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## Foundations Act

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Entry into force 01.10.1996

Amended by the following acts

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25.03.1998	RT I 1998, 36, 552	01.05.1998
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20.01.1999	RT I 1999, 10, 155	01.01.2000
20.06.2000	RT I 2000, 55, 365	12.07.2000
06.06.2001	RT I 2001, 56, 336	07.07.2001
14.11.2001	RT I 2001, 93, 565	01.02.2002
05.06.2002	RT I 2002, 53, 336	01.07.2002
17.12.2003	RT I 2003, 88, 591	01.01.2004
16.12.2004	RT I 2004, 89, 613	07.01.2005
15.06.2005	RT I 2005, 39, 308	01.01.2006
23.11.2006	RT I 2006, 55, 412	01.01.2007
06.12.2006	RT I 2006, 61, 456	01.01.2007
04.06.2008	RT I 2008, 27, 177	10.07.2008
29.01.2009	RT I 2009, 13, 78	01.07.2009
21.10.2009	RT I 2009, 51, 349	15.11.2009
29.10.2009	RT I 2009, 54, 363	01.01.2010
27.01.2010	RT I 2010, 9, 41	08.03.2010
09.12.2010	RT I, 17.12.2010, 20	01.01.2011, applies to annual reports for accounting periods beginning on 1 January 2010 or later.
05.12.2012	RT I, 18.12.2012, 3	19.12.2012
27.02.2014	RT I, 21.03.2014, 3	31.03.2014
11.06.2014	RT I, 21.06.2014, 8	01.01.2015; throughout the text of the Act, the words "register of the registered office" are replaced by the words "registry card" in the appropriate case form and the words "registers of the registered offices" are replaced by the words "registry cards" in the appropriate case form.
19.06.2014	RT I, 29.06.2014, 109	01.07.2014, the titles of ministers replaced on the basis of subsection 107 <sup>3</sup> (4) of the Government of the Republic Act.

## Chapter 1

# GENERAL PROVISIONS

## § 1. Definition of foundation

(1) A foundation is a legal person in private law which has no members and which is established to administer and use assets to achieve the objectives specified in its articles of association.

(2) The passive legal capacity of a foundation commences as of entry in the non-profit associations and foundations register (register) and terminates as of deletion from the register.

(3) Transformation of a foundation into a legal person of a different class is prohibited.

## § 2. Restrictions on activities

(1) Restrictions on the economic activities of foundations may be provided by law.

(2) A foundation shall not grant loans to or secure the loans of founders or members of the management board or supervisory board of the foundation, or of persons with an equivalent economic interest, unless otherwise provided by law.

(2<sup>1</sup>) Transactions in violation of the provisions of subsection (2) of this section concerning prohibited loans are void. Violation of the prohibition on securing loans provided by subsection (2) of this section does not result in the nullity of the transaction but the person whose loan was secured must compensate for the damage caused to the foundation by the provision of the security.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

(2<sup>2</sup>) The provisions of subsections (1)–(2<sup>1</sup>) of this section apply to credit agreements and other economically equivalent transactions.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

(3) A foundation may use its income only to achieve the objectives specified in its articles of association.

(4) A foundation shall not be a partner of a general partnership or a general partner of a limited partnership or manage a general partnership or limited partnership.

## § 3. Name

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

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

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

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

(5) [Repealed - RT I 2002, 53, 336 - entry into force 01.07.2002]

(6) A foundation may have only one name.

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

(8) The name of a foundation shall not be contrary to good morals.  
[RT I 2005, 39, 308 - entry into force 01.01.2006]

## § 4. Registered office

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

## Chapter 2 FOUNDATION OF FOUNDATION

## § 5. Founders and conditions of foundation

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

- (2) The founders of a foundation may be natural persons or legal persons.
- (3) A foundation may be founded on the basis of a will.
- (4) If a foundation is founded by several founders, they may only exercise the rights of founders jointly unless the foundation resolution prescribes otherwise.
- (5) The rights of a founder do not transfer to a legal successor of the founder.
- (6) A person who transfers assets to a foundation after it is founded does not acquire the legal status of a founder.  
[RT I 2002, 53, 336 - entry into force 01.07.2002]

#### **§ 6. Foundation resolution**

- (1) A foundation shall be founded by a foundation resolution which shall set out:
  - 1) the name, registered office and address of the foundation;
  - 2) the names and residences or registered offices and addresses of the founders and their personal identification codes or registry codes;
  - 3) the sum of money or other assets, and their value, to be transferred to the foundation by the founders;
  - 4) the names, residences and personal identification codes of the members of the management board and supervisory board.
- (2) The founders shall also approve the articles of association of the foundation as an annex to the foundation resolution.
- (3) All founders shall sign a foundation resolution and the articles of association approved thereby. A foundation resolution and the articles of association approved thereby shall be notarised. A representative of a founder may sign if the authorisation document granted to the representative therefor is notarised. Articles of association shall be amended after entry in the register of the foundation pursuant to the procedure provided for in §§ 41-42 of this Act and shall not require amendment of the foundation resolution.

#### **§ 7. Foundation of foundation on basis of will**

- (1) A foundation may be founded on the basis of a notarised will which must contain a foundation resolution which complies with the requirements of § 6 of this Act.
- (2) If a will does not designate an executor of the will who must ensure the entry of the foundation in the register, the court shall designate an administrator therefor who has the rights and obligations of an executor of a will.
- (3) If a foundation resolution contained in a will specified in subsection (1) of this section does not comply with the requirements provided for in § 6 of this Act, the executor or administrator of a will may, if necessary, appoint the members of the management board and supervisory board of the foundation and determine the conditions of the foundation resolution and articles of association which are not determined by the will.
- (4) Until the appointment of the management board and supervisory board, an executor or administrator of a will has the right to exercise rights arising from the foundation resolution and to administer transferred assets pursuant to the articles of association of the foundation.
- (5) The executor or administrator of a will has the right to demand reimbursement of necessary expenses incurred in the performance of his or her tasks and remuneration for the performance of tasks, the amount of which shall be determined by a court.
- (6) The authority of the executor or administrator of a will terminates upon entry of the foundation in the register or if entry in the register is no longer possible.

#### **§ 8. Articles of association of foundation**

- (1) The articles of association of a foundation shall be in writing. The articles of association shall set out:
  - 1) the name of the foundation;
  - 2) the registered office of the foundation;
  - 3) the objectives of the foundation;
  - 4) the procedure for transfer of assets to the foundation;
  - 5) the set of beneficiaries, except if all persons who are entitled to receive disbursements pursuant to the objectives of the foundation are beneficiaries;
  - 6) the term of the foundation if it is founded for a specified term;
  - 7) the distribution of the assets of the foundation upon dissolution of the foundation;

- 8) the procedure for appointment and removal of members of the management board and their term of office;
- 8<sup>1</sup>) the number of the members of the management board which may be expressed as a specific number or a maximum and minimum number;  
[RT I 2009, 13, 78 - entry into force 01.07.2009]
- 9) the procedure for appointment and removal of members of the supervisory board and their term of office;
- 10) the procedure for appointment and removal of auditors and their term of office;
- 11) the procedure for amendment of the articles of association;
- 12) whether and under what conditions the founders have the right to dissolve the foundation;
- 13) the procedure for remuneration of the members of the management board and supervisory board;
- 14) the procedure for use and disposal of assets;
- 15) other conditions provided by law.

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

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

## **§ 9. Beneficiaries**

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

## **§ 10. Foundation of foundation**

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

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

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

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

## **§ 11. Petition for entry in register**

(1) In order to enter a foundation in the register, the management board shall submit a petition which sets out the information specified in clauses 14 (1) 2–5), 8), 9), 10<sup>1</sup>) and 11) of this Act and is signed by all members of the management board. The following shall be appended to the petition:

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

- 1) the foundation resolution and articles of association approved thereby;
- 2) a bank notice concerning the money transferred to the foundation;
- 3) telecommunications numbers;
- 4) other documents provided by law.

[RT I, 21.03.2014, 3 - entry into force 31.03.2014]

(1<sup>1</sup>) Upon submission of a petition to the register, a foundation shall specify its planned principal activity and shall keep the register informed of any changes to the principal activity. Upon notification to the register of activities and specification of activities in annual reports, the Estonian Classification of Economic Activities is used.

[RT I, 18.12.2012, 3 - entry into force 19.12.2012]

(2) Any other petition submitted to the register shall be signed by a member of the management board. A petition for the entry of a new member of the management board in the register shall be signed by the new member of the management board, who shall certify in the petition that he or she has the right to be a member of the management board pursuant to law. If the members of the management board are only entitled to represent the foundation jointly, all members of the management board entitled to represent the foundation jointly shall sign the petition submitted to the register.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

(4) A notarised petition shall be submitted together with the documents necessary for making an entry to the registrar through the electronic information system of notaries through the notary having attested the petition. With good reason, the petition and the documents necessary for making an entry may be submitted through another notary. The notary shall explain to the person which documents shall be appended to the petition and which requirements apply thereto.

[RT I, 18.12.2012, 3 - entry into force 19.12.2012]

## **§ 12. Refusal to enter in register**

A registrar shall not enter a foundation in the register if its foundation resolution, articles of association or other documents do not comply with the requirements of law or if the petition for entry in the register is submitted after one year has passed since making the foundation resolution. Upon rejection of a petition, the registrar shall indicate the reason for rejection.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

## **§ 13. Liability of founders and members of management board and supervisory board upon foundation of foundations**

(1) The founders of a foundation, the members of the management board and supervisory board shall be solidarily liable for damage caused to the foundation by submission of inaccurate or incomplete information, incorrect valuation of contributions, or breach of other obligations upon the foundation of the foundation, unless a founder or a member of the management board or supervisory board proves that he or she was not aware nor should have been aware of the circumstances which caused the damage.

(2) In addition to the founders, the persons on whose account the foundation was founded are also liable on the basis provided in subsection (1) of this section. A person is not released from liability regardless of whether or not he or she was aware of the circumstances if a founder acting on the person's behalf was or should have been aware of such circumstances.

(3) An agreement which derogates from the provisions of subsections (1) and (2) of this section shall only be valid with respect to the creditors of a foundation if such agreement was entered into in the course of liquidation proceedings of the foundation.

(4) The claims provided by subsections (1) and (2) of this section expire after five years of the entry of a foundation in the register.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

## **§ 14. Register and information to be entered therein**

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

- 1) the registry code and consecutive numbers of register entries;
- 2) the name;
- 3) the registered office and address;
- 4) the objective;
- 5) information on the members of the management board;
- 6) information on the trustee in bankruptcy;
- 7) information on liquidators;
- 8) the right of representation of the members of the management board and the liquidators if such right differs from the general rule prescribed by the Act;
- 9) the time of making of the foundation resolution;
- 10) the date of approval of the articles of association;

[RT I, 21.03.2014, 3 - entry into force 31.03.2014]

10<sup>1</sup>) the beginning and end of the financial year;

[RT I, 18.12.2012, 3 - entry into force 19.12.2012]

- 11) the term of operation if the foundation is founded for a specified term;
- 12) the dissolution;
- 13) the merger or division;
- 14) the declaration of bankruptcy and termination of bankruptcy proceedings;
- 15) the deletion from the register;
- 16) information on the depository of documents of the liquidated foundation;
- 17) the date of entry;

[RT I, 18.12.2012, 3 - entry into force 19.12.2012]

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

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

(2<sup>1</sup>) Minutes of the meeting of the body which decided on the change shall be appended to the petition specified in subsection (2) of this section; such minutes shall contain information on the time and place of the meeting, voting results and adopted resolutions. The minutes shall be signed by all the members of the body who participated in the meeting.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(2<sup>2</sup>) An excerpt from the minutes which contains only the resolution providing the basis for the registry data may be submitted to the registrar instead of the minutes of the meeting of the body. A dissenting opinion of a person who maintains a dissenting opinion with regard to the resolution need not be appended to the excerpt. The provisions concerning the minutes of the meeting of a respective body shall otherwise apply to the content of the excerpt from the minutes.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

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

(5) The annual report and documents submitted together with the report shall be submitted to the register electronically on the basis of clause 67 (4) 1) of the Commercial Code pursuant to the procedure established by the regulation of the minister responsible for the area.

[RT I 2009, 54, 363 - entry into force 01.01.2010]

### **§ 15. Transactions entered into before entry in register**

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

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

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

## **Chapter 3 MANAGEMENT OF FOUNDATION**

### **§ 16. Bodies**

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

### **§ 17. Management board**

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

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

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

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

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

(6) A member of the supervisory board shall not be a member of the management board. The articles of association may prescribe other persons who cannot be members of the management board. A person with respect to whom a court has, pursuant to §§ 49 or 49<sup>1</sup> of the Penal Code, imposed a prohibition on acting as a member of the management board or a prohibition on business, a person who is prohibited from operating within the same area of activity as the foundation, or a person who is prohibited to act as a member of the management board on the basis of law or a court decision shall not be a member of the management board.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

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

[RT I 2004, 89, 613 - entry into force 07.01.2005]

#### **§ 18. Right of representation of management organ**

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

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

(3) Upon concluding transactions on behalf of a foundation, the members of the management board are required to adhere, with respect to the foundation, the restrictions prescribed by the articles of association or established by the supervisory board or the management board. A restriction on the right of representation does not apply with regard to third persons.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(4) A transaction concluded between a foundation and a member of the management board is void if the supervisory board does not agree to the transaction.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(5) A member of the management board has no right to represent the foundation in the conclusion of transactions for which, pursuant to law, the supervisory board must separately decide on the appointment of representatives.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

#### **§ 19. Appointment of members of management board**

(1) The members of the management board shall be appointed by the foundation resolution. Changes to the membership of the management board and removal of members of the management board shall be decided by the supervisory board. In order to elect a member of the management board, the consent of the person to be elected is required.

(2) The chairman of the supervisory board or a person authorised by the chairman shall sign a petition for deletion of a member of the management board from the register or entry of a new member of the management board in the register.

(3) A member of the management board shall be elected for a specified term of three years unless the articles of association prescribe another term. The articles of association shall not prescribe a term of office longer than five years for the members of the management board. Extension of the term of office of a member of the management board shall not be decided earlier than one year before the planned date of expiry of the term of office, and not for a period longer than the maximum term of office prescribed by law or the articles of association. A resolution for extension of the term of office of a member of the management board entered in the register shall be immediately submitted to the registrar.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

#### **§ 20. Substitute members of management board**

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

[RT I 2005, 39, 308 - entry into force 01.01.2006]

## **§ 21. Removal of member of management board**

(1) The supervisory board may remove a member of the management board regardless of the reason. Rights and obligations arising from contracts entered into with him or her terminate pursuant to the contracts. The provisions of the Law of Obligations Act concerning cancellation of authorisation agreement apply to cancellation of the contract of a member of the management board.  
[RT I 2009, 51, 349 - entry into force 15.11.2009]

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

(3) A member of the management board may resign from the management board regardless of the reason by notifying the supervisory board thereof. Rights and obligations arising from contracts entered into with a member of the management board terminate pursuant to the contracts. The provisions of the Law of Obligations Act concerning cancellation of authorisation agreement apply to cancellation of the contract of a member of the management board.  
[RT I 2009, 51, 349 - entry into force 15.11.2009]

## **§ 22. Remuneration of members of management board**

(1) Remuneration may be paid to members of the management board unless the articles of association prescribe otherwise. The amount of remuneration payable to a member of the management board and the procedure for payment shall be determined by a resolution of the supervisory board.

(2) Upon determining the procedure for remuneration of the members of the management board and the amount of fees and other benefits, and upon concluding contracts with the members of the management board, the supervisory board shall ensure that the total amount of the payments made by the foundation to the members of the management board are in reasonable proportion to the duties of the members of the management board and the economic situation of the foundation.

(3) If the economic situation of a foundation significantly deteriorates and further payment to a member of the management board of the fees established for or agreed upon with the member, or further allowing of other benefits to the member would be extremely unfair to the foundation, the foundation may require the decrease of the fees or benefits.

(4) The decrease specified in subsection (3) of this section does not affect other terms and conditions of contracts concluded with the members of the management board. In the case of reduction of remuneration or other benefits, a member of the management board has the right to exercise the right to extraordinary cancellation of a contract entered into with him or her with one month advance notice.

(5) Upon declaration of bankruptcy of a foundation and termination of the contract of a member of the management board, the member of the management board has the right to demand, in the course of the bankruptcy proceeding, compensation for the damage caused by the termination of the contract within one year after the date of termination of the contract.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

## **§ 23. Liability of members of management board**

(1) A member of the management board shall perform his or her obligations with the diligence normally expected from a member of the management board.

(2) Members of the management board who cause damage to the foundation by violation of their obligations shall be solidarily liable for compensation for the damage caused. A member of the management board is released from liability if he or she proves that he or she has performed his or her obligations with diligence normally expected from a member of the management board.

(3) The limitation period for assertion of a claim against a member of the management board is five years unless the articles of association of the foundation or an agreement with the member of the management board prescribe another limitation period.

(4) A claim for payment of compensation to a foundation for damage specified in subsection (1) of this section may also be submitted by an creditor of the foundation if the assets of the foundation are not sufficient to satisfy the claims of the creditor. In the case of declaration of bankruptcy of a foundation, only a trustee in bankruptcy may file a claim on behalf of the foundation.

(5) A creditor or trustee in bankruptcy has the right to file the claim specified in subsection (4) of this section also if the foundation has waived the claim against a member of the management board or has entered into a contract of compromise with such member or, upon agreement with the member of the management board, has limited the claim or filing thereof in another manner or reduced the limitation period.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]



## **§ 24. Tasks of supervisory board**

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

## **§ 25. Competence of supervisory board**

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

- 1) the acquisition or termination of participation in commercial undertakings;
  - 2) the transfer or encumbrance with a real right of immovables and movables entered in the register.
- [RT I 2009, 13, 78 - entry into force 01.07.2009]

(2) The articles of association may prescribe that the consent of the supervisory board is not required to enter into transactions specified in subsection (1) of this section or is only required in the cases specified in the articles of association; the articles of association may also prescribe other transactions for entry into which the consent of the supervisory board is required.

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

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

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

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

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(7) The supervisory board shall decide on conclusion and terms and conditions of transactions with members of the management board, on conduct of legal disputes and shall appoint a representative of the foundation in such transaction or dispute.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

(9) The specific work procedure of the supervisory board may be prescribed by the articles of association or by a resolution of the supervisory board.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

## **§ 26. Members of supervisory board**

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

(2) Members of the management board or auditors shall not be members of the supervisory board. A person with respect to whom a court has, pursuant to §§ 49 or 49<sup>1</sup> of the Penal Code, imposed a prohibition on acting as a member of the supervisory board or a prohibition on business, a person who is prohibited from operating within the same area of activity as the foundation, or a person who is prohibited to act as a member of the supervisory board on the basis of law or a court decision shall not be a member of the supervisory board. The articles of association may prescribe other persons who cannot be members of the supervisory board.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(3) The members of the supervisory board shall elect a chairman from among themselves, who shall organise the activities of the supervisory board. The registrar shall be notified of the election and change of the chairman of the supervisory board within five days. For notification, the relevant resolution of the supervisory board shall be submitted.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(4) Upon a change of the members of the supervisory board, the management board shall, within five days, submit a notice to the register concerning the time of the change of the members of the supervisory board and the basis therefor as specified in the articles of association. A complete list of the members of the supervisory board which shall set out the names, personal identification codes and dates of commencement of authorities

of the members and, in the case specified in subsection 78<sup>1</sup>(6) of the Non-profit Associations Act, also the addresses of the members, and the consent of new members concerning membership shall be appended to the notice.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

### **§ 27. Appointment and removal of members of supervisory board**

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

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(2) A member of the supervisory board shall be appointed for a term of five years unless the articles of association prescribe a shorter term of authority.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(3) A member of the supervisory board may resign from the supervisory board regardless of the reason by notifying thereof his or her appointer. Rights and obligations arising from a contract concluded with a member of the supervisory board shall terminate pursuant to the contract. The provisions of the Law of Obligations Act concerning cancellation of authorisation agreement apply to cancellation of the contract of a member of the supervisory board.

[RT I 2009, 51, 349 - entry into force 15.11.2009]

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

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

(1<sup>1</sup>) The authority of the court-appointed member of the supervisory board shall continue until the election or appointment of a new member of the supervisory board. A court-appointed member of the supervisory board has the right to receive compensation for reasonable expenses from the account of the foundation and a reasonable remuneration which, in the event of a dispute, a court shall specify by a ruling.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(3) [Repealed - RT I 2009, 13, 78 - entry into force 01.07.2009]

(4) [Repealed - RT I 2009, 13, 78 - entry into force 01.07.2009]

### **§ 29. Meeting of supervisory board**

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

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

(3) A meeting of the supervisory board shall be called if this is demanded by a member of the supervisory board, the management board or an auditor. If the meeting is not called within two weeks after the date of receipt of the relevant request, a member of the supervisory board, the management board or auditors have the right to call the meeting.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(4) Minutes shall be taken of meetings of the supervisory board. The minutes shall be signed by all the members of the supervisory board who participate in the meeting and the recording secretary. The dissenting opinion of a member of the supervisory board shall be entered in the minutes, which shall be confirmed by his or her signature.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

### **§ 30. Resolution of supervisory board**

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

(1<sup>1</sup>) In the election of a person, the candidate who receives more votes than the others shall be deemed to be elected. Upon an equal division of votes, lots shall be drawn unless the articles of association prescribe otherwise.

(1<sup>2</sup>) The quorum of the supervisory board or the validity of a resolution is not affected by the fact that less members than prescribed by the articles of association belong to the supervisory board.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

(1<sup>3</sup>) The members of the supervisory board absent from a meeting may participate in voting if they communicate their vote in a form which can be reproduced in writing.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

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

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

### **§ 30<sup>1</sup>. Invalidity of resolution of supervisory board**

(1) The provisions of the General Part of the Civil Code Act apply to declaration of invalidity and to nullity of a resolution.

(2) In addition to the bases provided for in § 38 of the General Part of the Civil Code Act, a resolution of the supervisory board is void if the requirements of law or articles of association were violated in the calling of the meeting of the supervisory board.

(3) A court judgment concerning revocation or establishment of the nullity of a resolution of the supervisory board applies to all founders regardless of their participation in the court proceedings.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

### **§ 31. Remuneration of members of supervisory board**

(1) Remuneration may be paid to members of the supervisory board unless the articles of association prescribe otherwise.

(2) Upon determining the procedure for remuneration of the members of the supervisory board and the amount of fees and other benefits, and upon concluding contracts with the members of the supervisory board, it shall be ensured that the total amount of the payments made by the foundation to the members of the supervisory board are in reasonable proportion to the duties of the members of the supervisory board and the economic situation of the foundation.

(3) If the economic situation of a foundation significantly deteriorates and further payment to a member of the supervisory board of the fees established for or agreed upon with the member, or further allowing of other benefits to the member would be extremely unfair to the foundation, the foundation may require the decrease of the fees or benefits.

(4) The decrease specified in subsection (3) of this section does not affect other terms and conditions of contracts concluded with the member of the supervisory board. If decrease of fees or other benefits is demanded, the member of the supervisory board may exercise the right to extraordinary cancellation of a contract concluded with him or her upon one month's advance notice of cancellation.

(5) Upon declaration of bankruptcy of a foundation and termination of the contract of a member of the supervisory board, the member of the supervisory board has the right to demand, in the course of the bankruptcy proceeding, compensation for the damage caused by the termination of the contract within one year after the date of termination of the contract.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

### **§ 32. Liability of member of supervisory board**

(1) A member of the supervisory board shall perform his or her obligations with the diligence normally expected from a member of the supervisory board.

(2) Members of the supervisory board who cause damage to the foundation by violation of their obligations shall be solidarily liable for compensation for the damage caused. A member of the supervisory board is released from liability if he or she proves that he or she has performed his or her obligations with diligence normally expected from a member of the supervisory board.

(3) The limitation period for assertion of a claim against a member of the supervisory board is five years unless the articles of association of the foundation or an agreement with the member of the supervisory board prescribe another limitation period.

(4) A claim for payment of compensation to a foundation for damage specified in subsection (2) of this section may also be submitted by an creditor of the foundation if the assets of the foundation are not sufficient to satisfy the claims of the creditor. In the case of declaration of bankruptcy of the foundation, only a trustee in bankruptcy may file such claim on behalf of the foundation.

(5) A creditor or trustee in bankruptcy has the right to file the claim specified in subsection (4) of this section also if the foundation has waived the claim against a member of the supervisory board or has entered into a contract of compromise with such member or, upon agreement with the member of the supervisory board, has limited the claim or filing thereof in another manner or reduced the limitation period.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

## **Chapter 4**

# **ACCOUNTING AND AUDIT**

### **§ 33. Accounting**

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

### **§ 34. Annual report**

(1) After the end of a financial year, the management board shall prepare the annual report pursuant to the procedure provided for in the Accounting Act.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

(2) The management board shall submit the report for approval to the supervisory board within four months after the end of the financial year. Before submission of the report for approval to the supervisory board, the management board shall forward the report to the auditor for audit, if auditing is compulsory in accordance with the law, the articles of association of the foundation or the resolution of the supervisory board.  
[RT I, 17.12.2010, 20 - entry into force 01.01.2011, applies to accounting periods of annual reports beginning on 1 January 2010 or later.]

(2<sup>1</sup>) Approval of the annual report shall be decided by the supervisory board. A member of the supervisory board may request from the foundation that the auditor who prepared the sworn auditor's report participate in the making of the decision to approve the annual report, and provide explanations concerning the sworn auditor's report if a member of the supervisory board has submitted the corresponding written request at least five days before the meeting of the supervisory board.  
[RT I 2010, 9, 41 - entry into force 08.03.2010]

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

(4) The management board shall submit the approved annual report to the register together with information concerning the principal activity of the accounting year pursuant to the Classification of Economic Activities established on the basis of subsection 4 (6) of the Commercial Code and, if auditing is compulsory, together with the sworn auditor's report within six months after the end of the financial year. Submission of information concerning the principal activity of the accounting year shall be based on the area of activity on which the most working hours have been spent or for which the largest amount of other resources have been used during the accounting year.  
[RT I, 17.12.2010, 20 - entry into force 01.01.2011, applies to accounting periods of annual reports beginning on 1 January 2010 or later.]

### **§ 34<sup>1</sup>. Failure to submit annual report**

(1) If a foundation fails to submit the requisite annual report to the registrar within six months after the expiry of the term specified by law, the registrar shall issue a warning on deletion from the register to such person and obligate the person to submit the annual report within a specified term which shall be at least six months.

(2) If a foundation fails to submit an annual report within the term specified in subsection (1) of this section and has not notified the registrar of a justified good reason which hinders the foundation from submitting the report, the registrar may publish a notice concerning the foundation's failure to submit the annual report within the prescribed term in the publication *Ametlikud Teadaanded* and invite the creditors of the foundation to notify of their claims against the foundation and to request the conduct of a liquidation proceeding within six months

after the date of publication of the notice, with a warning that if they fail to do so, the foundation may be deleted from the register without a liquidation proceeding.

(3) If, within six months after publication of the notice specified in subsection (2) of this section, the foundation has failed to submit the annual report to the registrar and failed to provide the registrar with justification for the reason which hinders the foundation from submitting the report, and the creditors of the foundation have not requested the liquidation of the foundation, the registrar may delete the foundation from the register in adherence to the provisions of subsection 58 (3) of this Act.

(4) The court ruling on deletion of a foundation from the register enters into force as of service of the ruling on the foundation. The foundation has the right to file an appeal against the ruling within thirty days after the service thereof. An entry on deletion of a foundation from the register shall not be made before the term prescribed for contestation of the court ruling or ruling on entry expires or, if such ruling is contested, before the court proceeding terminates. The provisions of the second sentence of § 599 of the Code of Civil Procedure do not apply to the case prescribed in this subsection.

(5) If, within six months after publication of the notice specified in subsection (2) of this section, a creditor of the foundation or the foundation submits a petition for liquidation of the foundation, the registrar shall make a decision on compulsory dissolution of the foundation.

(6) If, after deletion of the foundation from the register, it becomes evident that the foundation had assets and that liquidation measures are necessary, the registrar may decide on the liquidation of the foundation. A foundation may be liquidated at the request of a creditor thereof after it has been deleted from the register only if the registrar restores the term for submission of a petition for liquidation for the creditor pursuant to the procedure provided in the Code of Civil Procedure.

[RT I 2008, 27, 177 - entry into force 10.07.2008]

### **§ 35. Auditor**

The obligation to audit annual accounts of a foundation shall be provided by the Auditors Activities Act.

[RT I 2010, 9, 41 - entry into force 08.03.2010]

### **§ 36. Appointment of auditor**

(1) The number of auditors shall be specified and auditors shall be appointed by the supervisory board, which shall also specify the procedure for remuneration of auditors.

(2) Persons to whom the right to be an auditor is granted pursuant to law may be auditors.

(3) Members of the management board or supervisory board or employees of the foundation, or persons with an equivalent economic interest shall not be auditors. If a set of beneficiaries is determined by the articles of association, a beneficiary or a person with an equivalent economic interest shall not be an auditor.

(4) The management board shall submit a list of auditors to the register which shall set out the names and personal identification codes of the auditors, and the legal basis for their activities as auditors. Upon a change of auditors, the management board shall submit a new list of auditors to the register within five days.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(5) With good reason, a court may appoint a new auditor to replace a withdrawn auditor at the request of the management board or an interested person. The authority of a court-appointed auditor shall continue until election of a new auditor by the supervisory board. The court shall also specify the procedure for and amount of remuneration for the auditors appointed by the court.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

### **§ 36<sup>1</sup>. Change and replacement of auditor by court**

(1) The management board, supervisory board, at least one-tenth of the founders of the foundation or at least three founders if the number of founders of the foundation is less than thirty, may request the change of an auditor appointed by the supervisory board from a court if doubt exists concerning the independence of the person appointed by the supervisory board. The court shall hear the auditor appointed by the supervisory board.

(2) The request specified in subsection (1) of this section may be submitted within two weeks after the appointment of an auditor.

(3) A court shall also decide on the procedure for and amount of remuneration for the auditors appointed by the court.

[RT I 2010, 9, 41 - entry into force 08.03.2010]

### **§ 37. Term of authority of auditor**

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

### **§ 38. Special audit**

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

(2) Only auditors and sworn advocates may be the auditors for a special audit. The procedure for and amount of their remuneration shall be specified by a court.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

(2<sup>1</sup>) The court may replace an auditor for the special audit at the request of an interested person or on its own initiative if the person evidently does not have the necessary knowledge or experience for conduct of the special audit or if there are doubts as to his or her impartiality.

(3) The members of the management board and supervisory board shall enable the auditors for a special audit to examine all documents necessary to conduct the special audit and shall provide necessary information. The auditors for the special audit shall preserve the business secrets of the foundation. In the case of refusal to allow to examine documents or to provide information, the auditor for special audit may submit a petition in proceedings on petition to the court within two weeks as of receipt of the refusal or within four weeks as of the submission of a petition if there has been no response thereto requiring that the members of the management board and supervisory board provide information or allow to examine the documents.

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

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

(6) On the basis of the results of a special audit, a court shall decide whether and which measures must be applied to bring the activities of the foundation into compliance with the objectives of the foundation.  
[RT I 2005, 39, 308 - entry into force 01.01.2006]

### **§ 39. Access to information on activities of foundation**

(1) A beneficiary or other person with a legitimate interest may demand information from a foundation concerning the fulfilment of the objectives of the foundation. The beneficiary or other person with a legitimate interest may examine the annual report of the foundation, the sworn auditor's report, accounting documents, the foundation resolution and the articles of association.  
[RT I 2010, 9, 41 - entry into force 08.03.2010]

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

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

## **Chapter 5 AMENDMENT OF ARTICLES OF ASSOCIATION OF FOUNDATION**

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

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

(2) If one of several founders is deceased or dissolved or for another reason is not able or willing to exercise the rights of a founder (withdrawn), the other founders shall not annul the foundation resolution. The foundation

resolution or articles of association may be amended by the other founders only in accordance with the objectives of the foundation.

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

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

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

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

- 1) all founders are deceased or dissolved;
- 2) founders have failed to amend the articles of association in order to take into account changed circumstances within a reasonable period of time; or
- 3) this right is granted to the supervisory board by the articles of association.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

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

#### **§ 42. Entry of amendment of articles of association**

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

## **Chapter 6 WINDING-UP**

#### **§ 43. Bases for dissolution**

A foundation is dissolved:

- 1) by a resolution of the founders if this right is prescribed for founders in the articles of association;
- 2) on other grounds provided for in § 39 of the General Part of the Civil Code Act.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

#### **§ 44. Dissolution on basis of resolution of supervisory board**

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

#### **§ 45. Submission of bankruptcy petition**

If a foundation is insolvent and the insolvency, due to the economic situation of the foundation, is not temporary, the management board shall without delay and not later than within twenty days after the date on which the insolvency became evident, submit the bankruptcy petition of the foundation to a court. After insolvency has become evident, the members of the management board shall no longer make payments on behalf of the foundation, except in the case where making the payments in the situation of insolvency conforms to the diligence normally expected from a member of the management board. The members of the management board shall solidarily compensate to the foundation any payments made by the foundation after the insolvency of the foundation became evident which, under the circumstances in question, were not made with the diligence normally expected from a member of the management board. The provisions of § 23 of this Act apply to the liability of the members of the management board.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

#### **§ 46. Compulsory dissolution**

(1) A foundation is dissolved by a court ruling at the request of the minister responsible for the area or another interested person:

- 1) if the activities of the foundation do not comply with the requirements provided for in § 2 of this Act or with objectives of the foundation set out in the articles of association;
  - 2) if the assets of the foundation are clearly insufficient for the achievement of its objectives, and acquisition of sufficient assets in the immediate future is unlikely;
  - 3) if the supervisory board has not adopted a dissolution resolution in the cases prescribed in the articles of association, or the management board has not submitted a petition for dissolution prescribed by law;
  - 4) on other grounds provided for in § 40 of the General Part of the Civil Code Act.
- [RT I 2009, 13, 78 - entry into force 01.07.2009]

(2) [Repealed - RT I 2009, 13, 78 - entry into force 01.07.2009]

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

#### **§ 47. Petition for dissolution**

(1) Upon dissolution of a foundation, the management board shall submit a petition for entry of the dissolution in the register.

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

(3) If a foundation is dissolved on the basis of a court ruling, the court shall send the ruling to the register for entry.

(4) A foundation is deemed to be dissolved as of the making of the entry on dissolution in the register. Compulsory dissolution enters into force as of the entry into force of the court ruling.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

#### **§ 48. Liquidation**

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

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

#### **§ 49. Liquidators**

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

(2) A natural person who is prohibited from acting as a member of the management board shall not be a liquidator.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

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

(5) A liquidator may resign for the same reasons and pursuant to the same procedure as a member of the management board.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

#### **§ 50. Entry of liquidator**

(1) The management board shall submit a petition for entry of the first liquidators in the register. A petition for entry in the register of a change of liquidator or the right of representation of a liquidator shall be submitted by the liquidators. The resolution which constitutes the basis for the change of a liquidator or the right of representation of a liquidator shall be appended to the petition. All liquidators shall submit to the registrar a written confirmation concerning their right pursuant to law to act as liquidators.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

[RT I 2006, 61, 456 - entry into force 01.01.2007]

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



### **§ 51. Rights and obligations of liquidators**

(1) Liquidators have the rights and obligations of the management board which are not contrary to the nature of liquidation. Liquidation does not affect the legal relationships between the founders or between the founders and the foundation, or the rights of the supervisory board, unless otherwise provided by law and the nature of liquidation.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(2) Liquidators terminate the activities of the foundation, collect debts, sell assets, satisfy the claims of creditors and distribute the assets remaining after satisfaction of the claims of creditors among entitled persons.

(3) Liquidators need not sell assets unless this is necessary for satisfaction of the claims of creditors or for distribution of remaining assets among the entitled persons.

(4) Liquidators may only enter into transactions which are necessary for liquidation of the foundation.

### **§ 52. Right of representation of liquidators**

The right of representation of liquidators who are members of the management board does not change upon liquidation unless the articles of association or a court ruling prescribes the changing of the right of representation into joint representation or sole representation. Liquidators appointed by a court ruling or the articles of association may represent the foundation only jointly, unless a court ruling or the articles of association prescribe that all or some of the liquidators may represent the foundation alone or jointly. A division of the right of representation which differs from the right of representation prescribed by law applies to third persons only if it has been entered in the register.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

### **§ 53. Notification of creditors**

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

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

### **§ 54. Submission and satisfaction of claims**

(1) Creditors shall notify liquidators of all their claims against a foundation within two months after publication of the notice of liquidation. A notice shall set out the content, basis and amount of the claim, and documents substantiating the claim shall be appended thereto. Failure to notify of a claim on time does not affect the validity of the claim or restrict the right of the creditor to file an action with a court against the foundation being liquidated.

(2) Liquidators shall satisfy the claims of creditors of which the foundation is aware regardless of whether or not notification of such claims has been given.

(3) If a creditor known to the foundation has not filed a claim and the claim cannot be satisfied for reasons independent of the foundation, the money which belongs to the creditor shall be deposited if the conditions for depositing exist.

(4) If an obligation cannot be performed during liquidation or if a claim is under dispute, the assets of the foundation cannot be distributed between the entitled persons unless the contested amount of money has been deposited and the creditor has been granted sufficient security.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

### **§ 55. Submission of bankruptcy petition upon liquidation**

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

### **§ 56. Distribution of assets**

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

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

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

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

(5) Assets shall not be distributed among entitled persons within five months after the entry of the dissolution of the foundation in the register and publication of the notice of liquidation.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

#### **§ 57. Deletion from register and supplementary liquidation**

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

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

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

[RT I 2005, 39, 308 - entry into force 01.01.2006]

#### **§ 58. Deletion of foundation from register**

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

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

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

[RT I 2003, 88, 591 - entry into force 01.01.2004]

#### **§ 59. Preservation of documents**

(1) The liquidators shall deposit the documents of a foundation to a liquidator, a person maintaining an archive or another trustworthy person. If the liquidators have not appointed a depositary of documents, a court shall appoint one if necessary.

(2) The name, residence or registered office, and personal identification code or registry code of the depositary of documents shall be entered in the register on the petition of the liquidators or, in the case of a court-appointed depositary, on the basis of the court ruling. The depositary of documents shall be replaced and a new depositary shall be appointed based on a court ruling.

(3) The depositary of documents shall be responsible for the preservation, during the term prescribed for by law, of the documents deposited with the depositary.

(4) The founders may examine the deposited documents of the foundation. The creditors of the foundation and persons with a legitimate interest in the matter may examine the documents with the permission of the court.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

#### **§ 60. [Repealed - RT I 2002, 53, 336 - entry into force 01.07.2002]**

## **Chapter 7**

# MERGER AND DIVISION

## Division 1 Merger

### § 61. Definition of merger

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

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

(3) Merger is effected without a liquidation proceeding.

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

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

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

### § 62. Merger agreement

(1) In order to merge, the management boards of the foundations shall enter into a merger agreement which shall set out the names and registered offices of the foundations and the consequences of merger for the employees of the foundation being acquired. The merger agreement shall include an agreement to transfer all the assets of the foundation being acquired to the acquiring foundation.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

(2) A merger agreement shall be notarised.

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

### § 63. Merger resolution

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

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

### § 63<sup>1</sup>. Contestation of merger resolution

At the request of a founder of the foundation, a member of the supervisory board or management board, a court may declare invalid a merger resolution which is in conflict with the law, the partnership agreement or the articles of association if the request is submitted within one month after the resolution is made.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

### § 64. Protection of creditors

(1) Immediately after a merger has been entered on the registry card of the acquiring foundation, the acquiring foundation shall publish a merger notice to the creditors of the acquired foundation in the publication *Ametlikud Teadaanded*, informing them of the possibility to submit, within six months after the publication of the notice, their claims to the acquiring foundation in order to receive a security.

(2) The acquiring foundation must secure the claims of the creditors of the foundation being acquired within six months after the publication of the notice specified in subsection (1) of this section, if the creditors have no possibility to demand satisfaction of the claims and they prove that the merger may endanger the fulfilment of the claims.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

## **§ 65. Submission of petition to register**

(1) The management board of a foundation participating in a merger shall submit a petition for entry of the merger in the register not earlier than one month after the approval of the merger agreement. The following shall be appended to the petition:

[RT I, 18.12.2012, 3 - entry into force 19.12.2012]

- 1) a notarised copy of the merger agreement;
- 2) the merger resolution;
- 3) the permission for merger, if required;
- 4) [repealed - RT I 2009, 13, 78 - entry into force 01.07.2009]

(2) In a petition, the members of the management board shall confirm that the merger resolution is not contested or that a petition for contestation has been denied.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(3) The management board of the acquiring foundation may also submit a petition for entry of merger of the foundation being acquired in the register.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

## **§ 66. Name of acquiring foundation**

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

## **§ 67. Merger entry**

(1) A merger shall be entered on the registry card of the acquiring foundation if it is entered on the registry cards of all foundations being acquired. An entry on the registry card of a foundation being acquired shall indicate that the merger is deemed to be effected as of its entry on the registry card of the acquiring foundation.

(2) The petitions related to merger shall be joined in one proceeding.

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

## **§ 68. Legal effect of entry**

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

[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

(3) A merger shall not be contested after its entry on the registry card of the acquiring foundation.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(4) The members of the management board of a merging foundation shall be solidarily liable for damage wrongfully caused to the foundation, founders thereof or creditors of the foundation by the merger.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

(5) The limitation period for a claim specified in subsection (4) of this section shall be five years from entry of the merger on the registry card of the acquiring foundation.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

## **§ 69. Merger whereby new foundation founded**

(1) The provisions of §§ 61–68 of this Act together with other complementary provisions prescribed by law apply to merger whereby a new foundation is founded.

(2) The provisions regarding foundations being acquired apply to merging foundations, and the provisions regarding acquiring foundations apply to foundations being founded. Foundations shall be deemed to be merged as of entry of a new foundation in the register.

(3) The provisions for foundation of foundations apply to foundation of new foundations unless the provisions of this chapter provide otherwise. The founders are the merging foundations.

(4) In addition to the provisions of subsection 62 (1) of this Act, a merger agreement shall set out the name and registered office, and members of the management board of the new foundation. The articles of association of the foundation being founded which shall be approved by the merger resolution shall be appended to the merger agreement.

(5) The management board of a merging foundation shall submit a petition for entry of the merger in the register.

[RT I, 18.12.2012, 3 - entry into force 19.12.2012]

(6) The management boards of merging foundations shall submit a joint petition for entry of the new foundation in the register.

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

## **Division 2 Division**

### **§ 70. Definition of division**

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

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

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

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

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

### **§ 71. Division agreement**

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

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

(2) A division agreement shall be notarised.

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

### **§ 72. Division resolution**

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

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

### **§ 72<sup>1</sup>. Contestation of division resolution**

At the request of a founder of the foundation, a member of the supervisory board or management board, a court may declare invalid a division resolution which is in conflict with the law, the partnership agreement or the articles of association if the request is submitted within one month after the resolution is made.

[RT I 2009, 13, 78 - entry into force 01.07.2009]

### **§ 73. [Repealed - RT I 2009, 13, 78 - entry into force 01.07.2009]**

### **§ 74. Submission of petition to register of foundations**

(1) The management board of a foundation participating in division shall submit a petition for entry of the division in the register not earlier than one month after the approval of the division agreement. The following shall be appended to the petition:

[RT I, 18.12.2012, 3 - entry into force 19.12.2012]

- 1) a notarised copy of the division agreement;
- 2) the division resolution;

- 3) the permission for division, if required.
- 4) [repealed - RT I 2009, 13, 78 - entry into force 01.07.2009]

(2) In a petition, the members of the management board shall confirm that the division resolution is not contested or that a petition for contestation has been denied.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

#### **§ 75. Name of recipient foundation**

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

#### **§ 76. Division entry**

(1) A division shall be entered on the registry card of the foundation being divided if it is entered on the registry cards of all recipient foundations. Entries on the registry cards of the recipient foundations shall indicate that the division is deemed to be effected as of its entry on the registry card of the foundation being divided.

(2) The proceedings related to division shall be joined in one proceeding.  
[RT I, 21.06.2014, 8 - entry into force 01.01.2015]

#### **§ 77. Legal effect of entry**

(1) All assets of a foundation being divided or, upon separation, the separated assets pursuant to the distribution prescribed in the division agreement, transfer to the recipient foundations as of entry of the division on the registry card of the foundation being divided. After entry of a division on the registry card of the foundation being divided, entries regarding the transfer of assets shall be made in the land register and movable property registers on the petition of the recipient foundation.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

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

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

(4) A division shall not be contested after its entry on the registry card of the foundation being divided.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

#### **§ 78. Liability for obligations of foundation being divided**

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

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

(3) Immediately after a division has been entered on the registry card of the foundation being divided, the foundation participating in the division shall publish a division notice to the creditors of the foundations participating in the division in the publication *Ametlikud Teadaanded*, informing them of the possibility to submit, within six months after the publication of the notice, their claims in order to receive a security.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

(4) The foundation participating in division must secure the claims of the creditors within six months after the publication of the notice specified in subsection (3) of this section, if the creditors have no possibility to demand satisfaction of the claims and they prove that the division may endanger the fulfilment of the claims.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

(5) The members of the management board of a foundation participating in division shall be solidarily liable for damage wrongfully caused to the foundation, founders or creditors of the foundation by the division.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

(6) The limitation period for a claim specified in subsection (5) of this section shall be five years from entry of the division on the registry card of the foundation being divided.  
[RT I 2009, 13, 78 - entry into force 01.07.2009]

### **§ 79. Division whereby new foundation founded**

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

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

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

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

(5) The management board of a foundation being divided shall submit a petition for entry of the new foundations and the division in the register.

[RT I, 18.12.2012, 3 - entry into force 19.12.2012]

(6) The registrar shall enter each new foundation in the register and shall thereafter enter the division in the register and make a notation concerning each new foundation specifying when the division was entered in the register.

[RT I, 18.12.2012, 3 - entry into force 19.12.2012]

## **Chapter 8 IMPLEMENTATION OF ACT**

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

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

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

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

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

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

### **§ 81. Merger and Division**

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

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

### **§ 82. Petition for entry in register**

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

(2) A petition for entry in the register shall set out information concerning the foundation as provided by law, and the documents provided by law, and the certificate of registration of the foundation in the enterprise register shall be appended to the petition.

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

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

### **§ 83. Notations in registers**

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

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

### **§ 84. Deletion from register**

The provisions of § 95 of the Non-profit Associations Act apply to non-profit organisations entered in the enterprise register the objective of which is the accumulation and distribution of assets for specific purposes which by 1 October 1998 are not entered as foundations in the register or for which no petition for entry in the register has been submitted to the registrar or whose petition for entry in the register has been denied.

### **§ 85. Name of foundation**

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

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

### **§ 85<sup>1</sup>. Implementation of electronic reporting**

The provisions of the second sentence of subsection 34 (4) of this Act shall apply to annual reports which are prepared for the accounting period beginning on 1 January 2009 or later.  
[RT I 2008, 27, 177 - entry into force 10.07.2008]

### **§ 85<sup>2</sup>. Entry of period of financial year in register**

A registrar shall enter the beginning and end of the financial year of the foundations in the register pursuant to the articles of association without a petition for entry and ruling on entry. Section 82 of the Non-profit Associations Act and the second sentence of § 599 of the Code of Civil Procedure shall not apply to the entry and a state fee shall not be charged for it.  
[RT I, 21.03.2014, 3 - entry into force 31.03.2014]

### **§ 86. Amendments to Accounting Act**

[Omitted from this text.]

### **§ 87. Implementing regulations**

[Repealed - RT I, 21.06.2014, 8 - entry into force 01.01.2015]



**§ 88. Entry into force of Act**

This Act enters into force on 1 October 1996.