in the agreement on the transfer of the assets under which the notary's fee and the State fee related to the release for use or transfer of the assets is paid by the person who acquires the right to use the assets or the ownership of the assets.

(2) The costs of the release of State assets for use or the transfer of such assets by discretionary decision are borne by the person who acquires the right to use the assets or the ownership of the assets.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 64. Expenses related to transferring State assets

(1) Documented expenses which are directly related to arranging the transfer of an immovable property or limited real right and which exceed the sums paid by way of the corresponding participation fees, may be covered out of the funds received as the result of the sale.

(2) Subject to the approval of the Minister in charge of the policy sector, the debts related to an immovable property or superficies interest to be transferred may be paid out of the funds received as the result of the sale.

(3) By decision of the administrator of State assets, documented expenses which are directly related to arranging the transfer of a movable and any debts related to the movable transferred may be covered out of the funds received as the result of the sale.

(4) When living premises which are in the ownership of the State are transferred to the lessee, the administrator of the State assets is entitled to reimburse the lessee for any justified and documented improvements to those premises out of the means obtained from the sale.

§ 65. Expenses related to releasing State assets for use

(1) By decision of the administrator of State assets, documented expenses which are directly related to releasing an immovable property or superficies interest for use and which exceed the sums paid by way of the corresponding participation fees may be covered out of the funds received for the use.

(2) Subject to the approval of the Minister in charge of the policy sector, the debts related to an immovable property or superficies interest which were released for use may be paid by the administrator of the property out of the funds received for the use.

(3) By decision of the administrator of State assets documented expenses which are directly related to arranging the release for use of a movable and any debts related to the movable which has been released for use may be covered out of the funds received for the use.

(4) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

Subchapter 2 Public Auction

§ 66. Public auction: definition and special cases

(1) Public auction means a manner of releasing State assets for use or transferring State assets in which the contract is awarded to the person who agrees to the conditions of the auction, including any additional conditions stipulated as final, and bids the highest price.

(1¹) If several persons jointly make a bid at an auction, these persons may only exercise the right to acquire or use the assets jointly.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(1²) A participant of the auction is bound to the bid until the approval of the results of the auction. The person in whose favour the results of the auction are approved is bound to the bid until the execution of the agreement.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) State assets may be released for use, or sold, by means of a public auction conducted orally, by electronic means or in writing.

(3) An oral auction takes place at a set time and place at which participants have the possibility of registering themselves as participants of the auction in accordance with the conditions of the auction, having previously paid the participation fee and, if this is required, a security deposit, and make their bids on the spot.

(4) In an auction conducted in writing, the participants submit, in accordance with the conditions of the auction and by a set date, a written bid in a sealed envelope.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(5) In an auction conducted by electronic means, participants of the auction make their bids and communicate with the holder of the sale by means of a public data communication network and the usernames of and the bids made by the participants are accessible in real time to all participants of the auction by means of a data communication network.

(6) In a transfer, at an auction, of an immovable property which is zoned for agricultural and forestry use and contains a parcel of forest land whose area amounts to at least 0.5 ha, the owner of an adjacent immovable property, which is zoned for agricultural and forestry use and contains a parcel of forest land whose area amounts to at least 0.5 ha, who participated in the auction but was not awarded the contract, is entitled to acquire the immovable property which is the subject of the transfer at the price which was established in the auction, provided that owner, within five business days following communication of the results of the auction, submits a written notice of using that entitlement. If the immovable property of the entitled person consists of several cadastral units, a cadastral unit which contains a parcel of forest land whose area amounts to at least 0.5 ha must be immediately adjacent to the immovable property which is the subject of the transfer. If there are several persons who are entitled under this subsection, preference is given to the owner who made the highest bid.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(7) When an immovable property which is zoned for agricultural and forestry use and is used for agricultural purposes is being transferred or released for use, the person who was the last, before the auction, to use, on the basis of an agricultural use agreement, the land to be transferred or released for use or who, under § 34¹ of the Land Reform Act, held the right to use such land, and who participated in the auction but was not awarded the contract is entitled to acquire the property or receive it for use at the price which was established in the auction, provided that person, within five business days following communication of the results of the auction, declares in writing that they are using that entitlement. If there are several persons who are entitled under this subsection, preference is given to the person who used the larger part of the property that is being transferred or released for use. If a person entitled under subsection 6 of this section and a person entitled under this subsection wish to

exercise their respective entitlements in respect of the property at the same time, preference is given to the latter. A person does not have the entitlement provided for under this subsection if the corresponding use agreement that had been concluded with them has been terminated due to its breach by the user.
[RT I, 19.05.2020, 2 – entry into force 29.05.2020]

(7¹) Subsection 7 of this section does not apply to a person who was using the land, which was encumbered with usufruct as part of the land reform, on the ground provided for in subsection 6² of § 34¹ of the Land Reform Act.
[RT I, 19.05.2020, 2 – entry into force 29.05.2020]

(8) If, for reasons to do with the person entitled under subsection 6 or 7 of this section, the transfer of the immovable property fails to be effected within the time-limit established by the seller, the person who was awarded the contract in the auction is entitled to acquire the property within the time-limit established by the seller.

(9) [Repealed – RT I, 05.04.2013, 2 – entry into force 15.04.2013]

§ 67. Notification of the results of a public auction

(1) The registration number of and the amount bid by the person who won an oral auction and the person who made the second best bid is announced by the person conducting the auction in the room in which the auction was held after the winner has been established.

(2) The name and the result of the bid or tender of the person who won an auction conducted in writing and the person who made the second best bid are communicated by the arranging body in writing within five business days after the holding of the auction to all persons who submitted a bid in the auction.

(3) The results of an auction conducted by electronic means are notified to all participants of the auction in a public data communication network at the address at which the auction was held immediately after the winner of the auction has been established.

§ 68. Approval of the results of a public auction

(1) The deciding body decides to approve or refuse to approve, including due to declaring the auction a failure, the results of a public auction within 20 business days following communication of the results of the auction.

(2) When releasing State assets for use or when transferring State assets, the deciding body is entitled to declare a public auction a failure and to refuse to approve the results of the auction if:

- 1) no one registers as a participant of the auction or none of the registered participants attended the oral auction;
- 2) no bids, or no bids which met the requirements were submitted;
- 3) the participants of the auction did not abide by the instructions of the person who conducted the auction or infringed the rules of procedure of the auction;
- 4) it was revealed in the auction that the participants had colluded or engaged in concerted action, and this affected or may have significantly affected the results of the auction;
- 5) the winning bid in an auction in which no starting price was set is economically unacceptable to the State.

(3) In addition to the grounds provided in subsection 2 of this section, the deciding body refuses to approve the results of a public auction if:

- 1) in conducting the auction, the arranging body or the person who conducted the auction infringed the rules of procedure of the auction;
- 2) the procedure provided by legislation was infringed in the auction to such an extent that this affected the results of the auction;
- 3) the winner of an auction conducted in writing was not entitled to participate in the auction;
- 4) at least one of the participants who submitted a bid in an oral auction or an auction conducted by electronic means was not entitled to participate in the auction and the participation of that person or those persons significantly affected the results of the auction.

(4) When approval of the results of a public auction is refused, the reasons for the refusal are to be set out in writing.

(5) The decision approving the results of a public auction sets out the name of the winner of the auction and the amount bid by the winner. If the amount of the cash deposit in the auction was set at least at five per cent of the starting price for the bids, the decision also sets out the name of the person who made the second best bid, and the amount bid by that person.

(6) On the grounds provided in subsections 6 and 7 of § 66 of this Act, the deciding body approves the results of the auction in favour of the persons entitled under those sections.

(7) In the case described in subsection 8 of § 66 of this Act, the deciding body is entitled to repeal the decision approving the results in favour of the entitled person and to approve the results in favour of the person who made the highest bid in the auction.

(8) The decision must be delivered without delay to the persons whose rights and obligations it concerns. The operative part of the decision is published on the public website of the person who conducted the auction.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 69. Decision following refusal to approve the results of a public auction and declaration of invalidity of the results of the auction

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(1) Within one month following refusal to approve the results of a public auction or declaration of invalidity of the results of the auction, the deciding body decides whether to hold a new auction, or to postpone or forgo the new auction.

(2) In a situation mentioned in subsection 3 of § 30 of this Act, when refusing to approve the results of a public auction, the deciding body has a right to decide the transfer of an item of movable property by discretionary decision, provided the price of the transfer is likely to fall below 30,000 euros.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 70. Operations concerning securities

(1) The cash deposit paid by the person entitled to acquire or use the State assets is deemed to be a partial payment toward the purchase price or use fee. The valid letter of guarantee is returned to the person referred to in this subsection after payment of the purchase price or use fee but not before the conclusion of the real right contract.

(2) Within 10 business days following communication of the results of the auction, the arranging body returns the cash deposits of the other participants of the public auction. If, within this time-limit, it is not established in whose favour the results of the auction are approved, the cash deposits are returned to the persons referred to in this subsection within five business days following the approval or refusal to approve the results of the auction. Valid letters of guarantee are returned to other participants of the auction within the same time-limits.

(3) If the results of the auction are not approved or are declared invalid due to reasons dependent on the deciding or arranging body, the arranging body returns the cash deposits and valid letters of guarantee to the persons referred to in subsection 1 of this section within five business days following the refusal to approve the results of the auction or declaration of invalidity of the results of the auction.

(4) The cash deposit is not returned to a participant of a public auction whose actions resulted in the failure of the auction or a refusal to approve the results of the auction, and any guarantee submitted by the participant is called in.

(5) If the results of the auction are declared invalid due to reasons dependent on the person entitled to acquire or use the State assets as a result of the auction, the cash deposit is not returned to that person and any guarantee submitted by that person is called in.

(6) In the case of failure to return the cash deposit within the time-limit, the entitled person may demand payment of late interest at the rate of 0.1 per cent per day of the deposited cash amount which has not been returned.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 71. Evading the conclusion of the agreement

(1) The deciding body sets a time-limit for the conclusion of the agreement on the release of the assets for use or agreement on the transfer of the assets. The time-limit may be up to two months following approval of the results of the public auction. In cases where this is justified, the deciding body may extend that time-limit.

(2) When the conclusion of the agreement is being evaded, the deciding body may declare the results of the public auction invalid.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) If the winner of a public auction fails to conclude the agreement within the relevant time-limit, or fails to submit a guarantee to performing the agreement, the agreement may be concluded with the person who made the second best bid, provided the cash deposit was set at least at five per cent of the starting price for the bids. The arranging body sets a time-limit for concluding the agreement, which may be up to one month.

(4) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016]

Subchapter 3 Selective Tender

§ 72. Authority to hold a selective tender

(1) When releasing State assets for use, a selective tender is used where, in addition to the price, the fulfilment of additional conditions is important.

(2) Securities may be sold by selective tender only if the sale concerns shares in a State-owned company or shares which are freely transferable under the articles of association of the company.

(3) The agreement is concluded with the person whose tender has been declared the best by the deciding body upon considering the price which was bid as well as the fulfilment of the additional conditions. Additional conditions and price may be subject to negotiation with the tenderers.

(4) Any additional conditions must be amenable to objective assessment.

(5) The provisions in sections 68–71 of this Act apply to the procedure for selective tenders.

§ 73. Additional conditions of a selective tender

(1) Additional conditions in the sale or release for use of State assets may include the following:

- 1) the making of investments, including by way of increasing the share capital;
- 2) the obligation to use the assets for a specific purpose;
- 3) the maintenance of employment;
- 4) the creation of new jobs;
- 5) the submission and implementation of a technical or financial plan meeting the requirements presented;
- 6) compliance with environmental protection requirements;
- 7) other additional conditions whose fulfilment the deciding body considers important.

(2) In addition to the list in subsection 1 of this section, additional conditions to the release of State assets for use may take the form of:

- 1) an obligation imposed on the user regarding the assets which have been released for use;
- 2) an obligation imposed on the user to perform work for or provide services to the body which released the assets for use, provided the performance of the work or the provision of the services require special skills on the part of the user or are of a special nature.

(3) When releasing State assets for use, participants of a selective tender may be allowed to make proposals concerning specific technical or other details of the work or service, provided the participants are required to include in their tenders specific information concerning the technical and other specifications and projects that they propose.

Subchapter 4 Public Sale of Securities

§ 74. Public sale of securities

(1) The types of public sale of securities are as follows:

- 1) public offering at a predetermined price or at an equilibrium price established in the course of the offering (hereinafter, ‘public offering’);
- 2) the sale of securities in a regulated market.

(2) Public sale may be applied only in the case of securities which, under the terms of their emission, are freely transferable.

(3) A non-market transaction which is performed in the trading system of a regulated market and which concerns securities listed in the regulated market is also deemed a sale in the regulated market.

(4) When preparing a public sale, the holder of the sale:

- 1) in the case of a public offering with an equilibrium price, arranges the discovery of the minimum price;
- 2) in the case of a public offering at a predetermined price, arranges for the determination of the selling price;
- 3) arranges the preparation and registration of the prospectus;
- 4) where this is needful, enters into an agreement with a third party on preparing and conducting the public sale.

(5) Provided the Government of the Republic consents to this, the holder of the sale may postpone or stop the sale if the conditions in the regulated market in which the securities have been accepted for trading or are intended to be so accepted have become significantly less advantageous compared to the conditions which prevailed at the time when the sale was decided, and going forward with the sale would cause the State more harm than postponing or stopping the sale.

(6) Within 15 business days following the expiration of the time-limit for submission of offers, the holder of the sale decides, by directive, to approve or refuse to approve the results of the public offering.

(7) The holder of the sale refuses to approve the results of the public offering if, in conducting the sale, the procedure established in legislation has been infringed, or the conditions of the sale have been derogated from.

(8) In the case described in subsection 7 of this section, the sums transferred by the offerors as payment for the purchase of the securities are returned to those offerors within 20 business days following the date on which the decision to refuse to approve the results of the public offering was made. If the holder of the sale does not return the said sums within the time-limit, it is liable to pay late interest on those sums to the offerors at the rate of 0.1 per cent per day.

(9) Within 30 days following approval of the results of the public offering, the holder of the sale submits to the Government of the Republic an information report concerning the results of the sale and the expenses related to the sale.

Subchapter 5

Special Rules Governing the Encumbering of Immovable Property with a Superficies Interest and Transferring Immovable Property by Discretionary Decision for the Purpose of Developing the Business Environment and for Permitting Significant Investments for the Development of the Estonian Economy

[RT I, 28.06.2016, 1 - entry into force 01.07.2016]

§ 74¹. Principles of encumbering immovable property with a superficies interest and of transferring immovable property by discretionary decision for the purpose of developing the business environment

(1) A State-owned immovable property that is suitable for developing the business environment (hereinafter in this Subchapter, the 'business environment immovable') may, by discretionary decision, be encumbered with a superficies interest or transferred to a local authority or undertaking for permitting significant investments for the development of the Estonian economy. The investment made by the local authority or undertaking must generate economic value added, facilitate regional and socio-economic development and promote environmental soundness.

(2) The provisions set out in this Subchapter in respect of undertakings also apply to foundations and non-profit organizations.

(3) The Government of the Republic makes regulations to establish the procedure and requirements for applying for and deciding the encumbering of a State-owned immovable property that is suitable for developing the business environment with a superficies interest and for transfers of such property by discretionary decision.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 74². Requirements for undertakings applying for business environment immovables

(1) An undertaking submitting an application for a business environment immovable must comply with the following requirements:

- 1) the applicant is recorded in the Estonian commercial register or register of non-profit organizations and foundations;
- 2) under applicable legislation, the applicant has no unpaid national taxes or unpaid local taxes attaching to the applicant's place of residence or seat or unpaid social insurance contributions or interest charged on overdue tax payments (hereinafter, the 'tax arrears') as of the date of submission of the application and the payment of tax arrears has not been staggered over a longer period than six months as of the date of submission of the application, unless the staggered payment of tax arrears has been guaranteed in full;
- 3) the applicant or the person controlling the applicant must not be bankrupt or under liquidation.

(2) For the purposes of this Act, tax arrears means overdue tax payments in the amount exceeding 100 euros.
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 74³. Applying for encumbering a business environment immovable with a superficies interest and for the transfer of such an immovable by discretionary decision

(1) Applications for encumbering a business environment immovable with a superficies interest or for transferring such an immovable by discretionary decision are submitted to the Ministry of Economic Affairs and Communications.

(2) The Ministry of Economic Affairs and Communications assesses the conformity of the applicant and its application to the requirements arising from this Act and from the regulations of the Government of the Republic enacted under § 74¹(3) of this Act. If the assessment of conformity to the requirements reveals deficiencies, the applicant will be notified without delay and a time-limit will be set for eliminating the deficiencies. The time-limit for processing the application may be extended by the time allocated for eliminating the deficiencies. If the applicant fails to eliminate the deficiencies in time, the Ministry of Economic Affairs and Communications may refuse to consider the application.

(3) The Ministry of Economic Affairs and Communications may cede the functions of receiving the applications for business environment immovables, of assessing the conformity to requirements and of processing of applications to a legal person in private law in accordance with the procedure established in the Administrative Cooperation Act.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 74⁴. Deciding on the encumbering of a business environment immovable with a superficies interest and on the transfer of such an immovable by discretionary decision

(1) The applications that meet the requirements arising from the regulations of the Government of the Republic enacted under § 74¹(3) of this Act are assessed by a committee convened by the Minister in charge of the policy sector (hereinafter, the 'committee') who, on the basis of the assessment results, addresses a recommendation to accept or reject the application to the administrator of State assets who administers the immovable property referred to in the application.

(2) The committee is composed of representatives of the Ministry of Economic Affairs and Communications, Ministry of Finance and Ministry of the Environment, and where necessary, of representatives of other administrators of State assets who administer immovable properties whose encumbering with a superficies interest by discretionary decision or whose transfer by such decision the application concerns.

(3) When the committee makes its recommendation to accept or reject the application, the administrator of State assets who administers the immovable property in question may approach the Government of the Republic in order to obtain the consent for encumbering the immovable property with a superficies interest, or for its transfer, by discretionary decision.

(4) If the administrator of the immovable property to be encumbered by discretionary decision with a superficies interest or to be transferred by such decision is not the Ministry of Economic Affairs and Communications, the Government of the Republic, when granting the consent for encumbering the immovable property with a superficies interest or for its transfer, also decides the ceding of the property to the Ministry of Economic Affairs and Communications.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 74⁵. Terms and conditions of an agreement, concluded by discretionary decision, on granting a superficies interest in respect of a business environment immovable, and on the transfer of a business environment immovable

(1) In addition to what is required by sections 27 and 49 of this Act, the administrator of State assets stipulates in an agreement on granting the superficies interest in respect of a business environment immovable or in an agreement on the transfer of a business environment immovable the requirements for the use of the immovable according to its intended purpose, the time-limit for the performance of the agreed-upon tasks, the manner of and time-limits for submitting reports and the monitoring of the performance of the agreement.

(2) When an item of immovable property is encumbered with a superficies interest by discretionary decision, the term of the superficies interest for the designated purpose of the immovable property set out in the agreement must be at least 10 years after the superficies interest is entered in the Land Register.

(3) When an item of immovable property is transferred by discretionary decision, the acquired immovable property must, after the passing of ownership, remain in the ownership of the undertaking or local authority and be used for its designated purpose set out in the agreement for at least 10 years.

(4) A business environment immovable is transferred by discretionary decision to or is encumbered with a superficies interest in favour of a local authority without charge or, in favour of an undertaking, for a payment corresponding to its usual value.

(5) The Ministry of Economic Affairs and Communications may cede the functions of monitoring the performance of agreements on granting the superficies interest in respect of State assets and agreements on transfer of State assets to a legal person in private law in accordance with the procedure established in the Administrative Cooperation Act.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

Chapter 6

PARTICIPATION OF THE STATE IN LEGAL PERSONS IN PRIVATE LAW

Subchapter 1

Exercising the Rights of the Shareholder

§ 75. Acquisition of shares and requirements in respect of the Articles of Association

(1) When the State participates in founding a company, or acquires a holding in a company in which the State holds no shares, the holding of the State may not be less than a minority interest.

(2) The provision of subsection 1 of this section does not apply:

1) to the acquisition of shares as a gift or as a result of succession;

2) when the holding is acquired for the purpose provided in clause 4 of subsection 1 of § 71 of the State Budget Act;

[RT I, 13.03.2014, 2 – entry into force 23.03.2014]

3) to the acquisition of a holding as a result of a barter transaction;

4) when the holding is acquired in accordance with a law or resolution of the *Riigikogu*;

5) when a holding in a legal person in private law with limited liability which is registered in a foreign state is acquired so that an Estonian foreign mission can obtain the right to use enclosed premises.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) When the State has at least the required interest in a company, the holding administrator, in exercising its founder's or shareholder's rights, must take steps to ensure that the Articles of Association of the company state the company's area of activity and aim.

(3¹) The administrator of a partially State-owned company which for the purposes of the State Budget Act is part of central government must, when exercising its founder's or shareholder's rights, take steps to ensure that the following specific requirements are reflected in the articles of association of the company:

1) all of the company's receipts and expenditures are reflected in a balanced budget which is drawn up in conformity with the company's financial plan, with the rules concerning budget position set out in § 6 of the State Budget Act, with the rule concerning net debt set out in § 10 of the same Act, and with any limitations established in accordance with § 11 of the same Act;

2) each year, the company draws up and presents, in accordance with the rules set out in § 12 of the State Budget Act, a financial plan to serve as the basis for the preparation of the company's budget.

[RT I, 13.03.2014, 2 – entry into force 23.03.2014]

(4) Where this is justified, the holding administrator, when founding a partially State-owned company, or acquiring a holding in a company in which the State held no shares, must take steps to ensure that the following specific requirements are reflected in the articles of association of the company:

1) a representation requirement that is greater than the one specified in subsection 2 of § 170 and in subsection 1 of § 297 of the Commercial Code;

2) a majority requirement that is greater than the one specified in subsection 1 and 2 of § 174 and in subsection 1 of § 299 of the Commercial Code.

(5) When it is necessary to increase the share capital of the company, the holding administrator must consider whether it may be expedient to seek an emission of preferential shares.

(6) In observing the obligations provided in subsection 4 and 5 of this section, the holding administrator must, having regard to the size of the State's holding, avoid the creation of disproportionate entitlements.

§ 76. Competence of the Government of the Republic

(1) As a person exercising the founder's rights, a Minister may, within his or her competence and following the procedure provided by law, decide the founding of a partially State-owned company or become a shareholder of a company in which the State acquires a holding which confers at least a minority interest, or a holding whose

nominal value is at least 1,000,000 euros, only in accordance with an authorization from the Government of the Republic.

(2) The decision to found a partially State-owned company or acquire a holding in a company must, among other things and following the provision in subsection 2 of § 10 of this Act, define the purpose of the State's participation in the company.

(3) The administrator of the holding in a company referred to in subsection 1 of this section may make decisions or vote in a general meeting of the shareholders only in accordance with the authorization from Government of the Republic in the following matters:

- 1) winding up the company;
- 2) merging the company with a company which is not part of the same consolidation group, or dividing the company;
- 3) transforming the company;
- 4) the company's issuing of convertible debentures, increasing or decreasing the share capital;
- 5) acquiring new shares or increasing the nominal value of the share in a private limited company, among other things by way of capitalisation of reserves; waiving the right of pre-emption in respect of subscribing for shares in a public limited company or in respect of increasing the nominal value of the share in a private limited company, or using such a right of pre-emption to an extent that falls below that which is possible;
- 6) amending the articles of association, when this entails changes in the rights related to the holding;
- 7) entry into, modification or termination of an agreement between the shareholders.

(4) Where the holding administrator requests this, the Government of the Republic may issue instructions and guidelines to the administrator also in regard to matters not referred to in subsection 3 of this section.

(5) The Government of the Republic makes the decisions referred to in subsections 1, 3 and 4 of this section at the proposal of the holding administrator or the Minister representing the ministry which seeks the administration of the holding. The matter may also be raised for discussion by another member of the Government of the Republic.

(6) For the making of the decisions referred to in subsections 2 and 3 of this section, unless the relevant documents can be accessed by using the central database of the Registry Department of the Courts, the administrator of the shares submits to the Government of the Republic the following:

- 1) the company's articles of association and memorandum of association;
- 2) where the company has another founder who is a legal person in private law, its audited annual report for the previous financial year.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(7) For the making of the decisions referred to in clauses 2, 3 and 5 of subsection 3 of this section, in addition to those provided for in subsection 6 of this section, the administrator of the shares submits to the Government of the Republic the following particulars:

- 1) the purpose of participation in the company and its relationship with the development strategy established for the area, and a reference to the specific strategic aim or measure;
- 2) the position of the ministry whose area of government includes matters that the company to which assets are ceded is involved in or will be involved in;
- 3) the strategy for the next four years, the investment plan and financial forecasts approved by the company's supervisory board, including the income statement, balance sheet and cash flow statement as of the end of the previous financial year;
- 4) in the case referred to in clause 5 of subsection 3 of this section, the reason for the increase of share capital and the relevant financial and profitability calculations.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(8) The requirements of the increase of share capital of the company and of the acquisition of new share in the case of such increase, provided in clauses 4 and 5 of subsection 3 of this section, are not applied in the case referred to in clause 21 of subsection 4 of § 37 of this Act. In such a case, if the share capital is increased, the administrator of the new shares is the Ministry of Finance.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 77. Dividend

(1) If the State holds at least a required interest in a company, the Government of the Republic, at the proposal of the Minister in charge of the policy sector, approves the amount or rate of the dividend which serves as the instruction to the holding administrator in voting in the general meeting of the shareholders.

(2) The holding administrator submits to the Minister in charge of the policy sector a proposal regarding the amount or rate of the dividend referred to in subsection 1 of this section together with the report which is mentioned in subsection 2 of § 98 of this Act.

(3) When extraordinary circumstances arise, the holding administrator may submit to the Minister in charge of the policy sector a reasoned request to propose to the Government of the Republic to adjust the amount of rate mentioned in subsection 1 of this section. The said request may also be made by the Minister in charge of the policy sector.

(4) In the case of a company which does not fall under subsection 1 of this section, when the holding administrator receives the notice convening a general meeting of the shareholders, he or she must consult the Ministry of Finance without delay concerning the rate or amount of the dividend.

Subchapter 2

Exercising Founder's and Membership Rights in a Foundation or Non-Profit Association

§ 78. Competence of the Government of the Republic

(1) The person who exercises founder's rights may, within his or her competence and following the procedure provided by law decide, only in accordance with an authorization from the Government of the Republic:

- 1) the founding of a State foundation or foundation whose founders include the State;
- 2) the division, winding up or merger with another foundation of a foundation established by the State;
- 3) the acquisition or transfer by a State foundation of a qualifying holding in a company, or the participation of a State foundation in the founding of another foundation.

(2) The person who exercises membership rights may vote, only in accordance with an authorization from the Government of the Republic:

- 1) at the founding or winding up of a non-profit association;
- 2) in becoming a member of or terminating the membership in a non-profit association;
- 3) in merging or dividing a non-profit association.

(3) The decision to found a foundation whose several founders include the State or a non-profit association, or to become a member of a non-profit association must, among other things and following the provision of subsection 2 of § 10 of this Act, determine the purpose of the State's participation in the foundation or non-profit association.

(4) At the proposal of the person exercising founder's or member's rights, the Government of the Republic may also issue instructions and guidelines in matters not mentioned in subsections 1 and 2 of this section.

(5) The Government of the Republic makes the decisions mentioned in subsections 1, 2 and 4 of this section at the proposal of the person who exercises founder's or member's rights or who seeks such rights. The matter may also be raised for discussion by another member of the Government of the Republic.

(6) The provisions of subsections 2–4 of this section do not apply to participation in the non-profit associations referred to in subsections 1 and 2 of § 6 of this Act.

(7) For the making of the decisions referred to in subsections 1 and 2 of this section, unless the relevant documents are accessible using the central database of the Registry Department of the Courts, the person exercising founder's rights in a foundation submits to the Government of the Republic the following:

- 1) the foundation's articles of association or a draft version thereof, the foundation agreement and memorandum of association or draft versions thereof;
- 2) other agreements related to the founding, or their draft versions;
- 3) where the foundation has another founder who is a legal person in private law, its audited annual report for the previous financial year.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(8) For the making of the decisions referred to in subsections 1 and 2 of this section, the person exercising founder's rights in a foundation or membership rights in a non-profit association submits to the Government of the Republic the following particulars:

- 1) the purpose of participation in the foundation or non-profit association and its relationship with the development strategy established for the area, and a reference to the specific strategic aim or measure;
- 2) the position of the ministry whose area of government includes matters that the foundation or non-profit association to which assets are ceded is involved in or will be involved in;
- 3) the strategy for the next four years, the investment plan and financial forecasts approved by the foundation's supervisory board or the authorised body of the non-profit association, including the income statement, balance sheet and cash flow statement as of the end of the previous financial year;
- 4) in the case of increase of the foundation's capital, the reason for the increase of the capital and the relevant financial and profitability calculations.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 79. Requirements in regard to the articles of association of a foundation

(1) When the person to exercise founder's rights engages in the exercise of those rights, he or she must take steps to ensure that the following specific requirements are reflected in the articles of association of a foundation established by the State:

1) a State foundation keeps all of its funds in the Ministry of Finance, makes payments from its funds through the Ministry of Finance, and may hold accounts in credit or financial institutions only upon agreement with the Ministry of Finance;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

2) a foundation whose several founders include the State participates in and acquires and transfers holdings in companies, founds other foundations, is merged with another foundation or divided only in accordance with a prior unanimous decision of all the founders;

3) a foundation established by the State may borrow money and enter into financial lease agreements only in accordance with a unanimous decision of all the members of its supervisory board;

[RT I 2010, 38, 233 – entry into force 01.07.2010]

4) a foundation whose several founders include the State only participates in a company whose activities are directly related to attaining the aim of the foundation;

5) in the agreement on the acquisition of an immovable or superficies interest for no charge, a foundation established by the State assumes the obligation to use the assets for a specific purpose, and to pay the contractual penalty, in accordance with the provisions in § 33 of this Act;

6) a foundation whose several founders include the State is wound up or merged with another foundation when this is demanded by the State;

7) a foundation whose founders include the State may not be wound up or merged with another foundation without the consent of the State;

[RT I, 13.03.2014, 2 – entry into force 23.03.2014]

8) a State foundation may not grant loans, guarantee any obligations of third parties, enter into deposit agreements with credit or financial institutions, or invest its funds in financial instruments, including securities, except where this is authorised in the articles of association.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) The person exercising the founder's rights in a foundation established by the State which for the purposes of the State Budget Act is part of central government must, when exercising those rights, take steps to ensure that the following specific requirements are reflected in the articles of association of the foundation:

1) all of the foundation's receipts and expenditures are reflected in a balanced budget which is drawn up in conformity with the foundation's financial plan, with the rules concerning budget position set out in § 6 of the State Budget Act, with the rule concerning net debt set out in § 10 of the same Act, and with any limitations established in accordance with § 11 of the same Act;

2) each year, the foundation draws up and presents, in accordance with the rules set out in § 12 of the State Budget Act, a financial plan to serve as the basis for the preparation of the foundation's budget.

[RT I, 13.03.2014, 2 – entry into force 23.03.2014]

Subchapter 3 Management and Supervision

§ 80. Requirements to candidates for membership of a governing body

(1) The holding administrator and the Minister in charge of the policy sector as well as the person exercising the founder's or membership rights may not appoint to the governing body of a legal person in private law, or propose to appoint as a member of such a body, or vote in support of the appointment of, any person who falls under subsections 2–4 of this section or who does not fulfil the following requirements:

1) possession of the knowledge and experience required to perform the duties of the office, taking into account the area of activity of the legal person and the area of finance;

2) capability of acting with the degree of care expected of him or her and in accordance with the requirements of the office, taking into account the aims and interests of the legal person, and the need to ensure effective protection of the interests of the State as the shareholder, founder or member.

(2) When exercising its founder's or shareholder's rights, the holding administrator must take steps to ensure that the articles of association of the partially State-owned company contain provisions that disqualify from membership in the supervisory board of that company any person who has a substantive conflict of interest with the company which, among other things, may emanate from the fact that the person, or another party related to that person:

1) is a self-employed person who operates in the same area of activity as the partially State-owned company and who is not a shareholder of that company;

2) is a partner of a general partnership, or the general partner of a limited partnership, which operates in the same area of activity as the partially State-owned company, if he or she is not a shareholder of that company;

3) owns a qualifying holding, within the meaning of § 9 of the Securities Market Act, in a company which operates in the same area of activity as the partially State-owned company, and which is not a shareholder of that company;

4) is a member of the governing body of another company which operates in the same area of activity as the partially State-owned company, except where the other company is a partially State-owned company, or a company which belongs to the same group as that partially State-owned company, or a company which is a shareholder of the partially State-owned company;

5) has substantial business interests in relation to the partially State-owned company, which among other things are reflected in owning a qualifying holding in or being a member of the governing body of a legal person which is a significant buyer of goods from or seller of goods to, or supplier of services to or user of services of, the partially State-owned company.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(3) When exercising his or her founder's rights, the person exercising those rights must take steps to ensure that the articles of association of the foundation established by the State contain provisions that disqualify from membership in the supervisory board of that foundation any person who has a substantive conflict of interest with the foundation which, among other things, may emanate from the fact that the person, or another party related to that person:

1) is a self-employed person who is engaged in the same economic activity as the foundation established by the State and who is not a co-founder of that foundation;

2) is a partner of a general partnership, or the general partner of a limited partnership, which is engaged in the same economic activity as the foundation established by the State, where neither the person nor the general or limited partnership of which that person is a partner is a co-founder of that foundation;

3) owns a qualifying holding, within the meaning of § 9 of the Securities Market Act, in a company which is engaged in the same economic activity as the foundation established by the State, where neither the person nor the company in which that person owns the qualifying holding is a co-founder of that foundation;

4) is a member of the governing body of a company which operates in the same area of activity as the foundation established by the State, except where that company is a partially State-owned company, or a company which belongs to the same group as the partially State-owned company, or a company which is a co-founder of the foundation established by the State;

5) has substantial business interests in relation to the foundation established by the State, which among other things are reflected in owning a qualifying holding in or being a member of the governing body of a legal person which is a significant buyer of goods from or seller of goods to, or supplier of services to or user of services of, the foundation established by the State.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(4) When exercising its founder's or shareholder's rights, the holding administrator and the person exercising the founder's rights must take steps to ensure that the articles of association of the company or foundation contain provisions that disqualify from membership in the governing body of the company or foundation any person:

1) whose culpable acts or omissions have resulted in the bankruptcy of any person;

2) whose culpable acts or omissions have resulted in the withdrawal of an authorization issued to a legal person;

3) on whom the disqualification from holding director's, liquidator's or registered representative's positions and from pursuing a business as a self-employed person has been imposed;

4) whose culpable acts or omissions have caused harm to a legal person;

5) who has been convicted of an economic criminal offence or of a criminal offence related to the office held, or of a criminal offence against property;

6) [repealed – RT I, 06.07.2017, 3 – entry into force 16.07.2017].

(5) When exercising its founder's or shareholder's rights, the holding administrator and the person exercising the founder's rights must take steps to ensure that the articles of association of the company or the foundation established by the State stipulate that:

1) the restrictions listed in points 1–4 of subsection 4 of this section continue to apply for five years after the declaration of bankruptcy, the withdrawal of the activity licence, the expiration of the disqualification from holding director's, liquidator's or registered representative's positions and from pursuing a business as a self-employed person, or after the payment of compensation for the harm caused;

2) the disqualification provided in clause 5 of subsection 4 of this section does not apply to a person whose conviction has been spent.

(6) For the purposes of this Act, 'related party' means the spouse, parent, child, grandchild and any party who is related to the person referred to in subsection 2 of this section by having a common household.

[RT I, 06.07.3027, 3 – entry into force 16.07.2017]

§ 80¹. Appointments Committee

(1) For the making of the proposals concerning appointments of members of supervisory boards of partially State-owned companies, the Government of the Republic forms the Appointments Committee.

(2) The task of the Appointments Committee is, having regard to the specifics of the partially State-owned company, to make proposals to the administrator of the holding in that company concerning:

1) the selection of candidates for membership, including chairmanship, in the supervisory board, and concerning the recalling of members from that board;

2) the number of members in the supervisory board, and the duration of the members' mandate;

3) the rate of remuneration payable to members of the supervisory board.

(3) When making the proposals referred to in subsection 2 of this section, the Appointments Committee must have regard to the requirements provided with respect to members of the supervisory board in § 80 of this Act.

(4) The right to propose appointment of the four members of the Appointments Committee is vested in an organization that represents the private sector and that is designated by the Government of the Republic, the Minister in charge of the policy sector and two ministers designated by the Prime Minister.

(5) The members of the Appointments Committee referred to in subsection 4 of this section:

1) are recognized business or management experts who have an extended and international experience and an unblemished reputation in their specialism and in business;

2) have not held membership of the Appointments Committee during the previous three years;

3) have no substantive conflict of interest with the partially State-owned company;

4) undertake to keep confidential any business secrets or personal information that they become privy to as part of their work in the Appointments Committee;

5) have submitted, to the Minister in charge of the policy sector, a declaration of interests within the meaning of the Anti-Corruption Act.

(6) In addition to the members referred to in subsection 4 of this section, the Appointments Committee includes the following ex officio members:

1) the Secretary-General of the Ministry of Finance;

2) the Secretary-General of the ministry that administers the holding in the partially State-owned company, in discussions concerning the supervisory board of that company;

3) the Secretary-General of the Ministry of Economic Affairs and Communications, in discussions concerning any members of the supervisory board of any partially State-owned company administered by the Ministry of Finance, or in discussions concerning the Committee's work arrangements.

(7) The Chair of the Appointments Committee is elected by members of the Committee from among the members referred to in subsection 4 of this Act.

(8) To execute its tasks, the Appointments Committee:

1) approves the Rules of Procedure of the Committee, laying down at least the form and frequency of its meetings and the principles for the preparation of items on the agenda of Committee meetings and for the making of decisions;

2) having regard to the specifics and the needs of the company, carries out analyses concerning the competencies that individuals participating in the supervisory board should possess;

3) assesses the suitability of candidates to the supervisory board, including the absence of conflicts of interest;

4) where necessary, involves representatives of non-governmental organizations, experts of relevant fields and other individuals in the preparation of analyses and the drawing up of assessments.

(9) The members of the Appointments Committee referred to in subsection 4 of this section are appointed for three years by order of the Government of the Republic.

(10) The Government of the Republic recalls any member of the Appointments Committee referred to in subsection 4 of this section before the expiry of his or her mandate if the member is permanently unable to perform Committee members' duties or if circumstances have come to light that would have precluded his or her appointment as member of the Committee.

(11) The members of the Appointments Committee referred to in subsection 4 of this section may, by decision of the Government of the Republic, be provided with remuneration for participation in the meetings of the Committee and be paid compensation for justified expenses incurred in order to participate in those meetings. [RT I, 06.07.2017, 3 – entry into force 16.07.2017]

§ 81. Appointing and recalling members of the Supervisory Board

(1) When exercising its founder's, membership or shareholder's rights, the holding administrator and the person exercising the founder's or membership rights must take steps to ensure that:

1) the articles of association of a foundation established by the State stipulate that members of the supervisory board are appointed and recalled by decisions of the founders in accordance with the provisions in the articles of association concerning the allocation of supervisory board appointments to each founder;

2) the articles of association of a non-profit association of which the State is a member stipulate that in a meeting of the members, the proposal to appoint to the governing body of the association, or to recall from such a body, is made by the members of the association;

- 3) the articles of association of a partially State-owned company in which the State is not the sole shareholder stipulate that the holding administrator is entitled to make the proposal to appoint to or recall from the supervisory board at least in regard to the number of members of the supervisory board that is proportional to the State's holding;
- 4) the articles of association of a partially State-owned company in which the State does not hold a required interest stipulate, in accordance with subsection 2 of § 319, that where this is expedient, some of the members of the supervisory board are appointed and recalled by the holding administrator.

(1¹) The holding administrator must base their actions on the proposal of the Appointments Committee:

- 1) when selecting or recalling members of the supervisory board of a partially State-owned company;
- 2) concerning the number of members of the supervisory board of a partially State-owned company and the duration of their mandate.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(1²) The holding administrator has a right, in justified cases, to disagree with the proposal of the Appointments Committee. In the case of disagreement with the proposal concerning the selection or recall of a member of the supervisory board, the Appointments Committee makes a new proposal to the holding administrator within 15 days from learning of the disagreement.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(2) [Repealed – RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(3) [Repealed – RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(4) If the person exercising the founder's rights in a foundation established by the State is entitled to appoint more than one member of the supervisory board of the foundation, he or she appoints at least one of these members at the proposal of the Minister in charge of the policy sector.

[RT I, 29.06.2014, 109 – entry into force 01.07.2014, in accordance with subsection 4 of § 107³ of the Government of the Republic Act, the words 'Minister of Finance' have been replaced by 'Minister in charge of the policy sector']

§ 82. Exchange of information

(1) The administrator of the State's holding transmits to the Minister in charge of the policy sector for information a copy of any decisions of the shareholders and of the minutes of the general meetings of the shareholders, which show the activities of the holding administrator in exercising shareholder's or founder's rights in the partially State-owned company.

(2) The person exercising the founder's rights in a foundation established by the State transmits to the Minister in charge of the policy sector for information a copy of any decision concerning the appointment or recalling of any members of the supervisory board of the foundation, and of any other decision made by the founders of the foundation established by the State.

(3) The copies of the decisions and other documents listed in subsections 1 and 2 of this section are transmitted within five business days following the making of the decision, the approval of the minutes or the execution of the document.

§ 83. Submission of information by candidates for membership in the supervisory board

(1) The holding administrator, the person exercising the founder's or membership rights and the Minister in charge of the policy sector may, in accordance with § 80 of this Act, appoint or, in the cases listed in § 81, propose to appoint, as a member of the supervisory board only a candidate who:

1) submits a written declaration to the effect that he or she has perused the requirements provided in legislation in regard to members of governing bodies of legal persons in private law, including the notification obligations listed in § 84, and that he or she meets those requirements and undertakes to observe them;

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

2) submits the particulars listed in subsection 2 of this section.

(2) The candidate referred to in subsection 1 of this section submits the following particulars:

1) first name and surname, personal identification code or, in the absence of such a code, the date of birth, the educational qualifications acquired and the contact particulars, including the residential address;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

1¹) first name and surname, personal identification code or, in the absence of such a code, the date of birth, of any related party;

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

2) a full overview of the employment positions and offices held during the last five years together with the corresponding time periods and the employment position or office held by any related party at the time the particulars are submitted, including particulars concerning membership in a governing body of a legal person in private law;

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

3) information concerning legal persons which were declared bankrupt or wound up by a court during the last five years and in which his or her participation at the time of the declaration of bankruptcy or of being wound up by the court amounted to more than 10 per cent of the share capital or of whose supervisory or management board he or she was a member at that time;

4) information concerning any convictions recorded in the Criminal Records Database;

5) information concerning the companies in which he or she has had, or in which any related party has at the time the particulars are submitted, a qualifying holding, showing at least the total amount of the share capital and the size of the holding, and the revenue and the list of the areas of activity for the last completed financial year.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(3) The Minister in charge of the policy sector may make regulations to establish a detailed list of the particulars which are required under subsection 2 of this section, the format for the submission of the particulars and the format for the submission of the declaration mentioned in clause 1 of subsection 1.

§ 84. Obligations to be observed by members of the supervisory board

(1) When a candidate described in subsection 1 of § 83 of this Act has been appointed member of the supervisory board of a legal person in private law, he or she is obligated to notify the person who is referred to in subsection 1 of § 83 and who has appointed him or her to the supervisory board, or who has made the corresponding proposal, of the following facts:

1) of any plans in the company, foundation or non-profit association to undertake transactions which are beyond the ordinary course of its business or which may be of significant importance to the legal person in private law and may entail consequences;

2) of his or her work as a member of the supervisory board or other governing body, including to submit, in the format and within the time-limit requested by the person who appointed him or her, information concerning the work of the supervisory board or other governing body;

3) of any change in the particulars he or she has submitted in respect of himself or herself, or of himself or herself not meeting the requirements provided in respect of members of governing bodies of legal persons in private law.

(2) If the candidate described in subsection 1 of § 83 is appointed chair of the supervisory board of a partially State-owned company in which the State holds at least a required interest, or of a foundation established by the State, he or she is obligated to submit to the holding administrator or the person exercising the founder's rights and the Minister in charge of the policy sector:

1) the agenda of a meeting of the supervisory board at least three business days before the meeting is held and, within one month following the holding of the meeting, a copy of the minutes of the meeting together with the materials for the meeting;

2) in the case that a resolution of the supervisory board is adopted without calling a meeting of the board, the draft resolution of the board at the same time that it is transmitted to the members of the board, and the record of the vote or the results of the vote within five business days following the vote.

(3) If the candidate described in subsection 1 of § 83 is appointed member of the supervisory board of a company in which the State does not hold a required interest, he or she is obligated to submit to the holding administrator and the Minister in charge of the policy sector the agenda of a meeting of the supervisory board three business days before the meeting is held and, within three months following the holding of the meeting, the minutes of the meeting. If the supervisory board includes more than one such member, the holding administrator designates one member who was appointed to the supervisory board at his or her proposal to perform this obligation.

§ 85. Remuneration of members of the supervisory board

(1) When exercising founder's, membership or shareholder's rights, the holding administrator or the person exercising the founder's rights must take steps to ensure that the articles of association of a partially State-owned company or of a foundation established by the State reflect the following principles:

1) the amount of the remuneration payable to members of the supervisory board of a State-owned company and the procedure for the payment of such remuneration is decided by the holding administrator by means of a resolution of the sole shareholder, having regard to the specifics of the company;

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

2) the amount of the remuneration payable to members of the supervisory board of a company in which the State holds at least a required interest, but in which the State is not the sole shareholder, and the procedure for the payment of such remuneration is decided by the general meeting of the company, having regard to the specifics of the company;

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

3) the remuneration of members of the supervisory board of a State foundation is set by the person exercising the founder's rights;

4) the remuneration of members of the supervisory board of a foundation whose several founders include the State is set jointly by the founders;

- 5) unless this Act or the Government of the Republic Act provide otherwise, equal remuneration is set to the members of the supervisory boards of the companies and foundations mentioned in clauses 1–4 of this subsection. A higher remuneration may be set for the chair of the supervisory board. Additional remuneration may be set for a member of the supervisory board in relation to the participation of that member in the audit committee mentioned in the Authorized Public Accountants Act, or other body of the supervisory board;
- 6) when paying remuneration to a member of the supervisory board of the company or foundation mentioned in clauses 1–4, the member’s participation in the board’s meetings and in the work of bodies of the board is taken into account;
- 7) when recalling a member of the supervisory board of a company or foundation falling under clauses 1–4 from the supervisory board, no compensation is paid to the member;
- 8) when, in the case of a company or foundation falling under clauses 1–4, the obligation described in clause 1 or 2 of subsection 2 of § 84 of this Act is not complied with, the person or body which set the remuneration may suspend the payment of remuneration to the chair of the supervisory board, or decide to reduce such remuneration proportionately to the period during which the said obligation was not complied with;
[RT I, 06.07.2017, 3 – entry into force 16.07.2017]
- 9) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016].

(1¹) The ground for suspending the remuneration in accordance with clause 8 of subsection 1 of this section is the written notice of the person or body that set the remuneration addressed to the management board of the company or foundation, setting out the period for which the chair of the supervisory board is not to receive any remuneration. The proposal to suspend the payment of remuneration or reduce the remuneration payable to the chair of the supervisory board may also be made to the holding administrator or to the person exercising the founder's rights by the Minister in charge of the policy sector.
[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(1²) When deciding the amount of the remuneration payable to members of the supervisory board of a partially State-owned company, the holding administrator has regard to the proposal of the Appointments Committee.
[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(2) The Minister in charge of the policy sector makes regulations to establish specific procedures concerning remuneration of members of supervisory boards and the limit rates of that remuneration which the person exercising the founder’s rights must follow.
[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

§ 86. Remuneration of a member of the management board

When exercising founder’s or shareholder’s rights, the holding administrator and the person exercising the founder’s rights must take steps to ensure that the articles of association of any company in which the State holds at least a required interest, and the articles of association of any foundation established by the State stipulate the following principles:

- 1) remuneration may be paid to a member of the management board only in accordance with the director’s agreement concluded with that member. Where the member of the management board, in addition to the duties of the member of the management board of the company or foundation, carries out other tasks required by the company or foundation, such tasks may only be remunerated if this is stipulated in the director’s agreement;
- 2) additional remuneration may be paid to a member of the management board as a function of his or her performance. Reasons must be given for setting a specific amount of additional remuneration, having regard to the attainment of the objectives set to the company or foundation and any added value created, and the market share attained, by the company. The total amount of additional remuneration paid during the financial year may not exceed the amount equivalent to four times the average monthly remuneration paid to the member of the board in the previous financial year;
- 3) a member of the management board may be granted termination pay only where he or she is recalled from the board on the motion of the supervisory board before the expiration of his or her mandate. Termination pay may be granted in the amount equivalent to up to three months’ remuneration of the member of the management board as effective at the time of the recall.

§ 87. Internal control and internal audit

When exercising his or her founder’s or shareholder’s rights, the holding administrator and the person exercising the founder’s rights must take steps to ensure that the articles of association of a partially State-owned company or a foundation established by the State reflect the following principles:

- 1) a foundation established by the State and a company in which the State has at least a required interest, is under an obligation to ensure an operational system of internal control;
- 2) a company falling under clause 1 of this section is under an obligation to create a position of internal auditor or to commission the services of an internal auditor, provided that, on the balance sheet date of the reporting year, at least two of the following three consolidated indicators exceed the thresholds provided in this clause: sales revenue: six million euros, balance sheet total: three million euros and the number of employees: 75;
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]
- 3) a foundation referred to in clause 1 is under an obligation to create a position of internal auditor or to commission the services of an internal auditor, provided that, on the balance sheet date of the reporting year, the balance sheet total exceeds two million euros or the revenue of the reporting year exceeds two million euros;
[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

4) a company or foundation falling under clause 1 may forgo creating a position of internal auditor or commissioning the services of an internal auditor, if in the view of the supervisory board, this may prove economically expedient. The board's corresponding decision must be previously endorsed by the general meeting of the shareholders, the person exercising the rights of the founder of the foundation or all founders; [RT I, 28.06.2016, 1 – entry into force 01.07.2016]

5) the holding administrator or the person exercising the founder's rights is entitled to demand the carrying out of a special audit, and to use a unit of the agency which he or she presides over to carry out the audit.

§ 88. Special rules regarding the management of partially State-owned companies

(1) When exercising founder's or shareholder's rights, the holding administrator must take steps to ensure that the articles of association of a partially State-owned company stipulate the following requirements:

1) the articles of association of a company in which the State holds at least a required interest may not circumscribe the powers of the supervisory board provided in subsection 1 of § 317 of the Commercial Code;

2) a private limited company in which the State holds at least a required interest must have a supervisory board;

3) any company falling under clause 1 of this section must, when setting the number of members on the supervisory board, take into account the size and financial situation of the company and the need to ensure effective performance of the tasks provided in § 316 of the Commercial Code in regard to the supervisory board;

4) in any company falling under clause 1 of this section, the acquisition and transfer of a qualifying holding is to be decided by the general meeting of shareholders. A decision by the general meeting of the parent company is also required in order for its subsidiary to acquire or transfer a qualifying holding in another company;

5) in any company falling under clause 1, the general meeting of the shareholders must adopt management and reporting principles in respect of the company's subsidiaries;

6) the subsidiary of a company falling under clause 1 must, for certain decisions, obtain the consent of the general meeting of the shareholders or the supervisory board of the parent company, provided the general meeting of the shareholders has made the corresponding decision;

7) in any company falling under clause 1, the general meeting must adopt the rules of procedure of the supervisory board;

8) the supervisory board of a company falling under clause 1 must observe the requirements, established by the Minister in charge of the policy sector in accordance with subsection 3 of this section, concerning the drawing up of the minutes and the information to be recorded in the minutes of the supervisory board of any State-owned company or any foundation established by the State, and concerning the submission of the information listed in clauses 1 and 2 of subsection 2 of § 84 of this Act, provided such requirements have been established;

9) the right of another shareholder of a company falling under clause 1 to receive information concerning the agenda of the supervisory board and to peruse the minutes of the meetings of the supervisory board;

10) any company falling under clause 1 is under an obligation to implement, in its management practices, the good practice of company management and to describe the observance of such practice in a management report which is included in the annual report;

11) any company falling under clause 1 may award grants and make gifts only for research and development purposes in the company's area of activity, provided this is conducive to the attainment of the company's activity and financial goals and provided the company's articles of association provide a procedure for the payment of grants, including the principles for the payment of grants and the making of gifts, the conditions of making the payments, limit amounts or rates for the financial year and the procedure of making the corresponding decisions.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(2) When exercising founder's or shareholder's rights, the holding administrator must take steps to ensure that the procedure mentioned in clause 11 of subsection 1 of this section provides that:

1) during any calendar year, the State-owned company and a company in which the State holds at least a required interest, together with the subsidiaries of the aforementioned company which are part of the consolidation group of that company may give out grants and make gifts in the amount of up to 0.5 per cent of the average consolidated net profit of the company across the preceding three financial years;

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

2) information concerning the grants awarded and the gifts made is disseminated through the website of the company within three business days following the making of the corresponding decision, and the information remains publicly available on the website at least during five years following the end of grant payments or of the making of the gift;

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

3) the name or designation of the recipient of the grant, the sum of the grant and the justification showing how the grant is conducive to the attainment of the company's activity and financial goals are stated on the company's website.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(3) The Minister in charge of the policy sector may establish requirements regarding the information to be recorded in, and the format of, the minutes of the meeting of the supervisory board of any State-owned company or any foundation established by the State, as well as regarding the submission of the information listed in clauses 1 and 2 of subsection 2 of § 84 of this Act.

§ 89. Special rules regarding the management of foundations established by the State

(1) The person exercising the founder's rights must take steps to ensure that the provisions in the articles of association of the foundation established by the State comply with the following:

1) in determining the number of members of the supervisory board, the aims, assets and financial situation of the foundation must be taken into account, as well as the need to ensure efficient performance of the tasks of the supervisory board in planning and organising the work of the foundation and in supervising the work of the management board;

2) unless otherwise provided by law, members of the supervisory board are appointed exclusively by the founders. The articles may also stipulate that up to one-half of the representatives of the State may be appointed by the person exercising the founder's rights on the basis of nominations made by parties named in the articles of association of the foundation;

3) at least by the beginning of the financial year, the supervisory board approves the foundation's activity goals and budget for the beginning year;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

4) meetings of the supervisory board take place when required, but not less frequently than once every three months;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

5) the supervisory board must adopt its rules of procedure;

6) the supervisory board must observe the requirements established by the Minister in charge of the policy sector in accordance with subsection 3 of § 88 of this Act in regard to drawing up minutes, and the information to be recorded in the minutes, of the meetings of the supervisory boards of State-owned companies and foundations established by the State, as well as the requirements regarding submission of the information listed in points 1 and 2 of subsection 2 of § 84 of this Act, provided that such requirements have been enacted;

7) The minutes of the meeting of the supervisory board must be signed by all members of the board who attended the meeting;

8) any co-founder is entitled to receive information concerning the agenda of the supervisory board and to peruse the minutes of the meetings of the board;

9) the supervisory board must approve the annual report;

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

10) before approving the annual report, the supervisory board must hear the authorised public accountant who audited the annual accounts.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) [Repealed – RT I 2010, 38, 233 – entry into force 01.07.2010]

Chapter 7 ADMINISTRATION OF REAL PROPERTY

Subchapter 1 Special Rules Regarding Administration of Built-up Real Property

§ 90. Obligations of the administrator of State assets in administering a built-up immovable property

(1) Built-up real property for the purposes of this Act means an immovable property, or several immovable properties jointly, on which a building that the State owns or uses under a use agreement is located.

(2) The administrator of State assets arranges the accounting of the expenses related to built-up real property.

(3) The administrator of State assets arranges the maintenance of built-up real property in accordance with the good practices of real property maintenance.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 91. Receiving built-up real property for use

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(1) The Government of the Republic makes regulations to establish the terms and conditions of built-up real property use agreements and the principles to be observed when setting the use fee.

(2) When built-up real property is received for use, a lease agreement is concluded. Where warranted by valid reasons, other use agreements may be opted for.

(3) The regulations referred to in subsection 1 of this section is not applied in the following cases:

1) residential premises are received for use;

2) built-up real property is received for use for up to 100 calendar days or, in the case of use periods calculated in hours, for up to 1000 hours in a calendar year;

- 3) the floor area received for use is does not exceed 100 square metres;
- 4) the estimated use fee, including value-added tax, for the area to be received for use does not exceed 1000 euro per calendar year;
- 5) in other cases provided by law.

(4) When built-up real property is to be received for use for a term exceeding 10 years, the use agreement may only be executed subject to the consent of the Government of the Republic.

(5) The requirement set out in subsection 4 of this section is not applied when receiving property for use if:

- 1) receiving the property for use is connected to a utility network or structure or to a public road;
- 2) the immovable property or superficies interest is to be encumbered with an easement;
- 3) the person releasing the property for use is a State-owned company acting on the basis of an in-house transaction referred to in § 14¹ of the Public Procurements Act, or a State-owned company which acts under subsection 1 of § 92 of this Act, all of whose shares are held by the State and whose principal activity consists in the provision of real estate services to the State and advising the State in matters of real estate;
- 4) the use agreement has received the authorization to conclude a finance lease agreement under subsection 3 of § 60 of the State Budget Act.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

Subchapter 2

State-owned Company Providing Real Estate Services to the State

§ 92. Purpose of activities of a State-owned company providing real estate services to the State

(1) The Government of the Republic is entitled to designate a State-owned company to provide real estate services to the State and advise the State in matters concerning real estate (hereinafter, ‘the provider of real estate services’).

(2) The real estate services referred to in subsection 1 of this section are the provision of real property for the State’s use and the management, development, leasing, transferring and acquisition of the State’s real property.

§ 93. Special rules regarding the articles of association of a company providing real estate services to the State

(1) In addition to observing other provisions which, under this Act, are considered necessary in the articles of association of companies, the holding administrator, when exercising his or her founder’s or shareholder’s rights, must take steps to ensure that the articles of association of the provider of real estate services stipulate the following principles:

- 1) the aim of the provider of services is to supply the service of providing real property for the State’s use and the service of managing, developing, transferring and acquiring State assets, and of encumbering such assets with limited real rights, and to advise the State in matters related to real estate;
- 2) the provider of services establishes the procedure for using and disposing of real property, having regard to the principles set out in this Act;
- 3) the supplying of the service of providing real property for the State’s use must seek the best offer for the State and, where necessary, also broker offers of real properties belonging to other parties;
- 4) regular publication, on its website, of information concerning its work and submission of information to the State Real Property Register in accordance with this Act and with the constitutive regulations of the State Real Property Register, enacted under subsection 3 of § 95 of this Act;
- 5) in addition to the provision of subsection 1 of § 298 of the Commercial Code, it is in the competence of the general meeting of the shareholders to borrow money and give a security in the amount exceeding 65,000,000 euros, to encumber any immovable property provided for the State’s use with a mortgage, to transfer any immovable property provided for the State’s use, to acquire or transfer a qualifying holding in a company, as well as to authorise a subsidiary to resolve to undertake any of the aforementioned acts;
- 6) the general meeting of the shareholders may resolve to borrow money and give the security mentioned in clause 5, or to transfer an immovable property provided for the State’s use only in accordance with the authorization of the Government of the Republic;
- 7) the amount of equity capital of the provider of the services must be at least 30 per cent of the annual weighted balance sheet total. The general meeting may resolve that the amount of the equity capital may, for a period specified in the resolution, fall below this value.

(2) The provision in clause 1 of subsection 1 of § 88 of this Act does not apply in regard to the articles of association of the provider of real estate services.

Chapter 8

DISSEMINATION OF INFORMATION, REPORTING AND OVERSIGHT

Subchapter 1 Dissemination of Information and Registration of State Assets

[RT I, 28.06.2016, 1 - entry into force 01.07.2016]

§ 94. Registration of State assets

The administrator of State assets makes arrangements to cause the assets that it administers to be recorded in state databases in accordance with the type of the asset and the legislation governing the operation of the relevant database.

§ 95. State Real Property Register

(1) A state real property register is established in order to perform the tasks provided in this Act (hereinafter, 'the register'). The purpose of the register is to provide an overview of the real property that belongs to the State, of the State's transactions involving real property and of the State's use of built-up real property, to disseminate the relevant information and to make it possible to conduct the relevant proceedings.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) The register assembles information from other databases concerning the State's real property and limited real rights and creates an environment for the exchange of information between administrators of State assets and for the performance of operations concerning the assets.

(3) The register is founded and its constitutive regulations are established by the Government of the Republic.

(4) The controller of the data in the register is the Ministry of Finance.

(5) The register records:

- 1) the purpose of administration of the property;
- 2) the particulars of notices, decisions and agreements, including sub-use agreements, concerning transfers of properties, release of properties for use and property use agreements concluded between administrators of State assets;
- 3) the particulars of the decisions and agreements on the State's acquisitions and receiving for use of immovable property;
- 4) the particulars concerning designations of administrators of State assets and of authorised agencies;
- 5) the particulars concerning the use of built-up real property;
- 6) the particulars related to energy use;
- 7) other particulars required by legislation.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(6) Providers of the data are administrators of State assets or the persons whom such administrators have authorised to act in their stead, and the provider of real estate services referred to in subsection 1 of § 92 of this Act.

(7) A provider of data records in the database of the register the particulars concerning any agreements connected to the immovable property within 10 business days following the conclusion or modification of the relevant agreement. Where the conclusion of the agreement is accompanied by the recording of an entry in the Land Register, the data provider enters the particulars in the database of the register within 10 business days following the entry of the real right in the Land Register.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(8) The provider of the data is responsible for the accuracy and updating of the data recorded in the register.

(9) Data concerning the designation of administrators of State assets and of authorised agencies have legal significance. Other data in the register are for information and statistical purposes only.

(10) Information related to a state secret and classified information of foreign states is not recorded in the register.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(11) The data in the register are public unless otherwise provided by law.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 96. Ascertaining the need for an immovable property

[RT I, 28.06.2016, 1 – entry into force 01.01.2017]

(1) Before an immovable property is transferred or its use authorised, the State's need for the property is ascertained. The following agencies and persons participate in the proceedings to ascertain the need for an immovable property within their area of competence (hereinafter, 'the authorised party'):

1) other administrators of State assets;
2) the Ministry of Finance, in order to carry out the tasks referred to in sections 14, 27 and 56 of the Planning Act;

[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

3) [repealed - RT I, 04.07.2017, 1 – entry into force 01.01.2018]

4) the local authority in whose area of administration the property is situated, in order to carry out the tasks referred to in sections 75, 95 and 126 of the Planning Act and in § 6 of the Local Government Organization Act;

5) the person referred to in subsection 1 of § 92 of this Act;

6) a legal person in public law, in order to carry out the tasks imposed on it by law;

7) a non-profit association or foundation established by the State or a non-profit association or foundation being established by the State, in order to carry out the tasks provided in its Articles of Association or Charter.

(2) The proceedings to ascertain whether an immovable property is required by the State do not have to be opened in the following cases:

1) the use of the immovable property is authorised in the cases provided in clauses 1–3 of subsection 2 of § 18¹ of this Act;

2) the use of the immovable property is related to a utility network or utility infrastructure or a public road;

3) the immovable property is being encumbered with a real servitude, real encumbrance or the right of pre-emption.

(3) The State's need for the immovable property is established through the register.

(4) When the administrator of State assets does not require the assets, a notice is published concerning ascertainment of the State's need for the immovable property. Any applications received concerning the property before the opening of the proceedings are annexed to the notice.

(5) An administrator of State assets or another authorised party may, within 21 days of the publication of the notice, present an application accompanied by justifications concerning its need for the immovable property. If the authorised party does not present the application within the time-limit, it is deemed that such party does not require the property and that it has no objections to the property's use being authorised or the property being transferred.

(6) The applications received from administrators of State assets take precedence over applications received from other authorised parties.

(7) After the acts described in this section have been carried out, the administrator of State assets opens the relevant proceedings.

[RT I, 28.06.2016, 1 – entry into force 01.01.2017]

§ 97. Dissemination of particulars concerning companies and foundations

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(1) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016].

(2) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016].

(3) The composition of the supervisory board of a company in which the State holds at least a required interest, and of the supervisory board of a foundation established by the State, as well as any changes to the composition of those boards and the amount of the remuneration set for members of the supervisory board are disseminated through the website of the holding administrator or the person who exercises the founder's rights within 10 business days following the making of the decision and the Ministry of Finance disseminates the data concerning such legal persons in an aggregated form through its website.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(4) Unless otherwise provided by law, the resolutions of a general meeting of any company and those of the founders of any foundation which fall under subsection 3 of this section are disseminated in accordance with the procedure provided in subsection 3.

(5) The reports mentioned in subsections 2–4 of § 98 of this Act are disseminated through the website of the holding administrator or the person exercising founder's or member's rights at the same time that they are submitted to the Ministry of Finance.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(6) Any company in which the State holds at least the required interest, and any foundation established by the State, disseminates through its website:

- 1) at the latest by the end of the month following the first and the third quarter of its financial year, the corresponding quarter's income statement, balance sheet and cash flow statement;
- 2) at the latest within two months after the end of the second and the fourth quarter of its financial year, the corresponding quarter's income statement, balance sheet and cash flow statement;
- 3) the reports and overviews mentioned in subsection 1 of § 98 of this Act at the same time that these are submitted to the Ministry of Finance and to the National Audit Office.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(6¹) Any company in which the State holds at least the required interest and which, under § 99 of the Auditors' Activities Act, is required to form an audit committee, disseminates through its website:

- 1) notices concerning significant facts or events having an impact on the company's activities;
- 2) the quarterly reports mentioned in clauses 1 and 2 of subsection 6 of this section, together with explanations and commentary and with a comparison to the financial results of the previous period.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

(7) The holding administrator or the person exercising the founder's rights is to ensure that the decisions referred to in subsection 3 and 4 of this section are also disseminated on the website of the company in which the State holds at least a required interest, or of the foundation established by the State, within 10 business days following the making of the decision.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(8) The information, decisions, reports and overviews referred to in § 98 of this Act must be accessible on the website of the person or entity that published them during five years following their dissemination.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

Subchapter 2

Reporting and Oversight

§ 98. Reporting in respect of the State's holdings of shares and the State's exercise of founder's rights

(1) In exercising their founder's or shareholder's rights, the holding administrator and the person exercising the founder's rights must take steps to ensure that the articles of association of the company in which the State holds at least a required interest, and the articles of association of the foundation established by the State stipulate the obligation to submit to the Ministry of Finance and to the National Audit Office, within four months following the end of the financial year, a copy of the audited and approved annual report. An overview of the work of the supervisory board in arranging, presiding over and supervising the activities of the company or foundation, together with the total of remuneration payments made to members of the supervisory and management board during the financial year, is enclosed with the report. The other shareholders of the company and the other founders of the foundation have a right to demand to be provided the report and the overview for perusal within the same time-limit.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) Each year, the holding administrator submits to the Ministry of Finance a report concerning the purpose of the State's holdings and the administration of those holdings. The same applies to the administration of participations in building associations.

(3) Each year, the person exercising the founder's rights in a foundation established by the State submits to the Ministry of Finance a report concerning attainment of the aims set to the foundation and the exercise of the founder's rights.

(4) By 1 August of every year, the person exercising the State's membership rights submits to the Ministry of Finance a report concerning the non-profit associations in which he or she exercises those rights. The same applies to participations in apartment associations and communities of co-successors.

(5) The reports mentioned in subsections 2 and 3 of this section are submitted within 30 days following the expiration of the time-limit set out in subsection 1. The reports drawn up by the Ministry of Finance are disseminated through the website of the ministry.

(6) The Government of the Republic makes regulations to establish requirements regarding the content of the reports mentioned in subsections 2–4 of this section, the procedure for submission of the reports and the forms for the reports.

(7) Where securities of partially State-owned company are listed in a regulated market, the holding administrator must observe and, where necessary, take steps to ensure, that the articles of association of the company stipulate that the reports mentioned in subsections 1 and 2 of this section must comply with the requirements regarding dissemination of information effective in the regulated market.

§ 99. Aggregated reports

(1) Once every four years, the Ministry of Finance submits to the Government of the Republic an aggregated report concerning the administration of real property belonging to the State. Where necessary, the report is accompanied by proposals to achieve a better administration of State assets.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) Once a year the Ministry of Finance submits to the Government of the Republic an aggregated report which is drawn up on the basis of the reports mentioned in subsections 1–4 of § 98 of this Act and, where this is necessary, includes proposals to improve the pursuit of the State's interests in legal persons in private law, and opinions concerning the expediency of effecting any transfers of state holdings and of continuing the work of foundations and non-profit associations in accordance with the aims pursued by the State's participation in those foundations and associations.

(3) The Government of the Republic approves the aggregate reports and transmits these without delay as information to the *Riigikogu* and the State Audit Office. The aggregated reports are disseminated through the website of the Ministry of Finance and must remain accessible for seven years following their dissemination.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 100. Oversight of administration of State assets

(1) In order to oversee the performance of the tasks provided in this Act, the Ministry of Finance is entitled:

- 1) to require administrators of State assets and authorised agencies to submit information and documents concerning acquisition of assets and acceptance of assets for state use, and concerning administration of State assets;
- 2) to conduct on-site inspections in order to check the accuracy of the information entered in the register by the administrator of State assets and the authorised agency;
- 3) when infringements are discovered, to make recommendations concerning elimination of those infringements or the performance of other necessary operations.

(2) The Ministry of Finance disseminates information concerning infringements of the requirements provided in this Act in the aggregated report mentioned in subsection 1 of § 99 of this Act.

§ 101. Obtaining an endorsement from the Ministry of Finance

(1) Ministries and the Government Office obtain an endorsement from the Ministry of Finance concerning a draft decision of the Government of the Republic or of the administrator of State assets in the following cases:

[RT I, 04.07.2017, 1 – entry into force 01.01.2018]

- 1) when State assets are to be ceded, following the procedure provided in § 51 of this Act, to a legal person in private law in which the State participates;
- 2) when the decisions referred to in sections 76 and 78 of this Act are to be made.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) An explanatory memorandum and supporting documents are annexed to the drafts referred to in subsection 1 of this section, having regard to the provisions of this Act concerning the presentation of the relevant drafts for decision-making.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) The Ministry of Finance decides the endorsement of the draft referred to in subsection 1 within 30 days after receiving the documents. In order to further ascertain the facts that have relevance in the endorsement proceedings, the Ministry of Finance may extend the aforementioned time-limit to 60 days, notifying this to the administrator of State assets who submitted the draft.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) If, within the time-limit established in subsection 3 of this section, the Ministry of Finance has not notified the administrator of State assets of granting or refusing to grant the endorsement, the draft is deemed to have been endorsed.

(5) Any refusal to endorse a draft referred to in subsection 1 of this section must be based on valid reasons based on the purpose and principles of administration of State assets as provided in this Act.

(6) If the Ministry of Finance refuses to endorse a draft for valid reasons, the administrator of State assets may only perform the transaction with the consent of the Government of the Republic.

(7) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016].

(8) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016].

Chapter 9 Implementing Provisions

Subchapter 1 Implementation of the Act

§ 102. Procedures and agreements

(1) The provision in subsection 11 of § 95 of this Act does not apply to agreements concerning the release for use or transfer of real property belonging to the State concluded before 1 January 2010, and concerning the security to be given under those agreements and the auxiliary obligations emanating from the same, with the exception of modifications to the agreements in question.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) Where this is possible and within one year following the entry into force of this Act, administrators of State assets are to bring into conformity with the provisions of this Act concerning release for use of State assets any agreements concerning release for use of State assets concluded before the entry into force of this Act.

(2¹) If a use agreement concluded before the entry into force of this Act in respect of the intended-purpose use and care of land which is located within a protected natural object or which contains such an object stipulates the possibility of extending its operation, the administrator of State assets may, when the term of the agreement expires, on a single occasion extend the operation of the agreement by up to five years, at the same time bringing that agreement into conformity with the legal provisions governing release for use of State assets.

[RT I 2010, 17, 94 – entry into force 01.05.2010]

(3) Any procedure initiated before the entry into force of this Act concerning the ceding, authorization to use, transfer or certification as unserviceable of State assets, may be carried through in accordance with the requirements in force before the entry into force of this Act at the latest six months after the entry into force of this Act.

(3¹) Operations concerning the release for use of residential premises belonging to the employer that were initiated on the basis provided in clause 4 of subsection 2 of § 18 of the State Assets Act in force prior to 1 July 2016 may be completed within six months from the entry into force of this Act in accordance with the provisions of the version of the State Assets Act in force before 1 July 2016.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) The obligation provided in subsection 4 of § 58 of this Act to transmit to an entitled person a notice concerning the auction is applied starting 1 April 2010.

(5) Subsections 3 and 9 of § 33 of the State Assets Act that entered into force after 1 July 2016 are retroactively applied to the payment of compensation on further transfers of any immovable property transferred under clauses 1–3 of subsection 1 of § 33 of the State Assets Act in force prior to 1 July 2016 without charge or below its usual value.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016].

(6) Subsection 4 of § 7 of this Act applies to designating the body to arrange, on behalf of the State, successions that opened before 1 July 2016.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(7) Assets that were confiscated before 1 February 2017 are subject to provisions of the law in force at the time of confiscation.

[RT I, 31.12.2016, 2 – entry into force 01.02.2017]

§ 103. Defining the purpose of administration of State assets

(1) Within one year following the entry into force of this Act the administrators of State assets must bring the assets that they administer into conformity with the provision of subsection 2 of § 8.

(2) Within one year following the founding of the State Real Property Register and in accordance with subsection 1 of § 10 of this Act, the administrators of State assets are to define the purpose of administration in respect of each immovable property which they administer.

(3) In accordance with the provision of subsection 2 of § 10 of this Act, the administrator of State assets must, at the latest in the first report to be submitted under subsections 2–4 of § 98, define the purpose of administration of each security, and of participation in each foundation or non-profit association.

§ 104. Re-registration of State assets, ceding of founder's and membership rights

(1) Within one year following the entry into force of this Act, the Ministry of the Interior is to make the arrangements to re-register any State assets which was in the administration of county administrations as administrators of State assets as assets which are in the administration of the Ministry of the Interior, or register the county administration as an authorised agency.

(2) Subsection 1 of this section does not apply in the case referred to in subsection 3 of § 4 of this Act.

(3) Within one year following the entry into force of this Act, administrators of State assets, except the ministry referred to in subsection 1 of § 6 of this Act, are to cede the entitlement to exercise membership rights in land improvement associations to the county administration in whose territory those associations are located.

(4) The entitlement to exercise membership rights in land improvement associations in respect of which bankruptcy or liquidation proceedings have been initiated is not ceded to the county administration.

(5) The entitlement to exercise the founder's rights in a foundation is to be ceded by the county administration to the Ministry of the Interior within three months following the entry into force of this Act.

(6) A constitutional institution retains the entitlement to exercise membership rights in a non-profit association, unless different provision is made in accordance with subsection 2 of § 6 of this Act in the agreement between administrators of State assets. The agreement is to be concluded within three months following the entry into force of this Act.

§ 105. Ownership reform

(1) If, in respect of certain State assets, ownership reform and land reform proceedings have not been finalised, the provisions of the Principles of Ownership Reform Act and the Land Reform Act, and the legislation enacted in accordance with those Acts, continue to apply until the relevant proceedings have been concluded.

(2) In transferring or releasing for use an immovable property which is designated as profit yielding land and contains a crop area or a parcel of natural grassland and which was not released for use under this Act, the person entitled under subsection 7 of § 66 of this Act is the person who, before the immovable property was registered in the State Real Property Register, was the last to use, under an agreement on the temporary use of land, more than one-half of the immovable property to be transferred or the land area to be released for use. [RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(3) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016].

(4) If, by the time that this subsection enters into force, the time-limit for submitting tenders in public auction proceedings has not expired, the provisions of subsection 2 of this section apply to any transfer and the provisions of subsection 3 of this section to any release for use of an immovable property. [RT I, 05.01.2011, 11 – entry into force 15.01.2011]

(5) When releasing State assets for use or when transferring State assets, the rights and duties established in Chapter 5 concerning entitled persons apply to the persons referred to in subsection 2 of this section. [RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 105¹. Transferring an item of immovable property encumbered with a superficies interest in the course of land reform

(1) A person in whose favour a superficies interest was created on state land in accordance with the Land Reform Act prior to 20 March 2013 and any successor to that superficies interest is entitled, up to 31 December 2013, to submit an application to acquire the land encumbered with the superficies interest, in accordance with the conditions provided in § 35¹ of the Land Reform Act, except where this concerns land which is required by the State for the performance of its functions. The application is submitted to the administrator of the State assets and the transfer is arranged by the administrator of the State assets or a person authorised by the administrator. If, at the time when the superficies interest was created, the construction work was in common ownership, the person mentioned in the first sentence of this subsection is entitled to acquire, on the same conditions, the entire land which corresponds to his or her share in the construction work at the time of the transfer of the land.

(2) If the superficies interest on land which is in the ownership of the State has been created in accordance with the Land Reform Act and the person in whose favour the interest was created has not used the option, provided in subsection 1 of this section, to acquire the land at advantageous conditions, each successive superfiary enjoys the right of pre-emption in the event of the transfer of the immovable property. The corresponding

observation is recorded in the Land Register on the basis of an application of the administrator of the State assets.

[RT I, 21.03.2014, 3 – entry into force 31.03.2014]

(3) The transfer of immovable property provided for in this section does not require the endorsement of the Ministry of Finance and does not need to be consented to by the Government of the Republic.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 106. Legal persons in public law

The provisions of Chapters 3 and 4 of this Act also apply to legal persons in public law, except to local authorities, in relation to possessing, using and disposing of their assets, unless otherwise provided by the law governing the activities of the legal person in public law.

§ 107. Registration of State land in the Land Register and in the Land Cadastre

(1) Administrators of State assets are required to cause any land units which belong to the State and which they administer to be registered as immovable property and to perform the necessary operations at the latest on 31 December 2017.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(2) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016].

(3) The Ministry of the Environment and the Ministry of Economic Affairs and Communications are required to cause the land units that they administer to be registered as immovable property and to perform the necessary operations at the latest on 31 December 2019.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(4) Prior to releasing State assets for use the administrators of the assets are required to cause the land units to be so encumbered to be registered as immovable property. The administrators of State assets referred to in subsection 3 of this section may release land units for use provided the units that are correspondingly encumbered are registered as immovable property within six months from the conclusion of the use agreement.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

§ 108. Bringing legislation and articles of association into conformity with this Act

(1) Administrators of State assets are to establish the procedures mentioned in this Act within six months following the entry into force of this Act. Until such procedures have been established, the procedures established under the State Assets Act are followed until the entry into force of this Act insofar as they do not contradict the provisions of this Act.

(2) [Repealed – RT I, 28.06.2016, 1 – entry into force 01.07.2016].

(3) The constitutive regulations of the ministries are to be brought into compliance with this Act within four months following the entry into force of this Act.

(4) Within the areas of government of the ministries, the constitutive regulations of state agencies and of state institutions affiliated to state agencies are to be brought into compliance with this Act within six months following the entry into force of this Act.

(5) When exercising his or her founder's or shareholder's rights, the holding administrator and the person exercising the founder's or membership rights must take steps to ensure that the articles of association of legal persons in private law in which the State participates are brought into compliance with the requirements provided in clauses 1 and 8 of subsection 8 of § 78, clauses 2, 3 and 4 of § 87 and clauses 3, 4 and 9 of subsection 1 of § 89 of this Act.

[RT I, 28.06.2016, 1 – entry into force 01.07.2016]

(6) Within two months following the entry into force of this Act, the Ministry of Finance is to submit for approval to the Government of the Republic the requirements listed in subsection 6 of § 98 of this Act, the procedure for submitting the reports and the forms of the reports.

(7) Within two months following the entry into force of this Act, the Minister in charge of the policy sector is to approve the procedure for remuneration and the limit rates of the remuneration of members of the supervisory boards which is referred to in subsection 2 of § 85 of this Act. Until the entry into force of the corresponding regulation of the Minister in charge of the policy sector, the procedure for remuneration and the limit rates of the remuneration of members of the supervisory board continue to apply as effective before the entry into force of this Act.

(8) The administrator of a partially State-owned company which for the purposes of the State Budget Act is part of central government, or the person exercising founder's rights in a foundation established by the State which for the purposes of the State Budget Act is part of central government, must take steps to ensure that the articles

of association of the company or foundation are brought into conformity with § 75(3¹) or 79(2) of this Act by 1 May 2014.

[RT I, 13.03.2014, 2 – entry into force 23.03.2014]

(9) The holding administrators and persons exercising the founder's rights take steps to ensure that, at the latest on 20 September 2017, the articles of association of partially State-owned companies and of foundations established by the State conform to this Act as amended through 1 July 2017.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

§ 108¹. Formation of the Appointments Committee

The Government of the Republic forms the Appointments Committee at the latest on 31 August 2017.

[RT I, 06.07.2017, 3 – entry into force 16.07.2017]

§ 108². Special rules due to the emergency situation declared by the Government of the Republic on 12 March 2020

The following special rules apply due to the emergency situation declared by the Government of the Republic on 12 March 2020:

1) until 31 December 2020, based on a decision of the Government of the Republic, special rules may be applied with respect to subsection 3 of § 5, subsection 1 of § 75 and to clause 4 of subsection 1 of § 88;

2) until 31 December 2020, the acquisition of convertible debentures is deemed the acquisition of a holding in a company in which the State holds no shares.

[RT I, 21.04.2020, 1 – entry into force 01.05.2020]

Subchapter 2 Termination of Activities of the State Assets Register

§ 109. Time-limit for termination of activities of the State Assets Register

(1) The activities of the State Assets Register are terminated within one year following the entry into force of this Act.

(2) Until commencement of the work of the State Real Property Register, the operation of the State Assets Register continues in accordance with the procedure in force prior to the entry into force of this Act.

§ 110. Archiving the data in the State Assets Register

(1) Within six months following termination of the activities of the State Assets Register, the Ministry of Finance arranges the archiving of the data in the Register.

(2) The State Real Property Register uses the data of the State Assets Register in accordance with the procedure established in its Constitutive Regulations.

§ 111. Registration of State assets in state databases

Administrators of State assets undertake to register in the relevant registers, by 31 December 2013, any State assets which they administer and which have not been registered in such databases, except in the case provided in § 107 of this Act.

Subchapter 3 Amendments to and Repeal of Laws

§ 112.–§ 130.[Omitted from this text.]

§ 131. Entry into force of the Act

This Act enters into force on 1 January 2010.