

# Consolidating Act on Commercial Foundations<sup>1)</sup>

This is an Act to consolidate Act no. 712 of 25 June 2014 on Commercial Foundations as amended by section 3 of Act no. 738 of 1 June 2015, section 3 of Act no. 262 of 16 March 2016, section 4 of Act no. 631 of 8 June 2016, section 11 of Act no. 665 of 8 June 2017, section 4 of Act no. 1665 of 26 December 2017, section 3 of Act no. 676 of 29 May 2018 and section 3 of Act no. 554 of 7 May 2019.

The promulgated legislative act regarding the footnote in the title of this Act, section 18(2) and (4), section 21a, section 21d, section 115(1) and section 132(1) will enter into force on 10 January 2020, cf. section 13(1) of Act no. 554 of 7 May 2019 to amend the Companies Act, the Certain Commercial Undertakings Act, the Commercial Foundations Act, and various other acts (Amendment of the regulations on beneficial owners as a consequence of the 5th Money Laundering Directive).

## Part 1

### *Scope of the Act etc.*

#### *Scope*

**1.-(1)** This Act applies to foundations, grants, establishments and other self-governing institutions deemed to be commercial (commercial foundations) according to section 2.

**(2)** For the purposes of this Act, a commercial foundation means a legal person who possesses assets that are irrevocably separate from the founder's assets in order to perform one or more of the purposes laid down in the statutes, which must be complied with for a number of years, where the rights of disposal over the foundation are granted to a management acting independently of the founder, where economic activity is exercised, cf. section 2(1) and (2), and where no natural or legal person outside the foundation has ownership of the foundation's assets.

**(3)** For the purposes of this Act, major donors, benefactors or similar of the foundation are equivalent in all respects with the founder of the foundation.

**2.-(1)** Under this Act, a foundation is deemed to be a commercial foundation if it

- 1) transfers goods or intellectual property rights or provides services or similar for which it normally receives consideration,
- 2) carries on business by selling or letting real estate, or
- 3) has a relationship as described in section 7 of the Companies Act with a public or private limited liability company, or with another undertaking.

**(2)** However, a foundation is not deemed to be commercial if the activities carried out by the foundation or with which the foundation has a relationship as described in subsection (1), no. 3, are limited or only comprise an insignificant part of the total assets of the foundation.

**(3)** The Danish Business Authority may lay down more detailed regulations on when commercial operation of a foundation is deemed to be too limited or only comprises an insignificant part of the assets of the foundation.

**3.-(1)** This Act does not cover

- 1) Danmarks Nationalbank (Central Bank of Denmark),
- 2) foundations set up by or pursuant to law or by international agreement between Denmark and another state, and which are subject to supervision by one of the states,

3) foundations with which a municipality or region has entered into an agreement to fulfil the obligations of the municipality or region pursuant to social legislation or other legislation, provided that the foundation does not carry out other tasks to any significant degree, or  
4) foundations which, as a condition for approval or subsidy from the public sector, are subject to supervision and financial control by a public authority pursuant to other legislation or provisions issued pursuant to other legislation.

**(2)** The foundation authority may decide that a foundation which, otherwise than pursuant to this Act is subject to public supervision and financial control, in whole or in part, is to be exempted from this Act. A foundation cannot be exempted from this Act if the founder of the foundation is a supervisory authority.

**(3)** Section 21a on registration of beneficial owners applies to foundations which fall outside the scope of this Act, cf. subsection (1), or which are exempted from this Act pursuant to subsection (2).

**4.** In cases of doubt, the Danish Business Authority will decide whether a foundation is covered by this Act.

#### *Names of commercial foundations*

**5.-(1)** Commercial foundations must use the word “*fond*” (foundation) in their name.

**(2)** The term “*erhvervsdrivende fond*” (commercial foundation) or “*erhvervsfond*” (commercially operating foundation) or the abbreviation “*ERF*” may only be used by a foundation which has been registered or has submitted an application for registration in accordance with section 12(1).

**(3)** The name must be clearly distinguishable from the name of other foundations and undertakings registered in the IT system at the Danish Business Authority, and may not be of such nature as to mislead the public. The name must not unjustifiably include any family name, business name, distinctive name of real estate, trademark, business identifier or similar feature not belonging to the foundation, or any other element likely to cause confusion with such name or similar feature.

**(4)** Foundations must specify their name, registered office and Central Business Register (CVR) number on letters and other business documents, including electronic communication, and on the foundation website.

**(5)** Subsections (1)-(4) apply correspondingly to secondary names.

#### *Groups*

**6.-(1)** A foundation covered by section 2(1), no. 3, is deemed to be a parent foundation, and the public or private limited liability company(ies) or other undertakings with which the foundation has the relationship described, is/are deemed to be subsidiaries.

**(2)** A group consists of a parent foundation and one or more subsidiaries. If more than one foundation satisfies one or more of the criteria in section 7 of the Companies Act, cf. section 2(1), no. 3 of this Act, only the foundation that exercises an actual dominant influence of the financial and operating decisions of the undertaking is deemed to be the parent foundation.

#### *Powers of the probate courts and the Danish Maritime and Commercial High Court*

**7.** Any powers granted to the probate courts under this Act must be exercised by the probate court that has jurisdiction over the place where the foundation has its registered office. However, such powers must be exercised by the Danish Maritime and Commercial High Court in

Copenhagen for areas that fall within the jurisdiction of the Copenhagen City Court, the Court of Frederiksberg, and the Courts of Glostrup and Lyngby, cf. section 4 of the Bankruptcy Act.

## Part 2

### *Communication*

**8.-(1)** The Minister for Industry, Business and Financial Affairs may lay down regulations stipulating that written communication to and from the Danish Business Authority about circumstances covered by this Act or provisions laid down in accordance with this Act, must be digital.

**(2)** The Minister for Industry, Business and Financial Affairs may lay down more detailed regulations on digital communication, including the use of specific IT systems, special digital formats and digital signatures, etc.

**(3)** A digital message is deemed to have reached the recipient when it is available to the recipient of the message.

**(4)** Following consultation with the Minister for Justice, the Minister for Industry, Business and Financial Affairs may lay down regulations stipulating that written communication to and from the Department of Civil Affairs about circumstances covered by this Act or regulations issued in pursuance of this Act, must be digital. Subsections (2) and (3) apply correspondingly.

**9.-(1)** The Minister for Industry, Business and Financial Affairs may lay down regulations stipulating that the Danish Business Authority may issue decisions and other documents according to this Act or provisions laid down in accordance with this Act without a signature, with a digital or similarly provided signature, or by means of a technique that ensures unambiguous identification of the person who has issued the decision or document. Such decisions and documents are equivalent to decisions and documents with a personal signature.

**(2)** The Minister for Industry, Business and Financial Affairs may lay down regulations stipulating that decisions and other documents which are made or issued exclusively on the basis of electronic data processing be issued solely with specification of the Danish Business Authority as the sender.

**(3)** Following consultation with the Minister for Justice, the Minister for Industry, Business and Financial Affairs may lay down regulations for the Department of Civil Affairs corresponding to subsections (1) and (2).

**10.-(1)** Where this Act or provisions laid down in accordance with this Act require that a document issued by parties other than the Danish Business Authority or the Department of Civil Affairs be signed, such requirement may be satisfied by using a technique which ensures unambiguous identification of the person who has issued the document, without prejudice to subsection (2). Such documents are equivalent to documents with a personal signature.

**(2)** Following consultation with the Minister for Justice, the Minister for Industry, Business and Financial Affairs may lay down more detailed provisions regarding derogation from the signature requirement. In this connection, it may be decided that the personal signature requirement may not be derogated from for specific types of documents.

## Part 3

### *Registration, application for registration and time limits*

#### *Registration and application for registration*

**11.-(1)** In its capacity as registration authority, the Danish Business Authority keeps a register of commercial foundations covered and registered under this Act. Registration and publication under this Act must be made in the IT system at the Danish Business Authority.

**(2)** All information published in the IT system at the Danish Business Authority is deemed to have been communicated to third parties. Information to be registered and published may not be invoked against third parties until it has been published in the IT system at the Danish Business Authority, unless it can be established that the third party knew about the information. The fact that such information has not yet been published does not prevent third parties from invoking such information.

**(3)** The Danish Business Authority may lay down regulations on the language to be used in documentation to be submitted in connection with registrations or applications for registration.

**(4)** The Danish Business Authority may lay down more detailed regulations regarding preparation of annual reports in English.

**12.-(1)** All information to be registered under this Act must be recorded in the IT system at the Danish Business Authority by no later than two weeks after the date of the statutory decision or the change of circumstance, unless otherwise provided by or under this Act. Where the applicant does not register the information directly in the IT system at the Danish Business Authority, cf. section 19(1), an application for registration must be received by the Danish Business Authority by no later than two weeks after the date of the statutory decision or the change of circumstance.

**(2)** The board of directors is responsible for ensuring that registration takes place, or that an application for registration is filed with the Danish Business Authority in its capacity as the registration authority.

**(3)** Subsections (1) and (2) apply correspondingly to publication of documents and notifications etc. in the IT system at the Danish Business Authority. Where an applicant does not publish the document or notification directly in the IT system at the Danish Business Authority, cf. section 19(3), the document or notification must be received by the Danish Business Authority by no later than two weeks after the date of the relevant event.

**(4)** In its capacity as the registration authority, the Danish Business Authority may grant an extension of the time limits laid down in this Act.

**13.-(1)** Members of the board of directors and executive board as well as the auditor must be registered in the IT system at the Danish Business Authority.

**(2)** If an auditor is replaced before expiry of the auditor's term of office, or if the change of auditors is due to disagreements between the board of directors and the auditor, the registration or application for registration, cf. section 12(1), must be accompanied by an adequate account by the board of directors of the reason for such termination of office.

**(3)** The Danish Business Authority may lay down regulations regarding registration of founders.

**14.** In connection with establishment or increase of the contributed capital, the registration or application for registration, cf. section 12(1), must be accompanied by information about the foundation's associated costs.

**15.-(1)** Registration may not take place, if the information to be registered does not comply with the provisions of this Act or provisions laid down pursuant to this Act or the statutes. Furthermore, registration may not take place if the resolution giving grounds for the registration has not been reached in the way prescribed by this Act or provisions laid down pursuant to this Act or the statutes.

**(2)** An applicant registering information in the IT system at the Danish Business Authority or submitting an application for registration in the IT system at the Danish Business Authority, warrants that the registration or application is lawful, including that the applicant is duly authorised, and that the documentation related to the registration or application is valid.

**(3)** Subsections (1) and (2) apply correspondingly to documents etc. published in the IT system at the Danish Business Authority or submitted to the Danish Business Authority for publication etc. pursuant to this Act.

**16.-(1)** If an application cannot be registered due to an error or incompleteness, in its capacity as the registration authority, the Danish Business Authority may stipulate a time limit for rectification. In the event of failure to rectify within the time limit stipulated, registration will be refused.

**(2)** If registration is refused pursuant to subsection (1), the applicant must be notified in writing that registration will not take place, including the reason for non-registration.

**17.-(1)** In its capacity as the registration authority, the Danish Business Authority may request the information necessary to assess whether the conditions for registration have been met.

**(2)** In connection with application of registration and registration according to regulations laid down pursuant to this Part of this Act, in its capacity as the registration authority, the Danish Business Authority may request evidence of legal registration or application for registration for up to three years after the date of registration. In special cases, in its capacity as the registration authority, the Danish Business Authority may also demand that the foundation submit a declaration by an approved auditor that the financial transactions relating to the registration or the application for registration were legal. In the event of failure to comply with the requirements in the 1st and 2nd sentence, in its capacity as registration authority, the Danish Business Authority will stipulate a time limit for rectification of the matter. If the matter is not rectified by no later than the expiry of the time limit, the Danish Business Authority may, if necessary, take steps to have the foundation compulsorily dissolved under the regulations in sections 115-117.

**(3)** In connection with violation of the provisions of this Act or provisions laid down pursuant to this Act or the statutes, in its capacity as the registration authority, the Danish Business Authority may order the board of directors, executive board or the auditor to bring the matter into conformity with this Act or provisions laid down pursuant to this Act or the statutes.

**18.-(1)** Information on the names of persons registered pursuant to this Act must be published in the Central Business Register at all times, unless otherwise decided by the Danish Business Authority. This applies irrespective of whether the commercial foundation is active or has ceased to exist.

**(2)** Information on the addresses of persons registered pursuant to this Act must be published in the Central Business Register, until five years have passed since the person ceased being active in an undertaking registered in the Central Business Register. This applies irrespective of whether the undertaking is active or has ceased to exist. For persons who have registered name and address protection in the Civil Registration System, the address must not be published in the Central Business Register, as long as the protection in the Civil Registration System applies, unless the person submits a request to the Danish Business Authority that the address protection is not to apply to the Central Business Register. Persons who do not have a civil registration number (CPR number) may submit a request to the Danish Business Authority for address protection in the Central Business Register.

**(3)** The Danish Business Authority lays down specific terms and conditions for address protection and disclosure of protected addresses for persons without a civil registration number (CPR number), cf. subsection (2), 4th sentence.

**(4)** Updates of personal data covered by subsections (1) and (2) for fully liable members, owners and members of the management will cease five years after the person in question is no longer active in an undertaking registered in the Central Business Register.

*Specific provisions relating to registration etc.*

**19.-(1)** If the applicant itself carries out the registration pursuant to this Act or provisions laid down pursuant to this Act, such registration will replace submission of an application for registration.

**(2)** The Danish Business Authority lays down regulations on registration and application for registration of information to be registered under this Act.

**(3)** The Danish Business Authority lays down regulations on publication of registrations, documents and notifications etc. to be published in the IT system at the Danish Business Authority pursuant to this Act.

**(4)** The Danish Business Authority may lay down regulations on fees for application for registration, printouts etc., announcement, copies of documents, use of the IT system at the Danish Business Authority and fees for reminders in connection with late payment. The Danish Business Authority may also lay down regulations stipulating that individual foundations must pay a fee to cover the costs of administering this Act.

**20.** The Minister for Industry, Business and Financial Affairs may lay down regulations stipulating that information in the possession of the foundation authority must remain confidential.

**21.-(1)** If anyone asserts that a registration is detrimental to them, the question of deregistration is to be determined by the courts.

**(2)** Such legal proceedings must be commenced against the foundation within six months from the date of publication of the registration in the IT system at the Danish Business Authority. The court will send a transcript of the judgment to the Danish Business Authority in its capacity as the registration authority for publication of the outcome of the case in the IT system at the Danish Business Authority.

**21a.-(1)** A foundation must obtain information on the beneficial owners of the foundation, including information on the rights of such beneficial owners.

**(2)** The beneficial owners of the foundation must, on the foundation's request, provide the foundation with information on the beneficial owners of the foundation, including information that the foundation is obliged to obtain on the rights of such beneficial owners.

**(3)** A foundation must register information concerning its beneficial owners, including information about the rights of beneficial owners, in the IT system at the Danish Business Authority as soon as possible after the foundation becomes aware that a person has become a beneficial owner. Any change to the information registered about beneficial owners must be registered as soon as possible after the foundation has become aware of the change.

**(4)** A foundation must review at least once a year whether there are changes to the information registered about beneficial owners. The results of the annual review must be presented at the annual financial statements meeting of the foundation.

**(5)** A foundation must retain documentation for the information obtained on the foundation's beneficial owners for a period of five years after the beneficial ownership ceases to exist. The foundation must also retain documentation for the information obtained on any attempts at identifying beneficial owners for a period of five years after any such identification attempt.

**(6)** A foundation must provide, upon request, information on the foundation's beneficial owners, including the foundation's attempts at identifying its beneficial owners, to the Public Prosecutor for Serious Economic and International Crime. The foundation must moreover, upon request, provide the aforementioned information to other competent authorities, when these authorities assess that the information is necessary for the performance of their supervisory or control functions.

**(7)** The Public Prosecutor for Serious Economic and International Crime and other competent authorities may disclose, free of charge, information about beneficial owners registered, cf. subsection (3), or obtained, cf. subsection (6), to competent authorities or financial intelligence services in other EU Member States.

**(8)** The Danish Business Authority lays down more detailed regulations regarding registration, availability and publication of information according to subsections (1), (3) and (5) in the IT system at the Danish Business Authority, including which information the foundation must register in the IT system at the Authority.

**21b.** The beneficial owner of a foundation is considered to be the natural person or persons who ultimately exercise(s) direct or indirect control over the foundation or who in some other way has(ve) authority similar to ownership, including

- 1) the board of directors of the foundation, and
- 2) persons who are special beneficiaries of the foundation or, if the individuals who benefit from distributions from the foundation are not yet known by the foundation, the group of people in whose main interest the foundation was established or is managed.

**21c.** When establishing a commercial foundation, by no later than at the time of registration of the foundation, cf. section 12, information on the beneficial owners of the foundation must be obtained and registered, including information on the rights of such beneficial owners, cf. section 21a(1).

**21d-(1)** Foundations that must obtain, store and register information on beneficial owners, cf. section 21a, must, upon request, provide persons and undertakings which, pursuant to the Anti-Money Laundering Act must apply customer due diligence measures, with information on their beneficial owners.

**(2)** If, pursuant to the Anti-Money Laundering Act, the Danish Business Authority receives reports of discrepancies with regard to the information registered about the beneficial owners of a foundation, the Danish Business Authority will conduct an inquiry into the matter, cf. section 17(1), and section 21a(5). The Danish Business Authority may stipulate a time limit for the foundation for rectification of the matter.

**(3)** Simultaneously with the inquiry, cf. subsection (2), the Danish Business Authority may publish a notification about the report in the IT system at the Danish Business Authority. The foundation must be offered the option to object to the report before it is made public, unless the purpose of publishing the notification of the report will thereby be compromised.

#### *Calculation of time limit*

**22.-(1)** Where it is stipulated by this Act or by provisions laid down pursuant to this Act that an action may or must be taken within a certain number of days, weeks, months or years before a specific event occurs, the time allowed for taking such action is calculated from the day before this event.

**(2)** If the time limit for taking action expires on a weekend, public holiday, 5 June (Constitution Day), 24 December or 31 December, action must be taken no later than the last preceding working day.

**(3)** Where it is stipulated by this Act or by provisions laid down pursuant to this Act that an action or a decision may not be taken until a certain number of days, weeks, months or years after a specific event has occurred, the time allowed for taking such action or decision is calculated from the day after this event. The action or decision may not be taken until the day after expiry of the time limit.

**23.-(1)** Where it is stipulated by this Act or by provisions laid down pursuant to this Act that an action must be taken within a certain number of days, weeks, months or years after a specific event has occurred, the time allowed for taking such action is calculated from the day after this event, cf. subsections (2)-(4).

**(2)** If the time limit in subsection (1) is stated in weeks, the time limit for taking action expires on the same day of the week that the event took place.

**(3)** If the time limit in subsection (1) is stated in months, the time limit for taking action expires on the same day of the month that the event took place. If the event took place on the last day of a month, or if the time limit expires on a date that does not exist in that month, the time limit always expires on the last day of the month, irrespective of the number of days in that month.

**(4)** If the time limit in subsection (1) is stated in years, the time limit for taking action expires on the anniversary of the date of the event.

**(5)** If the time limit expires on a weekend, public holiday, 5 June (Constitution Day), 24 December or 31 December, action must be taken no later than the next working day.

#### Part 4

##### *Foundation authority*

**24.-(1)** Foundation authority under this Act is exercised by the Danish Business Authority.

**(2)** In connection with violation of this Act, provisions laid down pursuant to this Act or the statutes, the foundation authority may order the management or the auditor to bring the matter into conformity with this Act, provisions laid down pursuant to this Act or the statutes.

**(3)** The foundation authority may request the information necessary to perform its tasks.

##### *Scrutiny*

**25.-(1)** The foundation authority may decide that specific matters relating to a commercial foundation, its administration or annual reports must be scrutinised.

**(2)** The foundation authority appoints one or more scrutinisers on behalf of the foundation. The costs of scrutiny are approved and initially covered by the foundation authority, but are borne by the foundation.

**(3)** The scrutinisers may demand from the foundation's management any information deemed to be of importance to the assessment of the foundation and, if the foundation is a parent foundation, its group.

**(4)** The scrutinisers must submit a written report to the foundation authority. The foundation authority determines the remuneration for the scrutinisers.

#### Part 5

##### *Formation*



### *Founders*

**26.-(1)** A commercial foundation may be formed by one or more founders.

**(2)** A founder must not be the subject of financial reconstruction or pending bankruptcy proceedings.

**(3)** If the founder is a natural person, that person must have full legal capacity and may not be under guardianship pursuant to section 5 of the Danish Guardianship Act, or under co-guardianship pursuant to section 7 of the Guardianship Act.

**(4)** If the founder is a legal person, that person must be authorised to acquire rights, enter into commitments and be a party to legal proceedings.

### *Statutes*

**27.-(1)** Statutes must be established for a commercial foundation. These must include a specification of

1) the name and any secondary name(s),

2) the founder,

3) the purpose,

4) the size of the contributed capital, and how this has been paid,

5) whether, in connection with the formation, the foundation is to acquire assets other than cash

6) any special rights or benefits accruing to the founders or others,

7) the number of members of the board of directors, and how they are appointed,

8) the financial year, including the first financial year,

9) the specific date from which formation is to take legal effect if the legal effect is to enter into force on a date other than the date of the resolution to form the foundation, cf. section 29(3) and (4), and

10) appropriation of profits and reserves.

**(2)** Documents that are referred to in the statutes, but without their main contents being reproduced must be annexed to the statutes.

**(3)** If general guidelines regarding the circumstances described in subsection (1), nos. 3 and 10 are drawn up, such guidelines must be submitted to the Danish Business Authority in its capacity as the registration authority.

**28.-(1)** Provisions in statutes giving members of a specific family or certain families priority to distribution have no legal effect according to their content to the extent that the priority extends beyond persons who are alive at the time of formation and an unborn generation of these persons.

**(2)** The provision in subsection (1) applies correspondingly to provisions in statutes giving members of a specific family or certain families priority to take up a specific position or in some other way, including in the form of remuneration, receive financial support from the foundation or from an undertaking that is under the dominant influence of the foundation. However, this does not apply to the position of a member of the board of directors.

### *Registration of formation*

**29.-(1)** A commercial foundation must be registered or an application for registration must be filed, cf. section 12(1). A foundation may not be registered before the contributed capital laid down in the statutes has been fully paid up and the board of directors and an auditor have been appointed.

**(2)** The formation will take legal effect from the date of the resolution to form the foundation, or from a later date specified in the statutes, without prejudice to subsections (3) and (4).

**(3)** If the contributed capital only consists of cash, the formation may not take legal effect more than 12 months after the statutes have been signed.

**(4)** If, in connection with its formation, a foundation is to acquire assets other than cash, the formation may not take legal effect later than the date of registration or application for registration of the foundation, cf. subsection (1).

**(5)** If, in connection with its formation, a foundation acquires an existing undertaking or a controlling interest in another undertaking, the formation may take effect for accounting purposes from the first day of the current financial year of the undertaking acquired, or in which a controlling interest has been acquired.

**30.-(1)** A commercial foundation that has not been registered may not acquire rights, enter into commitments or be a party to legal proceedings, apart from proceedings relating to the formation. The foundation must add the words "*under stiftelse*" (in the process of formation) to its name.

**(2)** Where a foundation is formed with a date of legal effect that postdates the date of the resolution to form the foundation, cf. section 29(3) and (4), no rights may be acquired and no commitments may be entered into on behalf of the foundation in the period until the date of legal effect.

**(3)** The persons who have entered into a commitment on behalf of the foundation after the date of the resolution to form the foundation, but before the date of registration, or who have joint responsibility in this regard, will be jointly and severally liable for such commitment. Upon registration, the foundation acquires such commitments.

## Part 6

### *Capital*

**31.** A commercial foundation must have contributed capital of at least DKK 300,000.

#### *Contributed capital paid in the form of assets other than cash*

**32.-(1)** If contributed capital is paid in whole or in part with assets other than cash, the contribution must represent a financial value and must not be an obligation to perform work or provide a service. Claims against founders may not be contributed or be acquired, regardless of whether the claims are secured by a charge.

**(2)** If contributed capital is paid in whole or in part with assets other than cash, or the foundation is to acquire such assets in connection with the formation, the foundation must account for the circumstances of importance for the assessment of the contribution or the acquisition. The account must include a description of the individual assets and must state the name and address of the persons covered by the agreement on contribution or acquisition.

**33.-(1)** If other assets are contributed to the foundation, or the foundation is to acquire assets other than cash, a valuation report must be drawn up in connection with the formation. The valuation report must include

- 1) a description of each contribution,
- 2) information on the valuation method applied, and
- 3) a declaration that the estimated financial value of the assets corresponds at least to the contributed capital.

**(2)** The valuation report must be prepared by one or more independent valuation experts. The founders may appoint approved auditors as valuation experts. In other cases, valuation experts may be appointed by the probate court with jurisdiction over the place where the foundation is to have its registered office. The valuation experts must be able to make any investigation that they deem necessary, and they may demand any information and assistance from the founders or management that they consider necessary for the performance of their work.

**(3)** The valuation must not have been made more than four weeks before the date of the resolution. If the four-week period is exceeded, a new valuation is required.

**(4)** Where, in connection with its formation, a foundation acquires an existing undertaking, the valuation report must include an opening balance sheet for the foundation. The opening balance sheet must be prepared in accordance with the Financial Statements Act. The opening balance sheet must be accompanied by an audit report.

**34.-(1)** The requirement in section 33(1) to prepare a valuation report does not apply to contributions of:

1) Assets and liabilities presented individually in the financial statements or consolidated financial statements for the previous financial year prepared in accordance with the provisions of the Financial Statements Act or international accounting standards, cf. Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, in accordance with accounting regulations laid down in or pursuant to financial business legislation, or in the financial statements of a foreign undertaking prepared under the regulations of Directive 2013/34/EU of the European Parliament and of the Council with later amendments, and containing an audit report if the asset or the liability is measured at fair value in the financial statements or consolidated financial statements for the previous financial year.

2) Securities or money-market instruments recorded at the average price at which they have been traded on one or more regulated markets over the four weeks preceding the date of signing the statutes. However, a valuation report must be prepared in accordance with section 33(1) if the board of directors assesses that the average price is affected by extraordinary circumstances or that, for other reasons, the average price cannot be assumed to reflect the current value.

**(2)** The board of directors is responsible for ensuring that contributions covered by subsection (1) are not detrimental to the foundation or its creditors, and the board of directors must issue a declaration containing

- 1) a description of the asset and its value,
- 2) information on the valuation method applied,
- 3) a statement that the values stated correspond at least to the contributed capital, and
- 4) a statement that no new circumstances significant for the original valuation have occurred.

**(3)** The board of directors must submit the declaration under subsection (2) to the Danish Business Authority in its capacity as the registration authority at the same time as the registration or application for registration of the formation of the foundation, cf. section 12(1).

#### *Capital increase*

**35.-(1)** The board of directors may resolve to increase the contributed capital

- 1) in connection with a transfer of reserves or profits according to the foundation's most recent audited financial statements,
- 2) in connection with a transfer of profits earned or distributable reserves that have been earned or become distributable after the period covered by the most recently presented financial statements, unless the amount has been distributed, spent or tied up, or

3) in connection with an inheritance, a gift or similar contribution the foundation has received to increase the contributed capital.

**(2)** The board of directors must make any amendments to the statutes that are necessary because of an increase pursuant to subsection (1).

**(3)** Sections 32-34 apply correspondingly to capital increases made through contributions of assets other than cash. In such cases, however, any balance sheet prepared under section 33(4) must be prepared as a pre-acquisition balance sheet for the acquired undertaking.

**36.-(1)** A capital increase must be registered or an application for registration must be filed in the IT system at the Danish Business Authority by no later than two weeks after the date of the resolution to transfer reserves or profits or after the amount of the capital increase has been paid. The capital increase may not be registered before the transfer or contribution has been made.

**(2)** Any resolution to increase the capital will lapse if registration is refused. A resolution will also lapse if it has not been registered or no application for registration has been received by the Danish Business Authority within 12 months after the date of the resolution.

## Part 7

### *Management etc.*

#### *General provisions on management functions and duties of the board of directors*

**37.-(1)** A commercial foundation is managed by a board of directors which, in addition to the members of the board of directors elected pursuant to section 64(1), 1st sentence, consists of at least three members.

**(2)** The board of directors may appoint an executive board which may consist of one or more executive officers. The board of directors and the executive board make up the management.

**(3)** The majority of the members of the board of directors must not be executive officers in the foundation. No executive officer may be chairman or vice-chairman of the board of directors.

**(4)** The management or an equivalent body and members of the management or an equivalent body in subsidiaries of the foundation and in an undertaking which is not a subsidiary, but over whose operating and financial policies the foundation and its subsidiary exercise significant influence, may not appoint members to the board of directors of the foundation.

**(5)** The chairman or vice-chairman of the board of directors must not be an executive officer in a subsidiary or in an undertaking which is not a subsidiary, but over whose operating and financial policies the foundation and its subsidiary exercise significant influence, unless, in exceptional cases, the foundation authority consents to this.

**38.-(1)** The board of directors must always act in accordance with the purpose and interests of the foundation. In addition to performing overall and strategic management duties and ensuring proper organisation of the foundation's activities, the board must ensure that

1) the bookkeeping and financial reporting procedures are satisfactory, having regard to the circumstances of the foundation,

2) adequate risk management and internal control procedures have been established,

3) the board of directors regularly receives information as necessary about the financial position of the foundation,

4) the executive board performs its duties properly and as directed by the board of directors, and that

5) the capital resources are adequate at all times, including that the foundation has sufficient liquidity to meet its current and future liabilities as they fall due, and the board of directors is

therefore required to continuously assess the financial position and ensure that the existing capital resources are adequate.

**(2)** In foundations in which the board of directors has no executive board, in addition to the tasks referred to in subsection (1), the board of directors must take charge of the day-to-day management.

**39.** Members of the management must have full legal capacity and may not be under guardianship pursuant to section 5 of the Guardianship Act or under co-guardianship pursuant to section 7 of the Guardianship Act.

*Specifically regarding the founder's representation in the board of directors*

**40.-(1)** The founder, his or her spouse or cohabiting partner or persons related to said persons by kinship or relationship by marriage in the direct line of ascent or descent or collaterally as close as siblings, may not constitute the majority of the board of directors without the consent of the foundation authority.

**(2)** If a commercial foundation is formed by an undertaking, a person who, either directly or indirectly, owns more than 50% of the ownership interests or voting interests in the undertaking may not, without the consent of the foundation authority, constitute the majority of the board of directors together with persons who are as closely related to the person in question as stated in subsection (1), just as the latter persons may not constitute the majority of the board of directors without the consent of the foundation authority. Similarly, the majority of the management of the founder undertaking may not, without the consent of the foundation authority, constitute the majority of the board of directors together with persons who have a relationship stated in subsection (1) with said members of the management.

*Gender representation*

**41.-(1)** In commercial foundations whose debt instruments or other securities are admitted to trading on a regulated market in a Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area, and in large commercial foundations, cf. subsection (2), the board of directors must

- 1) set targets for the percentage of the under-represented gender in the board of directors, and
- 2) develop a policy to increase the percentage of the under-represented gender in other management levels of the foundation, without prejudice to subsections (5) and (6).

**(2)** Large commercial foundations are foundations that exceed two of the following criteria for two consecutive financial years:

- 1) a balance sheet total of DKK 156 million,
- 2) net turnover of DKK 313 million, and
- 3) an average number of full-time employees of 250.

**(3)** For the purposes of calculating the figures referred to in subsection (2), section 7(3) and (4) of the Financial Statements Act apply.

**(4)** For parent foundations which prepare consolidated financial statements or have consolidated financial statements prepared, the calculation referred to in subsection (2) must be at group level.

**(5)** For parent foundations which prepare consolidated financial statements, providing the targets and developing a policy, cf. subsection (1), for the group as a whole will suffice.

**(6)** Commercial foundations which in the most recent financial year have employed fewer than 50 employees may omit to develop a policy for increasing the percentage of the under-represented gender in the other management levels of the foundation, cf. subsection (1), no. 2.

### *Duties of the executive board*

**42.-(1)** In commercial foundations which have employed an executive board, the executive board is in charge of day-to-day management and must, as part of this, act in accordance with the purpose and interests of the foundation. The executive board must follow the guidelines and directions issued by the board of directors. Day-to-day management does not include transactions of an unusual nature or of major importance, having regard to the circumstances of the foundation. Such transactions may only be made by the executive board if specifically authorised by the board of directors, unless it will cause considerable inconvenience for the activities of the foundation to wait for a resolution by the board of directors. If so, the board of directors must be notified of the transaction as soon as possible.

**(2)** The executive board must ensure that bookkeeping complies with the applicable statutory regulations, and that its assets are properly managed.

**(3)** The executive board must also ensure that the capital resources are adequate at all times, including that the foundation has sufficient liquidity to meet its current and future liabilities as they fall due, and the executive board is therefore required to continuously assess the financial position and ensure that the existing capital resources are adequate.

**(4)** Executive officers have a right to attend and speak at meetings of the board of directors, unless otherwise determined in each case by the board of directors.

### *Administrator*

**43.** The board of directors may make an agreement with an administrator on performing certain specific operational functions. The management is responsible for the day-to-day operations of the foundation, irrespective of whether there is an agreement with an administrator.

### *Resignation of members of the management*

**44.-(1)** A member of the board of directors may resign from the board of directors at any time.

**(2)** A member of the board of directors must resign from the board of directors if said member is subject to bankruptcy proceedings.

**(3)** A member of the board of directors who commits an act that renders him or her unfit to continue as a member of the board of directors must resign from the board of directors.

**(4)** A member of the board of directors who, due to long-term illness or other incapacity, has proved incapable of holding the position as a member of the board of directors, or who has proved unfit, must resign from the board of directors.

**45.** The foundation authority may remove a member of the board of directors or an executive officer who does not comply with conditions set out in section 39. Moreover, the foundation authority may remove a member of the board of directors who does not meet the requirements in the memorandum of association or the statutes, or who must resign from the board of directors in accordance with the regulations in section 44(2)-(4).

**46.** In special cases, the foundation authority may order the board of directors to dismiss an executive officer if he or she clearly fails to live up to the requirements to be in charge of the day-to-day management of the foundation.

**47.-(1)** When a member of the board of directors leaves the board of directors, a new member of the board of directors is appointed in accordance with the statutes.

**(2)** If appointment of a member of the board of directors is not in accordance with the statutes, the foundation authority must make the appointment.

### *Alternates*

**48.** The provisions in this Act that govern members of the board of directors apply correspondingly to their alternates.

### *Remuneration of members of management*

**49.-(1)** The amount of remuneration for members of the management may not exceed what is considered usual, taking into account the nature and extent of the work, and what is considered reasonable with regard to the financial position of the commercial foundation and, in the case of parent foundations, the financial position of the group.

**(2)** The foundation authority may reduce remuneration for the board of directors that is deemed excessive, cf. subsection (1).

### *Rules of procedure*

**50.-(1)** The board of directors may, by means of rules of procedure, lay down a specific provision on the performance of the tasks of the board of directors.

**(2)** When the board of directors draw up the rules of procedure, the nature of the activities of the foundation and its needs must be taken into account. In this regard, the board of directors should consider in particular whether the rules of procedure are to include provisions on the composition of the board, the division of responsibilities, supervision of the executive board, keeping of books, minutes, etc., any written and electronic meetings, duty of confidentiality, alternates, accounting checks and controls, signing of the auditors' records, and provisions to ensure that there is the requisite basis for an audit.

### *Disqualification*

**51.** No member of management may participate in addressing matters related to agreements between the commercial foundation and that member, or legal proceedings against that member, or matters related to agreements between the commercial foundation and a third party, or legal proceedings against a third party, if the member has a material interest in such matter and that material interest could conflict with the interests of the foundation.

### *Meetings of the board of directors*

**52.-(1)** The board of directors elects its own chairman. In the event of a parity of votes, the election must be resolved by lot.

**(2)** The chairman must ensure that the board of directors convenes meetings when necessary and that all members of the board of directors are invited to attend.

**(3)** The chairman of the board of directors may not perform any duties for the foundation that are unrelated to the duties as chairman. However, where special circumstances so require, the chairman of the board of directors may perform any work that the chairman is requested to perform by and for the board of directors.

**53.-(1)** The board of directors forms a quorum when more than half of the members of the board of directors are represented, unless a higher number of members is required by the statutes. However, resolutions may not be passed without all members of the board of directors being given access to participate in transaction of the business.

**(2)** If a member of the board of directors is absent, and an alternate has been elected, the alternate must have the right to replace the member for as long as the member is absent. Unless otherwise resolved by the board of directors, or provided in the statutes, in exceptional cases, a member of the board of directors may appoint another member of the board of directors as its proxy instead of calling an alternate, if this is considered appropriate having regard to the issue to be discussed.

**(3)** All resolutions by the board of directors must be passed by a simple majority of votes, unless a special majority is required by the statutes. The statutes may stipulate that the chairman, or in the absence of the chairman, the vice-chairman, is to cast the deciding vote in the event of a parity of votes.

**(4)** Minutes recording the proceedings in the board of directors must be kept and must be signed by all the members of the board of directors present. Any member of the management who dissents on a matter at the meeting is entitled to have their opinion entered in the minutes of the meeting.

**54.-(1)** An auditor is entitled to attend meetings of the board of directors when financial statements etc. to be signed by the auditor are considered. An auditor is obliged to attend all meetings of the board of directors if so requested by any member of the management.

**(2)** If the auditor keeps records, the auditors' records must be presented at each meeting of the board of directors. Each addition to the audit book must be signed by all the members of the board of directors.

**55.** Any member of the management, the auditor, the foundation authority or the Danish Business Authority in its capacity as the registration authority may demand that the board of directors be convened.

#### *Meetings of the board of directors by written procedure or electronic means*

**56.-(1)** Meetings of the board of directors may be held by written procedure to the extent that this does not prevent the board of directors from performing their duties. Any member of management may, however, demand an oral discussion. The provisions of this Act on meetings of the board of directors apply correspondingly to meetings of the board of directors by written procedure.

**(2)** Meetings of the board of directors may be held electronically to the extent that this does not prevent the board of directors from performing their duties. Any member of management may, however, demand an oral discussion. The provisions of this Act on meetings of the board of directors, and on electronic communication, apply correspondingly to meetings of the board of directors held electronically and to all communication for this purpose.

**(3)** The board of directors may pass a resolution on exchanging documents electronically and communicating by email for an electronic meeting of the board of directors instead of sending and presenting documents in hard copy form in accordance with this Act.

#### *Duty of confidentiality*

**57.** Members of the management, valuation experts and scrutinisers, including their assistants and alternates, may not make unauthorised disclosure of any information gained in the performance of their duties.

#### *Disclosure of information, etc. to the auditor or scrutiniser*



**58.-(1)** Members of the management must provide any auditor or scrutiniser who is to make a declaration on the circumstances of the commercial foundation with any information deemed to be important to an assessment of the foundation and, if the foundation is a parent foundation, its group, cf. section 6.

**(2)** Members of the management must provide any auditor or scrutiniser who is to make a declaration on the circumstances of the foundation with access to make such examinations as are deemed necessary by the auditor or scrutiniser, and must provide the auditor or scrutiniser with such information and assistance as is deemed necessary by the party in question to perform their duties.

#### *Annual financial statements meeting*

**59.-(1)** A financial statements meeting must be held each year, at which the board of directors must decide on approval of the annual report and on appropriation of the profit or loss as recorded in the approved annual report.

**(2)** An auditor is obligated to attend the financial statements meeting referred to in subsection (1). However, if all members of the board of directors agree that the auditor is not required to attend, and the auditor agrees with this, the auditor is not obligated to attend. This resolution must be recorded in the minute book of the board of directors.

#### *Recommendations on foundation governance*

**60.-(1)** The board of directors must account for how they apply the recommendations on foundation governance prepared by the Committee on Foundation Governance. The board of directors must state in its account whether the foundation follows the individual recommendations, or whether it derogates from one or more recommendations, and if so, which one(s). If the board of directors derogates from a recommendation, the board of directors must explain its reasons for doing so and what alternatives they have implemented.

**(2)** The foundation authority may order the board of directors to account for how it applies the recommendations prepared by the Committee on Foundation Governance, cf. subsection (1).

#### *Extraordinary transactions*

**61.** The board of directors may, only with the consent of the foundation authority, make or contribute to extraordinary transactions which may carry a risk that the statutes cannot be complied with, or that the foundation will no longer be able to exist.

#### *Subsequent acquisitions from the founder etc.*

**62.-(1)** The management is responsible for ensuring that the acquisition of assets from the founder etc. is not detrimental to the foundation or its creditors. If the foundation acquires assets from a founder, the foundation authority must approve the acquisition if the foundation pays a consideration for the acquisition and this consideration corresponds to at least 10% of the contributed capital. The same applies to acquisitions from persons who, by marriage, cohabitation or lineal consanguinity as close as siblings, are related to a person falling within the 1st sentence or who have other close affiliations to such person.

**(2)** For the approval in subsection (1), the board of directors must prepare an account of the circumstances related to the acquisition. Furthermore, a valuation report must be prepared pursuant to section 33, unless the acquisition is covered by section 34. However, if the asset

acquired is an existing undertaking, the balance sheet to be prepared under section 33(4) must be prepared as a pre-acquisition balance sheet for the acquired undertaking.

**(3)** Subsections (1) and (2) do not apply to ordinary commercial transactions by the foundation.

#### *Improper transactions*

**63.-(1)** Members of the management may not enter into any transaction that is clearly capable of providing members of the management or others with an undue advantage over the foundation. Improper resolutions by the board of directors that conflict with legislation or the statutes are invalid.

**(2)** Agreements between one or more members of the management are only valid if drafted in a manner that can subsequently be verified, except for agreements made on usual terms in the ordinary course of business.

#### *Employee representation*

**64.-(1)** The regulations laid down in the Companies Act and the regulations laid down pursuant to the Companies Act on election by employees of members of the board of directors apply correspondingly to a commercial foundation and its subsidiaries. The members of the board of directors elected by the employees will only participate in addressing matters that do not relate to the undertaking if this has been stated in the statutes. To the extent that new members of the board of directors are to be appointed by the board of directors, the members of the board of directors elected by the employees will not take part in the appointment, unless otherwise stated in the statutes.

**(2)** Where the members of the board of directors elected under subsection (1), 2nd or 3rd sentences do not participate in addressing matters, these members of the board of directors are not included when a resolution requires the presence of a certain number of members or a certain part of the board of directors.

**(3)** The Danish Business Authority may lay down specific regulations for company and group representation in commercial foundations.

#### *Notification of group relations etc.*

**65.** The board of directors in a parent foundation must notify a subsidiary as soon as any group relationship has been established. A subsidiary must provide the parent foundation with such information as is necessary to assess the group's position and the results of its activities.

**66.** Members of the management may not carry out or engage in speculative transactions involving ownership interests in subsidiaries.

#### *Loss of capital*

**67.-(1)** If it is established that the equity represents less than half of the contributed capital, the board of directors must ensure that a meeting of the board of directors is held within three months. At the meeting of the board of directors, the board of directors must submit a proposal for measures that will fully cover the contributed capital, or a proposal for dissolution of the foundation.

**(2)** For the purposes of subsection (1), the board of directors may, in observance of sections 81-86, resolve to reduce the contributed capital. If, after reduction, the contributed capital is less than

the amount set out in section 31, the board of directors must propose that the foundation be dissolved.

**(3)** The board of directors must submit an extract from the minutes from the meeting of the board of directors, cf. section 53(4), with an explanation of the financial position of the foundation to the foundation authority within two weeks after the meeting of the board of directors, cf. subsection (1).

**(4)** If no meeting of the board of directors is convened, or if the board of directors resolves not to correct the capital position of the foundation under subsection (1), and if this does not take place within a time limit set by the foundation authority, the foundation authority will arrange for the foundation to be compulsorily dissolved in accordance with the regulations in sections 115-117.

#### *Right of representation and power to bind the company*

**68.-(1)** Members of the management represent a commercial foundation in relation to third parties.

**(2)** A foundation is bound by agreements made on behalf of the foundation by the entire board of directors, by a member of the board of directors, or by a member of the executive board.

**(3)** The power of each member of the board of directors or executive board to bind the foundation, as conferred by subsection (2), may be restricted by the statutes so that it may only be exercised by several members acting jointly or by one or more specific members acting jointly or alone. No other restrictions on the power to bind the foundation may be registered.

**(4)** Power of procuration may only be granted by the board of directors.

#### Part 8

#### *Auditing etc.*

**69.-(1)** A commercial foundation's financial statements must be audited by one or more approved auditors appointed by the board of directors or in accordance with the statutes. An auditor is appointed by the board of directors for a period of one year at a time at the annual financial statements meeting, cf. section 59, unless otherwise stated in the statutes. If the auditor is appointed in accordance with the statutes, such right to appoint may only apply for up to seven years from the formation of the foundation.

**(2)** If there is no auditor in the foundation, the foundation authority will appoint an auditor.

**69a.** Notwithstanding Article 17(1) of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities, the board of directors at the financial statements meeting, cf. section 59, in a commercial foundation covered by section 1a(a) of the Act on Approved Auditors and Audit Firms (Auditor Act) may elect the same auditor for a maximum of

1) 20 years if a tendering procedure has been conducted in accordance with Article 16(2)-(5) of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities with effect for the audit after expiry of a period of 10 years, or

2) 24 years, if, after the expiry of a period of 10 years, the board of directors at the financial statements meeting appoints at least one additional auditor to carry out the audit.

**70.-(1)** On behalf of the foundation, the foundation authority may appoint an additional approved auditor to participate in the audit together with the other auditor(s) until the next

financial statements meeting, cf. section 59. The other provisions of this Act regarding auditors apply correspondingly to this co-auditor.

**(2)** The appointed co-auditor must be registered in the IT system at the Danish Business Authority. The foundation authority determines the remuneration for the co-auditor. Costs of the co-auditor are initially covered by the Treasury, but are ultimately borne by the foundation.

**71.** The auditor may demand that members of the management provide any information that is deemed to be of importance to the assessment of the commercial foundation and, if the foundation is a parent foundation, its group, cf. section 6.

**72.-(1)** Changes regarding an auditor must be registered or an application for registration must be filed, cf. section 12(1).

**(2)** An auditor may be removed by the party that appointed the auditor or by the foundation authority. An auditor may only be removed before the auditor's term of office expires if such removal is based on reasonable grounds.

**(3)** If an auditor resigns or is removed from office, or if an auditor's appointment is otherwise terminated before the auditor's term of office expires, or if the change of auditors is due to disagreements between the board of directors and the auditor, the auditor must notify the foundation authority immediately. The notification must be accompanied by an adequate account of the reason for the termination.

**73.** The auditor must determine whether the board of directors complies with its obligations to prepare and keep books, records and minutes, and determine whether the regulations on the submission and signing of audit records are complied with, if such audit records are kept. If the auditor finds that the requirements concerned have not been fulfilled, the auditor must prepare a separate statement to that effect and submit this statement to the foundation authority.

**74.-(1)** In the auditor's critical review of the commercial foundation's accounting records and the foundation's circumstances in general, the auditor must comply with the audit requirements imposed by the foundation authority.

**(2)** The auditor must inform the foundation authority immediately if this Act, provisions laid down pursuant to this Act or the statutes are not complied with and such non-compliance is not insignificant or rectified immediately. Moreover, the foundation authority must be informed immediately by separate notification about matters which have come to the auditor's knowledge during the auditor's work, and which give reasonable grounds for presuming that members of the management may incur liability in damages or criminal liability for actions or omissions affecting the foundation, group undertakings, creditors or employees. Notification must always be provided in the event of non-compliance with

- 1) Part 28 of the Criminal Code and legislation regarding taxes, duties and subsidies, and
- 2) legislation on presentation of financial statements, including bookkeeping and keeping of accounting records.

**(3)** If, in connection with issuing declarations pursuant to section 1(2) and (3) of the Act on Approved Auditors and Audit Firms (Auditor Act), an auditor receives information or makes observations that give rise to the issue of a reprimand regarding the circumstances of the foundation, the auditor must notify the foundation authority immediately.

**75.** The foundation authority may order the auditor to provide information about the circumstances of the foundation.

### *Distributions and other capital outflow etc.*

**76.-(1)** Outflow of the commercial foundation's funds may only take place as

- 1) a distribution, cf. sections 77-79, or
- 2) a capital reduction, cf. sections 81-86.

**(2)** The board of directors is responsible for ensuring that capital outflow does not exceed a reasonable amount having regard to the foundation's financial position and, in the case of parent foundations, the group's financial position, and that no outflow is made to the detriment of the foundation or its creditors, cf. section 38(1), no. 5. The board of directors is also responsible for ensuring that the contributed capital as well as reserves that are undistributable under the law or according to the foundation's statutes, are covered after the capital outflow.

### *Distribution*

**77.** The board of directors is responsible for distributions in accordance with section 78 for the purposes established in the statutes, cf. section 27(1), no. 10. The board of directors may make reasonable transfers to reserves to consolidate the commercial foundation.

**78.-(1)** Distributions may only be made out of distributable reserves, i.e. amounts stated as retained earnings in the commercial foundation's most recent approved annual financial statements, and reserves that are distributable under the law or according to the foundation's statutes, less retained losses.

**(2)** After the presentation of the foundation's first annual report, profits earned and distributable reserves that have been earned or become distributable after the period covered by the most recently presented annual report may also be used for distributions, unless the amount has been distributed, spent or tied up.

**(3)** For the application of funds covered by subsection (2), the board of directors' resolution on distribution must be accompanied by a balance sheet. The board of directors must assess whether the balance sheet from the most recent annual report is adequate, or whether an interim balance sheet showing that sufficient funds are available for distribution has to be prepared, without prejudice to subsection (4).

**(4)** Notwithstanding subsection (3), an interim balance sheet must always be prepared showing that sufficient funds are available for distribution if the resolution on distribution is passed more than six months after the balance sheet date in the foundation's most recent approved annual report.

**(5)** If an interim balance sheet is prepared under subsections (3) and (4), such balance sheet must be audited by the foundation's auditor. The interim balance sheet must be prepared in accordance with the regulations on preparation of the foundation's annual report. The balance sheet date of the interim balance sheet may not predate the resolution on distribution by more than six months.

**(6)** If non-cash assets are distributed, a valuation report must be prepared, cf. section 33. The declaration by the valuation expert must state that the amount of distribution corresponds to at least the estimated value of the non-cash asset(s) distributed. If the board of directors prepares and files a declaration under section 34(2), it has no obligation to obtain a valuation report in connection with the distribution of assets as described in section 34(1). The board of directors must publish the declaration in the IT system at the Danish Business Authority, cf. section 12(3), by no later than two weeks after the date of the resolution on distribution. The balance sheet to be prepared under section 33(4) must be prepared as a pre-acquisition balance sheet for the transferred undertaking.

**(7)** The resolution by the board of directors on distribution must be recorded in the foundation's minute book. For applications of funds covered by subsection (2), the interim balance sheet or the balance sheet for the latest financial year must be included in the board of directors' minute book as an annex to the resolution.

**79.-(1)** If a distribution is clearly disproportionate to the funds of the foundation, the foundation authority may recommend that the board of directors consider increasing or reducing the distribution.

**(2)** If the size of the distribution is considered to pose a risk of violating the statutes, after consultation with the board of directors, the foundation authority may order the board of directors to make the necessary transactions with a view to increasing or reducing the distribution.

#### *List of grant recipients*

**80.-(1)** The board of directors must submit a list of recipients of distributions from the foundation in the financial year to the foundation authority by no later than at the same time as submission of the foundation's annual report to the Danish Business Authority.

**(2)** If the list is submitted, cf. subsection (1), as a stand-alone document, the list is exempt from regulations on access to documents.

#### *Resolutions on capital reductions*

**81.-(1)** With the consent of the foundation authority, the board of directors may pass a resolution to reduce the contributed capital, including amend the statutes. Resolutions on capital reductions must specify the amount by which the contributed capital is to be reduced and for which of the following purposes that amount is to be applied:

- 1) to cover losses,
- 2) distribution, or
- 3) to transfer to a special reserve fund.

**(2)** The statutes may stipulate that the contributed capital must be reduced by a certain amount or by certain percentages over a specified period of time with a view to making distributions to support the purpose. The amendments to the statutes necessary as a consequence of a reduction must be resolved by the board of directors and must be registered or an application for registration must be filed, cf. section 12(1).

**(3)** The contributed capital may not be reduced to a level below the minimum amount set out in section 31.

**82.** If the size of the contributed capital is considered to involve a violation of the statutes, after consultation with the board of directors, the foundation authority may order the board of directors to reduce the capital, cf. sections 81 and 83-86.

#### *Capital reduction in connection with distribution of assets other than cash*

**83.** If capital is reduced in connection with distribution of non-cash assets, a valuation report must be available on the date of the resolution, cf. section 33. The declaration by the valuation expert must state that the amount of the capital reduction corresponds to at least the estimated value of the non-cash asset(s) distributed. If the board of directors prepares and files a declaration under section 34(2), it has no obligation to obtain a valuation report in connection with the distribution of assets as described in section 34(1). The board of directors must publish the

declaration in the IT system at the Danish Business Authority, cf. section 12(3), by no later than two weeks after the date of the resolution on distribution. The balance sheet to be prepared under section 33(4) must be prepared as a pre-acquisition balance sheet for the transferred undertaking.

#### *Application for registration of capital reductions*

**84.** A resolution on capital reduction must be registered or an application for registration must be filed, cf. section 12(1).

#### *Request to creditors*

**85.** If capital is reduced for the purpose of distribution or transfer to a special reserve fund, cf. section 81(1), nos. 2 and 3, the creditors of the commercial foundation must be requested to file their claims against the foundation within four weeks. This request is by registration and publication of the resolution by the board of directors to reduce the contributed capital.

#### *Implementation of capital reductions*

**86.-(1)** When the time limit for notifications of claims has expired, cf. section 85, the board of directors may resolve to implement the capital reduction for the purpose of distribution or transfer to a special reserve fund, if it is appropriate to carry out the capital reduction, cf. section 38(1), no. 5, without prejudice to subsection (4).

**(2)** In its capacity as registration authority, the Danish Business Authority may implement a capital reduction for the purpose of distribution or transfer to a special reserve fund without an additional prior notice of four weeks after the expiry of the time limit for notification of claims to the foundation, cf. section 85, unless, prior to the reduction, it has been registered that the resolution on capital reduction is to be annulled, or an application for registration thereof has been filed, cf. subsection (3), or that the capital reduction is not to be implemented until a subsequent application for registration has been filed with the Danish Business Authority, cf. subsections (4) and (5).

**(3)** The board of directors must register that the capital reduction is to be annulled or apply for registration thereof before expiry of the time limit in subsection (2), if the capital reduction for the purpose of distribution or transfer to a special reserve fund cannot be implemented in accordance with what has been published, cf. section 85, or if it is not appropriate to implement the capital reduction, cf. section 38(1), no. 5.

**(4)** A capital reduction for the purpose of distribution or transfer to a special reserve fund may not be implemented if the notified claims due have not been met and, upon request, satisfactory collateral has not been provided for the disputed claims or claims not yet due. In its capacity as the registration authority, the Danish Business Authority may, at the request of one of the parties, decide whether collateral offered can be considered satisfactory.

**(5)** A capital reduction for the purpose of distribution or transfer to a special reserve fund must be registered or an application for registration must be filed in the IT system at the Danish Business Authority by no later than the expiry of the time limit for submission of the annual report including the date of the resolution on capital reduction, although by no later than one year after the resolution on capital reduction. If this time limit is exceeded, the resolution on capital reduction will become invalid.

**(6)** The Danish Business Authority may lay down regulations to the effect that certain changes to the foundation after the date of registration of the resolution on capital reduction, cf. section 84, mean that the resolution on capital reduction is to be annulled or that the capital reduction must

be implemented by a subsequent application for registration to the Danish Business Authority in its capacity as the registration authority.

*Distributions etc. to the founder, members of the management etc.*

**87.-(1)** Founders, members of the management, auditors or persons holding a leading position in the foundation may not receive payment other than remuneration, and such remuneration may not exceed what is considered usual, taking into account the nature and extent of the work. The same applies to persons related to one of the above persons by marriage or cohabitation, and any minor children of the above persons.

**(2)** Granting loans or providing collateral for loans to the persons mentioned in subsection (1) is not allowed.

**(3)** Notwithstanding subsection (2), a commercial foundation may, directly or indirectly, grant loans, or provide collateral for loans to the persons mentioned in subsection (1) for the purpose of usual business transactions.

*Repayment*

**88.-(1)** If a distribution or other capital outflow has been made in contravention of the provisions of this Act, the recipients must repay the amounts received with an interest that accrues annually at the rate specified in section 5(1) and (2) of the Interest on Delayed Payment, etc. Act plus 2%. However, this only applies if recipients realised or ought to have realised that the distribution of funds was illegal, without prejudice to section 49(2).

**(2)** If a commercial foundation has granted loans or provided collateral for loans in contravention of section 87(2), the amount must be returned to the foundation together with interest that accrues annually at the rate specified in section 5(1) and (2) of the Interest on Delayed Payment, etc. Act plus 2%, unless a higher rate of interest is agreed.

**(3)** Where repayment under subsection (1) or (2) is not possible, or if the recipient has no obligation to repay the amount, cf. subsection (1), 2nd sentence, the members of the board of directors involved in the resolution on the distribution or in implementing it, or in the preparation or approval of the incorrect financial report will be liable under the general law of damages for any loss suffered by the foundation.

**(4)** Any provision of collateral for loans in contravention of section 87(2) is binding on the foundation if the contracting party did not know that the collateral had been provided in contravention of this provision.

Part 10

*Amendments to the statutes*

**89.-(1)** On the recommendation of the board of directors, the foundation authority may permit a provision of the statutes to be amended or a commercial foundation to be dissolved, without prejudice to subsection (2). In this connection, the foundation may be permitted to amalgamate with one or more foundations covered by the Act on Foundations and Certain Associations.

**(2)** In connection with amendments to provisions in the statutes regarding purposes and distributions and in connection with liquidation of the foundation pursuant to section 107, the foundation authority must obtain consent from the Department of Civil Affairs before permission pursuant to subsection (1) may be granted.

**(3)** The provisions in subsections (1) and (2) apply irrespective of whether the statutes grant the board of directors or others the right to amend the statutes.



**90.-(1)** After consultation with the board of directors and with consent from the Department of Civil Affairs, the foundation authority may decide that a provision of the statutes must be amended if the provision is unenforceable or has proven to be clearly inappropriate.

**(2)** The Department of Civil Affairs may decide that a provision of the statutes must be amended if it is in contravention of legislation or the memorandum of association of the foundation.

## Part 11

### *Merger*

#### *Merger between commercial foundations*

**91.-(1)** Under the provisions of this Part of the Act, a foundation may be dissolved without liquidation by transferring its assets and liabilities as a whole to another commercial foundation. The same applies when two or more commercial foundations are merged into a new foundation. The transfers take place without consent from the creditors.

**(2)** A commercial foundation may cease to exist by merger under subsection (1) if the purpose of the surviving foundation is related to the object of the non-surviving foundation, and the purpose of the non-surviving foundation

- 1) will be significantly better safeguarded by the merger, or
- 2) can no longer or only with difficulty be met or has become inappropriate.

**(3)** A commercial foundation may be involved in a merger under subsection (1) as the surviving foundation when

- 1) the merger is not in contravention of the statutes of the foundation, and
- 2) the merger is assumed to be in the interest of the foundation.

**(4)** The board of directors in each of the merging foundations is to pass a resolution on merger subject to permission from the foundation authority under section 96.

**(5)** If a non-surviving foundation has reached the end of its financial year before the date on which the non-surviving foundation's rights and obligations are to be considered to have been transferred to the surviving foundation for accounting purposes, and the board of directors has not yet approved the annual report for this accounting period, the board of directors must approve the annual report for the accounting period no later than the date of the resolution on the merger.

**(6)** With permission from the foundation authority, the liquidator may decide or approve that a commercial foundation in liquidation suspend the liquidation process in order to be part of a merger as a non-surviving or surviving foundation if distribution of the liquidation proceeds has not yet commenced. If a foundation is the surviving foundation, permission to merge, cf. section 96, requires that the foundation comply with the provisions of this Act and the requirements of the statutes, including provisions and requirements for capital, management and auditor. The regulations regarding resumption of activities in section 119 will not then apply.

**(7)** With permission from the foundation authority, the probate court or a liquidator appointed by the probate court may decide or approve that a commercial foundation under compulsory dissolution may be part of a merger as the non-surviving or surviving foundation. If a foundation is the surviving foundation, permission to merge, cf. section 96, requires that the foundation comply with the provisions of this Act and the requirements of the statutes, including provisions and requirements for capital, management and auditor. The regulations regarding resumption of activities in section 119 will not then apply.

**(8)** A curator may decide or approve that a commercial foundation in bankruptcy may be part of a merger as the non-surviving foundation.

### *Joint merger statement*

**92.-(1)** The board of directors in the merging foundations must draw up and sign a joint merger statement that includes information and provisions on

- 1) the names and any secondary names of the foundations, including whether the name or secondary name of a non-surviving foundation is to be adopted as a secondary name for the surviving foundation,
- 2) the registered offices of the foundations,
- 3) the date from which the rights and obligations of a non-surviving foundation are considered to have been transferred for accounting purposes, cf. subsection (2),
- 4) any special benefits accruing to the members of the managements, founders or others, and
- 5) a reason for the appropriateness of the merger for each of the foundations involved for the purpose of obtaining permission pursuant to section 96, including an account of the consequences of the merger for fulfilment of the purpose of the individual foundation and how the purposes of the merging foundations are related.

**(2)** The joint merger statement must be signed by the end of the financial year including the date on which the merger takes effect for accounting purposes, cf. subsection (1), no. 3. If this time limit is exceeded, in its capacity as the registration authority, the Danish Business Authority will not be able to register the merger.

### *Interim balance sheet*

**93.-(1)** If the joint merger statement is signed more than six months after the end of the financial year to which the most recent annual report of the foundation relates, an interim balance sheet must be prepared for the foundation concerned. The foundation authority may grant exemptions from this requirement.

**(2)** The date of the interim balance sheet, which must be prepared in accordance with the Financial Statements Act, may not be more than three months before the date that the joint merger statement was signed. The interim balance sheet must be audited.

### *Declaration by valuation expert(s) on the creditors' position*

**94.-(1)** For each of the merging foundations, one or more independent valuation experts must draw up a written declaration as to whether the creditors of the individual foundation can be considered to be sufficiently protected after the merger relative to the foundation's present situation.

**(2)** The valuation experts must be appointed under section 33(2), 3rd sentence. If the boards of directors of the merging foundations want to use one or more joint valuation experts, these valuation experts must, at the boards of directors' request, be appointed by the probate court with jurisdiction over the place where the registered office of the surviving foundation is situated. Section 33(2), 4th sentence applies correspondingly to the valuation experts' activities in relation to all of the merging foundations.

**(3)** A condition for the foundation authority's permission to carry out the merger is that the declaration under subsection (1) positively states that the creditors of all foundations involved can be considered to be secured by sufficient collateral after the merger relative to the foundations' present situation.

### *Application for registration of merger and submission of documents*

**95.-(1)** In its capacity as the registration authority, the Danish Business Authority must, within four weeks after the signing of the joint merger statement under section 92, have received the following from each of the participating foundations

- 1) an application for registration of the merger,
- 2) documentation for the merger resolution passed by the board of directors, cf. section 91(4),
- 3) a joint merger statement, cf. section 92,
- 4) an interim balance sheet, if applicable, cf. section 93,
- 5) a declaration by a valuation expert(s) on the creditors' position, cf. section 94, and
- 6) dated statutes if, as part of the merger, a new foundation is formed or amendments are made to the statutes of the surviving foundation.

**(2)** Applications for registration under subsection (1) must include any consequential amendments to the information registered about the foundation in the event that the merger of the foundation is permitted by the foundation authority pursuant to section 96.

#### *Permission from the foundation authority to carry out the merger*

**96.** The merger resolution passed by the board of directors requires permission from the foundation authority. The foundation authority will permit the merger when the conditions in section 91(2)-(8), section 92(1), section 93, section 94(3) and section 95(1) are met.

#### *Legal effect of merger*

**97.** A non-surviving foundation will be considered to have been dissolved and its rights and obligations will be considered to have been transferred in full to the surviving or new foundation when

- 1) permission to carry out the merger has been granted, cf. section 96, and
- 2) the merger has been registered in the IT system at the Danish Business Authority.

**98.** If a commercial foundation resulting from a merger enters into an agreement before the foundation has been registered, and if the other contracting party is aware that the foundation has not been registered, the other contracting party may, unless otherwise agreed, cancel the agreement if registration is refused. If the other contracting party was not aware that the foundation had not been registered, the party may cancel the agreement as long as the foundation remains unregistered.

#### *Merger of a commercial foundation with its wholly owned subsidiary(ies)*

**99.-(1)** A parent foundation may acquire a wholly owned subsidiary which is a public or private limited liability company, such that the foundation acquires the subsidiary's assets and liabilities as a whole, whereby the subsidiary is dissolved without liquidation. The transfers are not subject to consent by the creditors.

**(2)** A merger resolution is passed in the foundation by the board of directors subject to permission from the foundation authority under section 104.

**(3)** Section 91(6) and (7) apply correspondingly to foundations entering into mergers pursuant to subsection (1).

**(4)** In a non-surviving subsidiary, the merger resolution must be passed by the central governing body of the company.

**(5)** If a non-surviving subsidiary is in liquidation, a merger, cf. subsection (1), may only be resolved if, as shareholder, the foundation has not yet received any distributions, and if the

general meeting resolves at least at the same time to suspend the liquidation process. Section 231 of the Companies Act on resumption of activities will then not apply.

**(6)** If a non-surviving subsidiary is under compulsory dissolution, a merger resolution, cf. subsection (1), requires approval from the probate court or any liquidator appointed by the probate court.

**(7)** A subsidiary in bankruptcy may participate in a merger, cf. subsection (1), if this is approved by the curator.

**(8)** If a non-surviving subsidiary has reached the end of its financial year before the date on which its rights and obligations are to be considered to have been transferred to the surviving foundation for accounting purposes, and the general meeting has not yet approved the annual report for this accounting period, the general meeting must approve the annual report for the accounting period no later than the date of the merger resolution.

#### *Joint merger statement*

**100.-(1)** The board of directors of the foundations and the central governing body of the subsidiaries involved must draw up and sign a joint merger statement that includes information and provisions on

- 1) the names and any secondary names of the subsidiaries, including whether any name or secondary name of a non-surviving subsidiary is to be adopted as a secondary name for the surviving foundation,
- 2) the registered office of the foundation and the subsidiaries,
- 3) the date from which the rights and obligations of a non-surviving subsidiary are considered to have been transferred for accounting purposes to the foundation, cf. subsection (2),
- 4) any special benefits accruing to the members of the management of the foundation or subsidiaries, and
- 5) a reason for the merger in order to obtain permission pursuant to section 104.

**(2)** For the foundation and each of the subsidiaries, the joint merger statement must be signed by the end of the financial year including the date on which the merger takes effect for accounting purposes, cf. subsection (1), no. 3. If this time limit is exceeded, in its capacity as the registration authority, the Danish Business Authority will not be able to register the merger.

#### *Interim balance sheet*

**101.-(1)** Section 93 applies correspondingly to the foundation.

**(2)** Section 239 of the Companies Act applies correspondingly to the subsidiaries involved.

#### *Declaration by valuation expert(s) on the creditors' position*

**102.-(1)** For the foundation and each of the subsidiaries involved in the merger, one or more independent valuation experts must draw up a written declaration as to whether the creditors of the foundation and the individual subsidiary can be considered to be secured by sufficient collateral after the merger relative to the present situation of the foundation and the individual subsidiary.

**(2)** The valuation experts must be appointed as specified in section 33(2). If the board of directors of the foundation and the central governing body of the subsidiaries involved want to use one or more joint valuation experts, these valuation experts must, at the management bodies' request, be appointed by the probate court with jurisdiction over the place where the registered office of the surviving foundation is situated. Section 33 applies correspondingly to the valuation experts' activities in relation to all of the merging legal persons.

**(3)** A condition for the foundation authority's permission to carry out the merger is that the declaration under subsection (1) positively states that the creditors of all legal persons involved can be considered to be secured by sufficient collateral after the merger relative to the present situation of the foundation and the individual subsidiary.

#### *Application for registration of merger and submission of documents*

**103.-(1)** In its capacity as the registration authority, the Danish Business Authority must, within four weeks after the signing of the joint merger statement under section 100, have received the following from the foundation and each of the subsidiaries involved

- 1) an application for registration of the merger,
- 2) documentation for the merger resolution, cf. section 99(2) and (4),
- 3) a joint merger statement, cf. section 100,
- 4) an interim balance sheet, if applicable, cf. section 101,
- 5) a declaration by valuation expert(s) on the creditors' position, cf. section 102, and
- 6) dated statutes if, as part of the merger, amendments are made to the statutes of the foundation.

**(2)** Applications for registration under subsection (1) must include any consequential amendments to the information registered about the foundation in the event that the merger of the foundation is permitted by the foundation authority pursuant to section 104.

#### *Permission from the foundation authority to carry out the merger*

**104.** The merger resolution passed by the board of directors requires permission from the foundation authority. The foundation authority will grant permission to carry out the merger when

- 1) the merger is not in contravention of the statutes of the foundation,
- 2) the merger is assumed to be in the interest of the foundation, and
- 3) the conditions in section 99(2) and (3), section 100(1), section 101, section 102(3) and section 103(1) are met.

#### *Legal effect of merger*

**105.** A merger will be considered to have been completed, and each of the non-surviving subsidiaries involved will be considered to have been dissolved and its rights and obligations to have been transferred in full to the foundation when

- 1) permission to carry out the merger has been granted, cf. section 104, and
- 2) the merger has been registered in the IT system at the Danish Business Authority.

#### *Cross-border merger*

**106.** The Minister for Industry, Business and Financial Affairs may lay down regulations according to which sections 91-105, with such changes as are necessary, apply to

- 1) a merger of commercial foundations where a commercial foundation is involved in a merger with one or several commercial foundations governed by the legislation of another EU/EEA Member State and comparable to a commercial foundation covered by this Act, and
- 2) a merger where a parent foundation acquires a subsidiary corresponding to a public or private limited liability company and governed by the legislation of another EU/EEA Member State.

## Part 12

### *Dissolution*

#### *Resolution to enter into liquidation*

**107.-(1)** Any resolution on voluntary dissolution by liquidation must be passed by the board of directors in observance of section 89(2).

**(2)** If, according to the statutes, a commercial foundation has been formed for a specified period of time, the resolution under subsection (1) may be passed by the board of directors alone.

#### *Election of liquidator*

**108.-(1)** On the recommendation of the board of directors, the foundation authority is to appoint one or more liquidators for the liquidation to replace the management. The provisions of this Act on management apply to liquidators.

**(2)** A liquidator is appointed until further notice. The foundation authority may remove a liquidator and appoint a new liquidator at any time.

**(3)** At the same time as passing the resolution to liquidate the foundation, cf. section 107(1), the board of directors must pass a resolution on recommendation of a liquidator. The liquidator must be recommended to the Danish Business Authority at the same time as the registration or application for registration of the resolution on liquidation, cf. section 109(1).

**(4)** Liquidation may be initiated when a liquidator has been registered in the IT system at the Danish Business Authority, cf. section 109(1). In the period from passing the resolution on voluntary dissolution, cf. section 107(1), until a liquidator is appointed, the former management may only carry out transactions that are necessary and that may be carried out without detriment to the foundation, including its purpose and interests, and the foundation's creditors.

**(5)** A liquidator must not have been a member of the management and must be independent of the purpose and activities of the foundation.

#### *Application for registration of liquidation*

**109.-(1)** A resolution to enter into liquidation must be registered or an application for registration must be filed, cf. section 12(1), when the conditions in section 89(2) are met. The resolution must be notified to all known creditors of the foundation by no later than at the same time as the registration or application for registration to the Danish Business Authority in its capacity as the registration authority.

**(2)** A foundation in liquidation must keep its name with "*i likvidation*" (in liquidation) added to it.

**(3)** When a foundation has resolved to enter into liquidation, no resolution to change the registered circumstances concerning the foundation may be passed, except for

1) change of liquidator,

2) change of auditor,

3) capital increases,

4) change of the address of the liquidator's registered office if it is not possible to contact the foundation at the former address or if, exceptionally, such change is warranted by the specific circumstances,

5) resumption of activities, cf. section 119, and

6) merger, cf. section 91(6) and section 99(3), and any provisions issued pursuant to section 106.

**(4)** Change of liquidator in accordance with subsection (3), no. 1 may only be resolved by the foundation authority, cf. section 108(1). A resolution to change the circumstances mentioned in subsection (3), nos. 2-6 requires that the liquidator decide or approve the changes. A resolution to change circumstances in accordance with subsection (3), nos. 2 and 4-6 must also be approved by the foundation authority.

#### *Request to creditors*

**110.-(1)** Upon registration and publication in the IT system at the Danish Business Authority of the board of directors' resolution to enter into liquidation, cf. section 107(1), the foundation's creditors will be requested to file their claims with the liquidator by no later than three months from the date of publication.

**(2)** The liquidator may not close and dissolve the estate until the time limit stipulated in subsection (1) has expired.

**(3)** If a liquidator cannot accept a notified claim, the creditor must be notified of this. If a creditor wants to contest a decision, the creditor must be notified that the matter will have to be brought before the probate court with jurisdiction over the place where the registered office of the foundation is situated by no later than four weeks after submission of the notification.

**(4)** Claims filed after the estate has been closed and dissolved must be paid out of funds not yet distributed in accordance with the statutes.

#### *Presentation of annual report in liquidation*

**111.** The provisions of this Act and the Financial Statements Act on financial reporting and auditing, and the submission of annual reports to the Danish Business Authority apply correspondingly to commercial foundations in liquidation.

#### *Tasks of the liquidator, including a description of the most important reasons for the liquidation*

**112.-(1)** The liquidator must secure the affairs of the commercial foundation during the liquidation and ensure that the foundation's assets are realised and that the foundation's obligations are fulfilled. The activities of the foundation may only be continued by the liquidator to the extent necessary for a fair liquidation of the foundation.

**(2)** The liquidator must have sufficient knowledge of the activities and legal relationships of the commercial foundation to carry out a task of this nature and scope.

**(3)** As soon as possible after appointment, the liquidator must submit a report to the foundation authority stating the most important reasons for the liquidation, including whether there is reason to initiate an investigation with a view to criminal prosecution.

#### *Approval of liquidator's remuneration and distribution of the foundation's funds*

**113.** Determination by a liquidator of the liquidator's remuneration must take into account the scope of the work and the nature of the estate, the liability associated with the work and the results obtained under the given circumstances, and the remuneration must be approved by the foundation authority.

**114.-(1)** Liquidation proceeds may be distributed when the time limit referred to in section 110(1) has expired and debts to all known creditors have been paid, and when the distribution of liquidation proceeds has been approved by the foundation authority.

**(2)** When the administration of the estate has been concluded, the liquidator may pass a resolution on final liquidation of the foundation. Administration of the estate may not be concluded until any disputes under section 110(3) have been settled.

**(3)** By no later than two weeks after conclusion of the liquidation, this must be registered in the IT system at the Danish Business Authority, or an application for registration must be submitted. The liquidation accounts with documentation of the distribution of liquidation proceeds must be enclosed as an annex to the registration or application for registration. The liquidation accounts must be audited by an approved auditor. The foundation will subsequently be struck off the Danish Business Authority's register.

### *Compulsory dissolution*

**115.-(1)** The Danish Business Authority, in its capacity as the registration authority, may, in observance of section 89(1), request the probate court with jurisdiction over the place where the registered office of the commercial foundation is situated to dissolve the foundation if

- 1) the foundation has not, at the appropriate time, submitted the approved annual report of the foundation in accordance with the Financial Statements Act,
- 2) the foundation does not have the board of directors or auditor required in this Act or in the statutes, and it is not deemed appropriate for the foundation authority to appoint a new board of directors or auditor in accordance with section 47(2) or section 69(2).
- 3) the foundation has not registered information on its beneficial owners, or if the foundation has registered incomplete information pursuant to section 21a,
- 4) the foundation has not held documentation for the information on its beneficial owners, or the foundation has held incomplete documentation pursuant to section 21a,
- 5) the foundation does not have the registered office required in this Act or in the statutes, or
- 6) dissolution is not resolved in cases covered by section 67(4) or section 118(2).

**(2)** In its capacity as the registration authority, the Danish Business Authority may stipulate a time limit within which the foundation may rectify a deficiency under subsection (1). If the deficiency is not rectified by no later than the expiry of the time limit stipulated, in its capacity as the registration authority, the Danish Business Authority may request that the probate court dissolve the foundation, cf. subsection (1).

**(3)** If dissolution is not adopted by the board of directors in circumstances in which this is required by legislation or by the statutes, the Danish Business Authority may request the probate court with jurisdiction over the place where the registered office of the foundation is situated to dissolve the foundation.

**116.-(1)** The Danish Business Authority will publish the decision to remit a commercial foundation for compulsory dissolution in the probate court in the IT system at the Danish Business Authority.

**(2)** The foundation must keep its name with "*under tvangsopløsning*" (under compulsory dissolution) added to it.

**(3)** The probate court may appoint one or more liquidators. The probate court may also appoint an auditor. The provisions on liquidation in this Part apply to compulsory dissolution, always provided that the probate court or anyone authorised by the court makes decisions with respect to the foundation's circumstances. The costs of dissolution will be paid out of public funds, if necessary.

**(4)** Upon conclusion of administration of the estate, the probate court must notify the Danish Business Authority in its capacity as the registration authority to such effect, and the Authority must register the dissolution of the foundation in the IT system at the Danish Business Authority.



**117.-(1)** When it has been decided that a commercial foundation must be compulsorily dissolved, no resolution to change the registered circumstances concerning the foundation may be passed, except for

- 1) installation or change of a liquidator appointed by the probate court, cf. section 116(3), 1st sentence,
- 2) installation or change of an auditor appointed by the probate court, cf. section 116(3), 2nd sentence,
- 3) resumption of activities, cf. section 120, or
- 4) merger, cf. section 91(7) and section 99(3), and any provisions issued pursuant to section 106.

**(2)** Change of liquidator in accordance with subsection (1), no. 1 may only be resolved by the probate court. A resolution to change the circumstances mentioned in subsection (1), nos. 2-4 requires that the probate court or any liquidator appointed by the court decides or approves such changes. A resolution to change circumstances in accordance with subsection (1), nos. 3 and 4, must also be approved by the foundation authority.

**(3)** In the period from submission of the request for compulsory dissolution of the foundation to the probate court until a liquidator has been appointed or the foundation has been dissolved, the former management of the foundation may only carry out transactions that are necessary and that may be carried out without detriment to the foundation, including its purpose and interests, and its creditors.

**(4)** To the extent necessary, the former management of the foundation must provide the probate court and any liquidator appointed by the probate court with information on the foundation's activities until commencement of the liquidation. The same applies to the foundation's former auditor if the probate court is unable to obtain information from the foundation's former management. The management and the auditor must provide the information necessary for the probate court and any appointed liquidator to assess existing and future claims. In groups, the managements of subsidiaries must also assist the probate court and any liquidator appointed by the probate court if, in its capacity as a parent undertaking, the foundation is subject to compulsory dissolution.

**(5)** The probate court may summon former members of the management as well as the foundation's former auditor to a court hearing in order to obtain the information mentioned in subsection (4).

**118.-(1)** If a scrutiny initiated in pursuance of section 25 results in the scrutinisers recommending in their written report to the foundation authority that the commercial foundation be dissolved, within four weeks after receiving a copy of the scrutiny report, the board of directors must convene a meeting of the board at which this subject is on the agenda.

**(2)** If the board of directors does not convene a meeting, or if the board of directors does not resolve to dissolve the foundation pursuant to subsection (1), the foundation authority may arrange for the foundation to be compulsorily dissolved in accordance with the regulations in sections 115-117.

#### *Resumption of activities and temporary resumption*

**119.-(1)** It may be decided to resume activities in a commercial foundation, if distribution of the liquidation proceeds pursuant to section 114 has not been commenced. A condition for resumption of activities is that a board of directors and an auditor are appointed in accordance with this Act and the statutes, and that a declaration is made by a valuation expert, cf. section 33(2), confirming the availability of contributed capital in the foundation. The contributed capital must be reduced to the amount available. If, after this, the contributed capital is less than the

requirement laid down in section 31, the contributed capital must be increased to at least this amount.

**(2)** The provision in subsection (1) also applies if, during the liquidation process, it transpires that the circumstances leading to the liquidation resolution no longer exist. In this event, the liquidator must decide to suspend the liquidation process, and for the foundation to resume its operations.

**(3)** A resolution on resumption of activities pursuant to subsection (1) or (2) is subject to approval by the foundation authority. A resolution on resumption of activities must be registered or an application for registration must be filed, cf. section 12(1).

**120.-(1)** Section 119 applies correspondingly when a commercial foundation under compulsory dissolution by order of the probate court registers or applies for registration, cf. section 12(1), of discontinuation of the proceedings and resumption of the foundation's activities.

**(2)** If a foundation is subject to compulsory dissolution, a condition for resumption of the foundation's activities is that the circumstances that caused the foundation to be subject to compulsory dissolution have been rectified. Such rectification must be made by no later than at the time of passing the resolution to resume the foundation's activities, cf. section 119(1). Documentation that the matters have been rectified must be submitted no later than the date of registration or application for registration, cf. subsection (1). If, at the time of the request to resume the foundation's activities, the foundation has not yet submitted annual reports for the financial year in which the time limit for submission falls, receipt of said annual reports will also be a condition for resumption of the foundation's activities.

**(3)** If the probate court has appointed a liquidator, such liquidator must consent to the resumption of activities.

**121.-(1)** The probate court may order that the estate of a commercial foundation that, following liquidation, has been struck off the register in the IT system at the Danish Business Authority, cf. section 114(3), is to be restored to the register if additional funds become available for distribution. The probate court may also order that temporary resumption takes place if other circumstances provide grounds for such temporary resumption.

**(2)** The former liquidator will be responsible for administration of the estate. If this is not possible, the probate court or a liquidator appointed by the court will be responsible for administration of the estate.

**(3)** Temporary resumption of the administration of the estate and its completion must be registered in the IT system at the Danish Business Authority, or an application for registration must be submitted, by no later than two weeks after the probate court has issued an order to this effect.

#### *Transition to financial reconstruction or bankruptcy proceedings*

**122.-(1)** Only the board of directors, the foundation authority or, if the foundation is in liquidation, the liquidator may file a petition in financial reconstruction or bankruptcy on behalf of the foundation. The probate court will notify the Danish Business Authority, in its capacity as the registration authority, of financial reconstruction or bankruptcy.

**(2)** If the liquidator considers that the creditors will not be satisfied in full in connection with the liquidation, the liquidator must file a petition in financial reconstruction or bankruptcy.

**(3)** If a foundation is under compulsory dissolution pursuant to section 115(3), the liquidator must file a petition in financial reconstruction or bankruptcy. If no liquidator has been appointed, the probate court may issue a financial reconstruction or bankruptcy order on its own initiative.

**(4)** When a petition for bankruptcy has been filed, no resolution to change the registered circumstances concerning the foundation may be passed, except for changes concerning the auditor appointed by the probate court or a merger, cf. section 91(8), and any provisions issued in pursuance of section 106.

**(5)** In a foundation whose management has been assumed by the reconstruction administrator, no resolution to change the registered circumstances concerning the foundation may be passed, except for changes concerning an auditor appointed by the reconstruction administrator.

**123.-(1)** A commercial foundation under financial reconstruction must keep its name with "*under rekonstruktionsbehandling*" (under financial reconstruction) added to it.

**(2)** A commercial foundation in bankruptcy must keep its name with "*under konkurs*" (in bankruptcy) added to it.

**(3)** Completion of the bankruptcy must be registered in the IT system at the Danish Business Authority, unless otherwise indicated in the notification from the probate court.

## Part 13

### *Transition between commercial and non-commercial foundations etc.*

**124.-(1)** If an existing foundation becomes subject to the provisions of this Act, or if the conditions for being exempt from this Act no longer apply, this must be registered or an application for registration must be filed, cf. section 12(1). An account from the board of directors must be enclosed as an annex to the registration or application for registration, explaining why the foundation is considered to be subject to a registration obligation pursuant to this Act.

**(2)** The Danish Business Authority will decide whether the foundation is subject to a registration obligation pursuant to this Act. With the exception of section 27, Part 5 does not apply to registration of an existing foundation as a commercial foundation.

**125.-(1)** If a commercial foundation ceases to be covered by this Act, this must be registered or an application for registration must be filed, cf. section 12(1). An account from the board of directors must be enclosed as an annex to the registration or application for registration, explaining why the foundation is no longer considered to be covered by this Act.

**(2)** When a foundation is no longer covered by this Act, the foundation will be struck off the register of commercial foundations. The Danish Business Authority will notify the Department of Civil Affairs to this effect.

## Part 14

### *Damages*

**126.-(1)** Founders and members of management who, in the performance of their duties, have intentionally or negligently caused damage to the commercial foundation are liable to pay damages. The same applies where the damage is caused to any third party.

**(2)** The provision in subsection (1) applies correspondingly with regard to the liability to pay damages of auditors, valuation experts or scrutinisers.

**(3)** If an auditing firm has been elected as the auditor, both the auditing firm and the auditor performing the audit are liable for damages.

**127.** A decision to commence legal proceedings pursuant to section 126(1), 1st sentence, against members of the management, auditors, valuation experts, scrutinisers or third parties may be taken by the board of directors or the foundation authority.

**128.-(1)** Damages under section 126 may be reduced if this is considered reasonable in view of the degree of fault, the amount of the loss and other circumstances of the case in general.

**(2)** If multiple persons are liable, they will be jointly and severally liable in damages. However, any person whose liability is reduced under subsection (1) is only liable for the reduced amount. If one of the persons liable for damages has paid the damages, this person may demand that each of the other persons liable pay their part of the damages, having due regard to the degree of fault attributable to each person and the circumstances of the case in general.

**129.** Civil proceedings against members of the management, auditors, valuation experts or scrutinisers may be brought before the court with jurisdiction over the place where the registered office of the foundation is situated.

## Part 15

### *Right of appeal*

**130.-(1)** Decisions made by the foundation authority or by the Danish Business Authority in its capacity as the registration authority pursuant to this Act or provisions laid down pursuant to this Act may be brought before the Danish Company Appeals Board no later than four weeks after notification of the decision. The decisions may be brought before the courts, without being brought before the Company Appeals Board first.

**(2)** However, matters concerning the stipulation of time limits in pursuance of section 16(1), and notification of extension of time limits in pursuance of section 12(4), as well as decisions pursuant to section 17(1), section 24(3), section 25, section 60(2), and section 75 may not be brought before any higher administrative authority.

## Part 16

### *Penalty provisions, etc.*

**131.-(1)** In the absence of a more severe penalty pursuant to other legislation, any violation of the regulations of this Act regarding registrations in the IT system at the Danish Business Authority or regarding submission of applications for registration, valuation reports under section 62(2) and notifications to the foundation authority or the Danish Business Authority in its capacity as the registration authority is punishable by a fine.

**(2)** Where members of the management, the auditor or the liquidator fail(s) to meet, in a timely manner, their obligations under this Act or in accordance with provisions stipulated under this Act to the Danish Business Authority in its capacity as the registration authority or to the foundation authority, the Danish Business Authority, in its capacity as the registration authority or the foundation authority may, by way of sanction, impose fines that accrue on a daily or weekly basis.

**132.-(1)** Violation of sections 5, 13 and 15, section 21a(3), (5) and (6), section 26(2), section 34(2), section 37(3)-(5), section 38, section 42(3), sections 49-51, section 52(3), section 53(4), section 54, sections 56-59, section 61, section 62(1), sections 63 and 65-67, section 76(2), section 77, section 78(1) and (6), 4th sentence, section 80, section 83, 4th sentence, section 85, section 86(4), section 87, section 116(2) and sections 117 and 123-125 is punishable by a fine. Continued participation in transactions that contravene section 87 is punishable by a fine.

**(2)** In the absence of a more severe penalty under other legislation, any person who wrongfully discloses or uses a password or other means of access to attend or participate electronically in an

electronic meeting of the board of directors, cf. section 56(2), 1st sentence, including electronic voting, will be punished by a fine.

**(3)** In the absence of a more severe penalty under other legislation, any person who wrongfully discloses or uses a password or other means of access to read, modify or send electronic messages, etc. covered by the provisions on electronic communication in section 56(3) will be punished by a fine.

**(4)** Regulations stipulated pursuant to this Act may stipulate fines for violation of the provisions in the regulations.

**(5)** Companies etc. (legal persons) may incur criminal liability according to the regulations in Part 5 of the Criminal Code.

**(6)** The period of limitation for non-compliance with the provisions in this Act or regulations issued pursuant to this Act is five years.

## Part 17

### *Entry into force and transitional provisions*

**133.-(1)** The Minister for Industry, Business and Financial Affairs sets the date of entry into force of this Act, without prejudice to subsections (2)-(14). The Minister for Industry, Business and Financial Affairs may decide that different parts of this Act are to enter into force on different dates. However, section 24(1) enters into force on 1 December 2014.<sup>2)</sup>

**(2)** At the same time, the Minister for Industry, Business and Financial Affairs is authorised to repeal the Commercial Foundations Act, cf. Consolidated Act no. 560 of 19 May 2010, as amended. In this connection, the Minister for Industry, Business and Financial Affairs may decide that certain regulations in the Commercial Foundations Act, cf. Consolidated Act no. 560 of 19 May 2010, as amended, remain in force until they are replaced by the regulations in this Act.

**(3)** Administrative regulations issued pursuant to the existing provisions in the Commercial Foundations Act, cf. Consolidating Act no. 560 of 19 May 2010, as amended, will remain in force until they are amended or repealed.

**(4)** Section 5(1) and (3), sections 28, 30 and 40 do not apply to commercial foundations established before 1 January 1985. Transactions pursuant to section 67(2), 1st sentence, of the Commercial Foundations Act, cf. Consolidated Act no. 560 of 19 May 2010, as amended, still apply after the Act has been repealed.

**(5)** At its first meeting after entry into force of this Act, the board of directors must bring the statutes etc. into conformity with this Act, without prejudice to subsections (6)-(14).

**(6)** At its first meeting after entry into force of this Act, the board of directors must bring the composition of the board of directors into conformity with section 37(3) and (5). Ongoing appointment periods are to be respected; however, the composition of the board of directors must be brought into conformity with section 37(3) and (5) by no later than four years after entry into force of this Act.

**(7)** In commercial foundations formed prior to the entry into force of this Act, and in which the management or an equivalent body and members of the management or an equivalent body in subsidiaries of the foundation and in an undertaking which is not a subsidiary, but over whose operating and financial policies the foundation and its subsidiary exercise significant influence, appoint a minority of the members of the board of directors, there is not requirement for the board of directors to bring the composition of the board of directors into conformity with section 37(4). In commercial foundations formed prior to the entry into force of this Act and in which the management or an equivalent body and members of the management or an equivalent body in subsidiaries of the foundation and in an undertaking which is not a subsidiary, but over whose operating and financial policies the foundation and its subsidiary exercise significant influence,

appoint more than a minority of the members of the board of directors of the foundation, the composition of the board of directors must be brought into conformity with the 1st sentence, so that the relevant parties only appoint a minority of members of the board of directors. Ongoing appointment periods are to be respected; however, the composition of the board of directors must be brought into conformity with the 1st sentence by no later than two years after entry into force of this Act.

**(8)** If members of the management of the founder undertaking constitute the majority of members of the board of directors, the composition of the board of directors must be brought into conformity with section 40(2), 2nd sentence. Ongoing appointment periods are to be respected; however, the composition of the board of directors must be brought into conformity with section 40(2), 2nd sentence, by no later than two years after entry into force of this Act.

**(9)** If the board of directors has made an agreement with an administrator, the agreement must be brought into conformity with section 43 by no later than one year after entry into force of this Act.

**(10)** By no later than one year after entry into force of this Act, the board of directors must draw up rules of procedure, cf. section 50.

**(11)** By no later than one year after entry into force of this Act, the board of directors must include a provision in the statutes stipulating whether the chairman, or in the absence of the chairman, the vice-chairman, is to cast the deciding vote in the event of a parity of votes, cf. section 53(3), cf. section 52(1).

**(12)** The provision in section 69 on appointment of auditors or the necessary amendments to the statutes in this connection must be complied with by no later than at the first financial statements meeting after this Act has entered into force.

**(13)** Foundations covered by section 39 of the Commercial Foundations Act, cf. Consolidated Act no. 560 of 19 May 2010, as amended, must, within two years after entry into force of this Act, appoint an approved auditor and make any necessary amendments to the statutes. If the foundation fails to do so, the foundation must apply to the foundation authority for an exemption under section 3(2).

**(14)** Part 11 on mergers does not apply to ongoing mergers for which, in its capacity as the registration authority, the Danish Business Authority, upon entry into force of this Act, has published a notification that it has received a merger plan in accordance with section 23 of Executive Order no. 1064 of 17 November 2011 on the dissolution, reconstruction, bankruptcy and merger of commercial foundations. For ongoing mergers covered by the 1st sentence, the regulations in the Executive Order on the dissolution, reconstruction, bankruptcy and merger of commercial foundations applies.

## Part 18

### *Amendments to other legislation*

**Sections 134-135.** (Omitted)

## Part 19

### *Territorial provisions*

**136.** This Act does not apply to the Faroe Islands and Greenland, but may, by Royal Decree, be extended fully or in part to Greenland with any amendments necessitated by the specific conditions prevailing in Greenland.

Act no. 554 of 7 May 2019 (Amendment of the regulations on beneficial owners as a consequence of the 5th Anti-Money Laundering Directive)<sup>3)</sup> contains the following provision on entry into force.

**13.**

**(1)** This Act enters into force on 10 January 2020, without prejudice to subsection (2).  
**(2)-(3)** (Omitted)

*The Danish Business Authority, 20 September 2019*

FOR THE MINISTER  
Henning Steensig  
Deputy Director General

/ Christine Maxner

Official notes

<sup>1)</sup>The Act includes provisions implementing parts of Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ 2015, L 141, page 73, and parts of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, OJ 2018, L 156, page 43.

<sup>2)</sup> The following executive order on entry into force has been issued in pursuance of the provision mentioned: Executive Order no. 1386 of 10 December 2014.

<sup>3)</sup> The amendment concerns the footnote to the title of the Act, section 18(2) and (4), section 21a, section 21d, section 115(1), and section 132(1).