

The Act relating to Foundations (the Foundations Act)

TABLE OF CONTENTS

Chapter 1. Introductory provisions

- Section 2. Definition
- Section 3. Right of disposition over the capital asset
- Section 4. Non-commercial foundations and commercial foundations
- Section 5. Closely related parties
- Section 6. Exceptions to the Act's area of application
- Section 7. The Foundation Authority
- Section 8. The Foundations Register

Chapter 2. Establishing foundations

- Section 9. Foundation deed
- Section 10. Statutes
- Section 11. Notifying the Foundations Register
- Section 12. Enclosures with notification pursuant to section 11
- Section 13. Notifying the (Norwegian) Register of business Enterprises of commercial foundations

Chapter 3. Capital

I. General rules

- Section 14. Founding capital
- Section 15. Founding capital in assets other than cash
- Section 16. Increasing the founding capital
- Section 17. Reducing the founding capital
- Section 18. Managing the foundation's capital
- Section 19. Distribution
- Section 20. Loans and security
- Section 21. Separation duty

II. Special rules for commercial foundations as mentioned in section 4 second paragraph letters a) and b)

- Section 22. Special requirements for the founding capital
- Section 23. Equity requirements on conversion of a non-commercial foundation into a commercial foundation
- Section 24. Tied-up equity
- Section 25. Loss of the foundation's equity

Chapter 4. Organisation of foundations

I. Board

- Section 26. The board
- Section 27. Requirements relating to the composition of the board
- Section 27a). Gender representation when board members are appointed by central government or county or municipal authorities
- Section 28. Board members' terms of office
- Section 29. The Foundation Authority's authority to appoint and dismiss board members
- Section 30. The board's authority and responsibility
- Section 31. The board's rules of procedure
- Section 32. Quorum
- Section 33. Majority requirement

II. General manager

- Section 34. General manager
- Section 35. The general manager's authority and responsibility

III. Other bodies

- Section 36. Provisions in the statutes that the foundation shall have other bodies than the board and general manager

IV. Disqualification, outward representation etc.

- Section 37. Disqualification
- Section 38. Outward representation
- Section 39. Exceeding of representation rights
- Section 40. Remuneration

V. Employee representation in commercial foundations

- Section 41. Employee representation on the board
- Section 42. Employee right of representation in groups of companies and groups of enterprises

Chapter 5. Auditor

- Section 43. Appointment of an auditor etc.
- Section 44. The auditor's duties

Chapter 6. Conversion

- Section 45. Conversion
- Section 46. Conditions for conversion
- Section 47. Content of the conversion decision
- Section 48. Who can perform a conversion
- Section 49. Conversion proceedings
- Section 50. The Foundation Authority's conversion authority
- Section 51. The Foundation authority's review of conversion decisions
- Section 52. Dissolution of foundations
- Section 53. Merger of two or more foundations
- Section 54. Division of foundations
- Section 55. Conversion of legal subjects other than foundations

Chapter 7. Liability in damages and penal liability. Investigation

- Section 56. Liability in damages
- Section 57. Decision to file a claim on behalf of the foundation
- Section 58. Punishment
- Section 59. Investigation

Chapter 8. Entry into force and transition rules. Amendment of other acts of law

- Section 60. Entry into force
 - Section 61. Transition rules
 - Section 62. Amendment of other acts of law
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The Act relating to Foundations (the Foundations Act)

Cf. *formerly* Norwegian Act no 2-19; Decrees of 6 February 1694, 23 February 1748; Rescripts of 30 June 1770, 1 April 1773, 21 July 1773, 7 April 1774; Regulations of 21 August 1774; Rescripts of 3 November 1774, 9 May 1776, 14 August 1776, 18 September 1776, 16 April 1777, 17 January 1783; Bulletin of 10 April 1795; Regulation of 12 September 1806, the Foundations Act section 78 and, until 1 January 2005, *Act no 11 of 23 May 1980*.

Chapter 1. Introductory provisions

Section 1. *Area of application*

Unless otherwise laid down in or pursuant to legislation, this Act applies to foundations. A foundation may be a non-commercial foundation or a commercial foundation, cf. section 4.

The provisions of chapter 6 on the conversion of foundations shall also apply to the legal subjects mentioned in section 55.

The King may issue regulations relating to the application of the Act on Svalbard and may lay down specific rules having regard to the local conditions.

Section 2. *Definition*

By foundation is meant a capital asset made available by testament, endowment or other lawful act to be used independently for a specific purpose of a non-profit, humanitarian, cultural, social, educational, financial or other nature. A legal entity that meets the conditions laid down in the first sentence is a foundation pursuant to this Act, regardless of whether it is designated as a legacy, institution, fund or otherwise.

Section 3. *Right of disposition over the capital assets*

Once a foundation has been established, cf. section 2, its founder is no longer entitled to dispose over the capital assets that have been transferred to the foundation.

Section 4. *Non-commercial foundations and commercial foundations*

A foundation may be a non-commercial foundation or a commercial foundation.

Within the meaning of this Act, commercial foundations are

- a) foundations whose object is to engage in commercial activity;
- b) foundations engaging in commercial activity;
- c) foundations that, as a result of an agreement, or as shareholders or unit holders, have a controlling interest in a business enterprise outside the foundation itself.

For the purpose of deciding whether a foundation is a commercial foundation pursuant to the second paragraph letter c), a foundation is always deemed to have a controlling interest in a business enterprise outside the foundation itself when:

- a) the amount of shares or units held by the foundation in a company or partnership engaging in commercial activities represent the majority of the votes in the company or partnership, or
- b) the foundation is entitled to appoint or dismiss the majority of the members of the board of directors of the company or partnership engaging in commercial activities.

Non-commercial foundations are foundations other than commercial foundations.

In cases of doubt, the (Norwegian) Foundation Authority decides whether a foundation is a commercial foundation or a non-commercial foundation.

Section 5. *Closely related party*

Within the meaning of this Act, a closely related party is:

- a) a spouse or person with whom the person in question lives in a marriage-like relationship;
- b) relations in direct line of ascent or descent and siblings;
- c) relations in direct line of ascent or descent or siblings of a person mentioned under letter a);
- d) a spouse of, or a person living in a marriage-like relationship with, one of the persons mentioned under letter b);
- e) a company or partnership in which the person in question or any of the persons mentioned under letters a) through to d), either alone or jointly, have a controlling interest as mentioned in section 4 third paragraph.

Section 6. *Exceptions to the Act's scope*

The Act does not apply to:

- a) churches and churchyards or other assets owned by a congregation or religious community;
- b) pension schemes and pension funds under the supervision of the Financial Supervisory Authority of Norway, cf. (Norwegian) Act no 1 of 7 December 1956 relating to the supervision of credit institutions, insurance companies and securities trading etc. (the Financial Supervision Act) section 1 first paragraph no 14;
- c) savings banks.

Amended by Act no 48 of 19 June 2009 ((in force from such date as the King may decide).

Section 7. *The Foundation Authority*

The Foundation Authority is the supervisory body for foundations. The tasks of the Foundation Authority are:

- a) to keep a register of foundations in which all foundations shall be registered, cf. section 8;
- b) to conduct supervision and inspection to ensure that foundations are managed in accordance with their statutes and this Act;

c) to make decisions pursuant to this Act.

The foundation, its officers, its employees and its auditor shall provide the Foundation Authority with such information and other assistance as may be necessary in order for the Foundation Authority to perform its tasks pursuant to the Act. The auditor's duty of confidentiality does not apply in relation to the Foundation Authority.

The King may issue Regulations relating to the organisation and activities of the Foundation Authority and to the registration of foundations. A fee may be charged for registration in the Foundations Register and an annual charge may be imposed on foundations. The King may issue regulations relating to when fees and charges should be imposed, and to their size and their collection.

Such fees and charges can form the basis for distraint proceedings. When the (Norwegian) National Collection Agency is ordered to collect fees and charges as mentioned in the third paragraph, these may be collected by attachment of earnings or other benefits pursuant to the provisions of the (Norwegian) Satisfaction of Claims Act section 2-7. The National Collection Agency may also collect such fees and charges by means of distraint proceedings if legal protection for such distraint can be acquired through registration in a register or notification of a third party, cf. the (Norwegian) Mortgage Act chapter 5, and the distraint proceedings can be conducted in the National Collection Agency's offices pursuant to the (Norwegian) Enforcement of Claims Act section 7-9 first paragraph.

Amended by Act no 93 of 17 December 2004 (in force as from 1 January 2005)

Section 8. *The Foundations Register*

All foundations shall be registered in a central register kept by the Foundation Authority (the Foundations Register). The Foundations Register shall contain the following information, which shall be submitted to the register on the establishment of the foundation, cf. section 11:

- a) the date of establishment of the foundation and the name of the founder;
- b) the address of the foundation;
- c) members of the foundation's board, the name of its chair and any deputy members and observers on the board;
- d) the name of the general manager of the foundation, if any;
- e) the name of the auditor, the auditor's registered address and auditor number;
- f) the name of the accountant, if any (cf. (Norwegian) Act no 109 of 18 June 1993 relating to the authorisation of accountants), and the accountant's address and registration number;
- g) the statutes of the foundation.

In the case of the board's members, deputy members and observers and the general manager, the register must also contain their national ID numbers and their addresses. If the board is another foundation, cf. section 21 second

paragraph second sentence, the name and organisation number of that foundation must be registered.

If a foundation is wound up, the Foundations Register shall be notified and the foundation removed from the register. Such notification shall be given without undue delay. The same applies in the case of any other changes in relation to the registered information or circumstances about which the foundation is obliged to provide notification pursuant to the first paragraph. The foundation is not, however, obliged to notify of any change of address other than its own.

Documentation as mentioned in section 12 shall be enclosed with the initial notification sent for registration of the foundation with the Foundations Register. When notifying of changes, documents as mentioned in section 12 first paragraph letters b), c) and d) shall be enclosed with the change notification if it concerns matters covered by those provisions.

Notifications pursuant to the first through to the third paragraph may be sent electronically provided this does not contravene the requirements of section 12.

The following provisions of the (Norwegian) Business Enterprise Registration Act apply *mutatis mutandis* to the Foundations Register: sections 4-2, 4-3, 4-5 through to 4-7, chapter 5, sections 6-1, 7-1, 7-2, chapter 8 and sections 10-1, 10-3 and 10-5. The Foundation Authority may issue regulations entitling it to register changes on its own initiative in the Foundations Register and to determine the consequences of such changes in relation to other registers.

Chapter 2. Establishing foundations

Section 9. *Foundation deed*

The founder shall prepare a foundation deed, which, as a minimum, shall state the following:

- a) the object of the foundation;
- b) the assets to be used as founding capital, cf. section 15;
- c) the composition of the board, unless the composition of the foundation's first board is regulated by the statutes as mentioned in section 10 first paragraph letter c);
- d) any special rights to be granted to the founder or other persons in connection with the establishment of the foundation.

The foundation deed shall also contain the foundation's statutes, cf. section 10.

The foundation deed shall be dated and signed by the founder.

If a foundation is established without the founder having prepared a foundation deed that satisfies the requirements of the first paragraph, the board shall draw up the foundation deed, or supplement the foundation deed with any information that may be missing.

Section 10. Statutes

A foundation shall have statutes, which, as a minimum, shall state the following:

- a) the name of the foundation;
- b) the object of the foundation;
- c) the number or the minimum and maximum number of board members and how the board is to be elected;
- d) if the foundation is to include other bodies than the board, which bodies these are, how they are to be elected and their authority and duties (cf. section 36);
- e) the amount of the founding capital (cf. section 14 first paragraph and section 22).

The statutes of a commercial foundation shall also state the business name of the foundation, cf. the (Norwegian) Business Names Act section 2-2 eighth paragraph.

If the legal act on which the foundation is founded does not include statutes that meet the requirements of the first and second paragraph, the foundation's board shall draw up statutes or amend the statutes as required. The board shall also change the amount of founding capital stated in the statutes if the provision of the statutes would otherwise be incompatible with section 15 second paragraph.

Amended by Act no 91 of 5 September 2003 (in force as from 1 March 2004 in accordance with Decree no 1118 of 5 September 2003) and Act no 88 of 15 December 2006 (in force as from 1 January 2007 in accordance with Decree no. 1432 of 15 December 2006).

Section 11. Notifying the Foundations Register

Within three months of the establishment of the foundation, the board shall notify the Foundation Authority in accordance with section 2, so that the foundation can be registered in the Foundations Register. The notification shall contain the information mentioned in section 8 first paragraph.

The foundation cannot be registered unless a foundation deed has been drawn up in accordance with section 9 first and second paragraphs, cf. section 10, and unless the whole of the founding capital has been placed at the foundation's independent disposal.

Section 12. Enclosures with notification pursuant to section 11

The following shall be enclosed with the notification mentioned in section 11:

- a) a certified copy of the foundation deed;
- b) declarations from the auditor and a board member(s) that they accept their appointment;
- c) a declaration from the auditor that the whole of the founding capital has been placed at the foundation's disposal, cf. section 11 second paragraph;
- d) if the founding capital consists of assets other than cash, a statement from

the auditor that the value of the assets corresponds at least to the amount of founding capital stated in the statutes, cf. section 15 second paragraph.

An opening balance sheet for the foundation must also be enclosed with the notification. The opening balance sheet must be drawn up in accordance with the provisions of the (Norwegian) Accounting Act. The auditor shall provide a declaration that the balance sheet has been prepared in accordance with those provisions. The opening balance sheet and auditor's declaration shall be dated no earlier than four weeks before notification of the Foundations Register pursuant to section 11.

Enclosures as mentioned in the first paragraph letters b) through to d) may be submitted electronically. The Foundations Register may issue regulations requiring such electronic enclosures to satisfy certain technical requirements, including conditions relating to the auditor's electronic signature.

If the board has made amendments to the foundation deed pursuant to section 9 fourth paragraph, or to the statutes pursuant to section 10 third paragraph, the notification shall also be accompanied by a certified copy of the original foundation deed or the original statutes.

Section 13. *Notifying the (Norwegian) Register of Business Enterprises of commercial foundations*

Notification of commercial foundations shall be sent to the Register of Business Enterprises, with the information required by the Business Enterprise Registration Act sections 3-6 and 3-7. If it is clear when the foundation is established that it will engage in commercial activities, the foundation shall be notified to the Register of Business Enterprises at the same time as notification is sent for registration with the Foundations Register pursuant to section 11. If the foundation becomes a commercial foundation at a later date, the Register of Business Enterprises shall be notified without undue delay, where necessary with the enclosures as mentioned in section 23 second sentence.

Chapter 3. Capital

I. General rules

Section 14. *Founding capital*

On their formation, foundations shall have a founding capital of at least NOK 100,000. The Foundation Authority may grant exemption from the first sentence.

If the founding capital fails to meet the requirement of the first paragraph, no foundation has been established. If the person intending to establish a foundation is deceased, the Foundation Authority shall decide who will take over the capital assets intended as founding capital for the foundation. Section 49 second sentence shall apply *mutatis mutandis*. The decision shall take account of what accords best with the purpose the foundation was

intended to serve, and of any other factors that the founder must be assumed to have considered highly important. If it is impossible on the basis of the considerations mentioned in the fourth sentence to find a suitable recipient of the capital assets, the assets shall be transferred to the founder's heirs, unless it is more reasonable to allocate them to a charitable cause. If court proceedings are instituted against decisions pursuant to this provision, the court shall be entitled to try all aspects of the case.

Section 15. *Founding capital in assets other than cash*

Assets that cannot be recognised in the balance sheet pursuant to the Accounting Act, may not be used as founding capital. An obligation to perform work or provide a service for the foundation may not under any circumstances constitute founding capital.

The assets to be used as founding capital may not be assigned a value greater than the fair market value on the date of the opening balance sheet.

Section 16. *Increasing the founding capital*

Decisions to increase the founding capital shall be made by the board. The board may not make such a decision if the increase is incompatible with the foundation's object, statutes or other requirements of the founder.

The founding capital can be increased by:

- a) a transfer of equity funds to the founding capital;
- b) supplementing the founding capital with assets received subsequent to the foundation's establishment, through testament, endowment or other unilateral act. However, this shall not apply if otherwise provided for or clearly assumed by the transferor of the assets.

The Foundations Register and, if applicable, the Register of Business Enterprises, shall be notified of the capital increase within six weeks of the decision being made. Notification of a capital increase pursuant to the second paragraph letter b) shall be accompanied by enclosed declarations as mentioned in section 12 first paragraph letters c) and d), cf. section 8 third paragraph second sentence. If the deadline for notification of the capital increase is exceeded, the capital increase shall lapse.

Section 17. *Reducing the founding capital*

Decisions to reduce the founding capital are made by the board. The board may not make such a decision if it follows from the statutes or if the founder has otherwise decided or obviously assumed that no distributions shall be made from the original founding capital.

The decision shall state the amount by which the founding capital will be reduced and whether the amount shall be

- a) used to cover a loss that cannot be covered in any other way, or
- b) transferred to other equity.

The Foundations Register and, if applicable, the Register of Business Enterprises, shall be notified of the decision to reduce the founding capital

within six weeks of the decision being made. If the deadline for notification of the capital reduction is exceeded, the capital reduction shall lapse.

If the whole amount by which the founding capital is reduced is to be used to cover a loss pursuant to the second paragraph letter a), the capital reduction will be effective from the date of registration of the notification mentioned in the third paragraph. If the amount by which the founding capital is reduced is to be used, in whole or in part, in accordance with the second paragraph letter b), all creditors shall be notified before the capital reduction can be made effective. The (Norwegian) Limited Liability Companies Act section 12-6 shall apply *mutatis mutandis*.

Section 18. *Managing the foundation's capital*

The foundation's capital shall be adequately managed, ensuring that sufficient consideration is at all times given to the security of the capital and the opportunities for assuring a satisfactory return in order to achieve the foundation's object.

Section 19. *Distribution*

Distribution of the foundation's funds shall be decided by the board. Distributions must be in accordance with the object of the foundation.

No distributions may be made to the founder, the founder's closely related parties pursuant to section 5 letter a) or to companies in which either of these individually or jointly have a controlling interest as mentioned in section 4 third paragraph. Where there are special reasons for so doing, the Foundation Authority may grant exemption from the first sentence.

If distributions are made from the foundation in contravention of the provisions of the first or second paragraph, or other provisions of this Act, the recipient shall return the funds received. The Limited Liability Companies Act section 3-7 first paragraph second sentence and second paragraph shall apply *mutatis mutandis*.

Section 20. *Loans and security*

The founder, the founder's closely related parties, observers, persons holding offices in the bodies mentioned in section 36 and the general manager may not have loans in the foundation. The same applies to furnishing security for the benefit of these persons.

Notwithstanding the first sentence, the foundation may furnish loans and security for the benefit of an employee if:

- a) the employee is an elected employee representative or observer to the board pursuant to provisions of sections 41 and 42, and
- b) the borrower is employed in a central position in the foundation, and
- c) the loan or security is furnished in accordance with ordinary practice relating to financial assistance to employees.

If the foundation has furnished a loan or security in contravention of the first and second paragraphs, the Limited Liability Companies Act section 8-11 shall apply *mutatis mutandis*.

Section 21. Separation duty

A foundation's assets shall be kept separate from other assets.

This does not apply to

- a) assets which, in accordance with the statutes or a decision of the board are managed by the Public Guardian's Office pursuant to the (Norwegian) Guardianship Act section 91, and
- b) assets that the Foundation Authority has decided can be managed together with the assets of other foundations (joint management).

If the assets of several foundations are jointly managed by one foundation, the Foundation Authority may decide that the foundation that carries out the joint management shall be the foundations' board.

Amended by Act no 130 of 21 December 2005.

II. Special rules for commercial foundations as mentioned in section 4 second paragraph letters a) and b)

Section 22. Special requirements for the founding capital

Commercial foundations as mentioned in section 4 second paragraph letters a) and b) shall have a founding capital of at least NOK 200,000. The founding capital of such commercial foundations is tied up, cf. section 24.

Section 23. Equity requirements on conversion of a non-commercial foundation into a commercial foundation

If a non-commercial foundation is converted into a commercial foundation as mentioned in section 4 second paragraph letters a) and b), it shall have an equity at least corresponding to the founding capital stipulated in its statutes. The notification to the Register of Business Enterprises (cf. section 13) shall be accompanied by a declaration from the auditor stating that the foundation satisfies the equity requirements in the first sentence.

Section 24. Tied-up equity

Distributions from commercial foundations as mentioned in section 4 second paragraph letters a) and b) may only be made insofar as the foundation's equity according to the most recently adopted balance sheet exceeds the founding capital as laid down in the statutes. The statutes can specify that other capital shall also be tied up in the manner stated in the first sentence.

Section 25. Loss of the foundation's equity

If, in view of the risk and scope of the foundation's activities, the equity of a foundation as mentioned in section 4 second paragraph letters a) and b) must be assumed to be unreasonably low, the board shall consider the matter

immediately and notify the Foundation Authority. The board shall then, within a reasonable period of time, prepare a report for the Foundation Authority describing any need for measures and, if applicable, stating what measures it will implement. The Foundation Authority may order the foundation to provide further reports on the implementation of such measures. The first through to the third sentence shall apply *mutatis mutandis* if the foundation's equity must be assumed to have been reduced to less than one third of the founding capital.

Chapter 4. Organisation of foundations

I. Board

Section 26. *The board*

Every foundation shall have a board. The board of foundations with a founding capital of NOK 3 million or more must consist of at least three members.

The board shall have a chair. The chair shall be elected by the board unless otherwise provided for in the statutes.

Section 27. *Requirements relating to the composition of the board*

Bodies corporate may not be board members; cf. however section 21 second paragraph second sentence. The same applies to legally disabled persons and persons who are disqualified for reasons stated in the (Norwegian) Bankruptcy Act section 142.

At least one half of the board's members shall reside in the realm; with the exception, however, of citizens of states that are parties to the EEA Agreement, when they reside in such a state.

The following persons may neither jointly nor severally be the only board members:

- a) a person having furnished capital assets included in the foundation's founding capital;
- b) a closely related party to the person having furnished capital assets included in the foundation's founding capital;
- c) a person who is an officer of or is employed by or subordinate to a person having furnished capital assets included in the foundation's founding capital;
- d) if the person having furnished capital assets included in the foundation's founding capital is a body corporate, a person who has interests in the body corporate as mentioned in section 4 third paragraph, and that person's closely related parties.

Nor can a person as mentioned in the third paragraph be chair of a board consisting of no more than two members.

The Foundation Authority may make individual decisions to grant exemption from the provisions of the second, third and fourth paragraphs.

Insofar as appropriate, the Act's provisions relating to board members shall also apply to deputy members and observers.

Section 27 a). *Gender representation when board members are appointed by central government or county or municipal authorities*

Act no 45 of 9 June 1978 relating to gender equality section 21 first, second and fifth paragraphs shall apply *mutatis mutandis* when the board of a foundation is appointed by central government or a county or municipal authority. When part of the board of a foundation is appointed by a central or local government authority, the first sentence shall apply *mutatis mutandis* to the board members in question.

Added by Act no 120 of 19 December 2003.

Section 28. *Board members' terms of office*

Unless otherwise provided for in the foundation's statutes, Board members shall serve for four years. Board members shall remain in office until new members are elected, even if their terms of office have expired.

Board members shall, in special cases, be entitled to retire before their term of office expires. The board and the person who appointed the board member shall be given reasonable advance notice.

If a board member retires from office before expiry of the term of office and there is no deputy member, the remaining board members shall ensure that a new board member is elected for the remaining period of the term of office. The election shall be conducted in accordance with the rules that apply to the election of board members.

Section 29. *The Foundation Authority's authority to appoint and dismiss board members*

The Foundation authority may appoint a board member on behalf of a foundation if the foundation is without a competent board pursuant to the law or its statutes.

The Foundation Authority may dismiss board members who materially neglect their duties in the execution of their office, who clearly prove unsuitable or who do not meet the legal requirements for board members, cf. Section 27. If court proceedings are instituted against the decision, the court shall be entitled to try all aspects of the case.

Section 30. *The board's authority and responsibility*

The board is the foundation's principal body.

The board is responsible for the management of the foundation.

The board shall ensure that the object of the foundation is complied with and that distributions are made in accordance with the statutes. The board shall ensure that the accounts and asset management are subject to adequate control.

Section 31. *The board's rules of procedure*

The chair of the board shall ensure that all matters that are the business of the board are considered. Board members and the general manager can demand that the board consider specific matters. Notice of meetings and other forums for board proceedings shall be given in an expedient manner and with the required notice.

The board shall consider its business in meetings, unless the chair of the board finds that it can be dealt with in writing or in another adequate manner.

The chair of the board shall ensure that the board members are, as far as possible, able to participate in joint proceedings concerning matters to be processed without a meeting. Board members and the general manager can demand that matters be processed in a meeting.

The chair of the board shall lead the board's proceedings. If neither the chair nor the deputy chair participates, the board shall elect a chair for the proceedings in hand. The general manager has a right and an obligation to participate in the board's proceedings and to speak, unless otherwise decided by the board in the case in question.

Minutes shall be taken of the board's proceedings. The minutes shall state the time and place, who participated, the manner of the proceedings and the decisions made. If a member of the board or the general manager disagrees with a board decision, they may demand that their opinion be recorded in the minutes. The minutes shall be signed by all members who participated in the deliberations of the board.

Section 32. *Quorum*

Unless the statutes make more stringent requirements, the board forms a quorum when more than one half of its members are present or participate in its proceedings. However, the board may not make a decision in a case unless all board members have, as far as possible, been given the opportunity to participate in the proceedings. If a board member is absent and a deputy is available, the deputy shall be called to attend.

Section 33. *Majority requirement*

For a decision to valid, the majority of the board members participating in the consideration must have voted in favour. In the event of parity of votes, the chair shall have the casting vote.

In elections or appointments, the person who receives the most votes shall be deemed to have been elected or appointed. The board may decide in advance that a new vote shall be held if none of the candidates receive the majority of the votes cast. In the event of parity of votes when electing the chair of the board or a person to chair a meeting, the matter shall be decided by drawing lots. In other cases of parity of votes, the chair shall have the casting vote.

The statutes may define more stringent voting rules than those provided for in this section and other rules on the consequences of a parity of votes.

II. General Manager

Section 34. General Manager

Unless otherwise stated in the statutes, the board can appoint a general manager. Commercial foundations as mentioned in section 4 second paragraph letters a) and b), that have a founding capital of NOK 3 million or more, must have a general manager. In such foundations, the general manager cannot be elected chair of the board.

Section 27 first paragraph second sentence shall apply *mutatis mutandis* to the general manager.

Section 35. The general manager's authority and responsibility

The general manager shall be responsible for the day-to-day management of the foundation's activities and shall comply with the guidelines and instructions issued by the board. The day-to-day management does not include matters of an extraordinary nature or great importance in relation to the foundation's situation.

The general manager shall ensure that the foundation's accounts comply with laws and regulations, and that its asset management is adequately organised.

III. Other bodies

Section 36. Provisions in the statutes that the foundation shall have other bodies than the board and general manager

The statutes may prescribe that a foundation shall have other bodies than the board and general manager.

The statutes may prescribe that such bodies shall have the authority:

- a) to appoint and dismiss board members under the conditions mentioned in section 29 second paragraph. This shall not, however, apply to board members who are to be or have been elected by the employees;
- b) to decide the amount of remuneration to be paid to board members;
- c) to monitor the foundation's activities;
- d) to issue statements relating to the annual report and accounts;
- e) to initiate investigations;
- f) to appoint the foundation's auditor;
- g) to decide to convert the foundation following a proposal from the board;
- h) to issue statements to the board or other bodies of the foundation.

The statutes may also prescribe that the foundation shall have a case-preparing, advisory or decision-making body that is completely subject to the board's authority to reverse decisions and issue instructions.

Such bodies cannot be assigned other authority than that provided for in the second paragraph.

The provisions of section 37 relating to partiality, and of section 40 relating to remuneration, shall apply *mutatis mutandis* to members of the bodies described in this section.

IV. Disqualification, outward representation etc.

Section 37. Disqualification

A board member or general manager is disqualified from participating in proceedings or decisions concerning matters that are of such great importance to him or her or to his or her closely related parties that he or she must be deemed to have a prominent personal or financial interest in the matter.

A board member or a general manager is also disqualified from participating in proceedings or decisions if he or she holds a position or an office in a private or public institution, organisation or enterprise with a financial or other prominent interest in the matter, or if he or she has previously participated processing the matter. The first sentence notwithstanding, a board member or a general manager holding a public position or office shall not be disqualified from participating in proceedings and decisions that essentially concern the use of public funds made available to the foundation.

Section 38. Outward representation

The board represents the foundation outwards.

The board may authorise the general manager to represent the foundation outwards, either alone or together with someone else, unless the statutes preclude the assignment of such authority. The executive committee can revoke any authority assigned pursuant to the first sentence at any time.

The general manager represents the foundation outwards in matters concerning its day-to-day management.

Section 39. Exceeding of representation rights

If anyone representing the foundation outwards pursuant to section 38 exceeds his or her authority to make dispositions on behalf of the foundation, such dispositions shall not be binding on the foundation if the foundation provides evidence that the other party understood or should have understood that authority had been exceeded and that it would be dishonest to apply such disposition.

Section 40. Remuneration

Remuneration of board members, the general manager or other leading employees of a foundation shall reasonable in relation to the work and responsibility that the office or the position involves. The Foundation Authority may reduce remuneration that is unreasonably high.

Remuneration agreed or decided in contravention of the first paragraph shall not be valid. If such remuneration has been paid out, it shall be returned to the foundation.

V. Employee representation in commercial foundations

Section 41. *Employee representation on the board*

In commercial foundations as mentioned in section 4 second paragraph letters a) and b), the Limited Liability Companies Act section 6-4 first and second paragraphs relating to employees' representation on the board of directors shall apply *mutatis mutandis* to any commercial activities.

In commercial foundations as mentioned in section 4 second paragraph letters a) and b), that have more than 200 employees, the employees shall elect the number of board members, observers and deputy members required under the Limited Liability Companies Act section 6-4 third paragraph, in relation to commercial activities.

The provision of section 28 relating to term of office shall not apply to board members and observers who have been elected pursuant to the provisions of the first and second paragraphs.

The King may, by Regulations or individual Decisions decide which employees are linked to the commercial activities and which matters concern those activities. The Limited Liability Companies Act section 6-4 fourth paragraph shall apply *mutatis mutandis*.

Section 42. *Employee right of representation in groups of companies and groups of enterprises*

In the case of commercial foundations as mentioned in section 4 second paragraph letter c), the Limited Liability Companies Act section 6-5 shall apply *mutatis mutandis* to the commercial activities. The King may, by Regulations or individual Decisions decide which employees are linked to the commercial activities and which matters concern those activities.

Chapter 5. Auditor

Section 43. *Appointment of an auditor etc.*

Unless otherwise stated in the statutes, an auditor shall be appointed by the body or bodies that, pursuant to the statutes, shall elect or appoint the board members.

If an auditor fails to perform his or her duties under to the law, or if the person or body authorised to appoint the auditor pursuant to the first paragraph fails to relieve the auditor of his or her assignment, the Foundation Authority may relieve the auditor of the assignment. The Foundation Authority may also appoint an auditor if the person who is authorised to appoint the auditor pursuant to the first paragraph fails to elect or appoint an auditor or appoints an auditor who does not meet the requirements for acting as the

foundation's auditor. Such appointment by the Foundation Authority shall apply until another auditor has been appointed in the prescribed manner.

If one or more county or municipal authorities are entitled to elect or appoint a majority of the board members, the county or municipal auditor may be appointed as the foundation's auditor. The same applies when the foundation's activities are essentially based on grants or appropriations from the county or municipal authority as mentioned. The provisions of this section shall otherwise apply.

Amended by Act no 21 of 7 May 2004 (in force as from 1 January 2005)

Section 44. *The auditor's duties*

The Foundation Authority can require the auditor to report in greater detail on specified matters relating to the foundation. Copies of the auditor's letter in which he draws attention to matters as mentioned in the Auditors Act section 5-2 fourth paragraph shall be sent to the Foundation Authority on a continuous basis.

In the auditor's report, the auditor shall give an opinion as to whether the foundation is managed and distributions made in accordance with the law and the foundation's object and its other statutes.

If board members or employees of the foundation, or persons closely related to them, have received loans or other payments from the foundation, the auditor shall confirm that such payments are in accordance with laws and regulations and the foundation's object.

Amended by Act no 88 of 15 December 2006 (in force as from 1 January 2007 pursuant to Decree no 1432 of 15 December 2006).

Chapter 6. Conversion

Section 45. *Conversion*

Within the meaning of the Act conversion shall mean amendment or cancellation of the legal act that forms the basis for the foundation, or of the foundation's statutes.

In addition to an amendment or cancellation of the legal act that forms the basis for the foundation, or of the foundation's statutes, conversion may include the following:

- a) the liquidation or winding-up of the foundation;
- b) the merger of the foundation with one or more other foundations whose object(s) are of materially the same nature;
- c) the splitting up of the foundation into several foundations;
- d) the release of tied-up property belonging to the foundation;
- e) exemption from the statutes in an individual case.

The rules on conversion in this chapter shall not apply to

- a) increase or reduction of the founding capital;
- b) necessary amendments to the statutes to bring them into line with the

requirements applying to commercial foundations.

Amendments to the statutes as mentioned in this paragraph may be made by the board. The rules of this chapter cannot be deviated from in the legal act that forms the basis for the foundation, in the statutes or by the person who is assigned conversion authority.

Section 46. *Conditions for conversion*

Conversion can be carried out when a provision in the statutes or in the legal act that forms the basis for the foundation

- a) cannot be complied with, for example because the foundation's capital assets are insufficient to provide reasonably for its object;
- b) is manifestly useless;
- c) conflicts with the intention of the legal act on which the foundation is based, for example because the premises on which the founder based the provision no longer apply, or
- d) is manifestly inappropriate or manifestly unreasonable.

If the provision in question does not concern the foundation's object, and it must be assumed that it was not ascribed great importance when the foundation was established, conversion can take place if the provision proves inappropriate or inexpedient.

Section 47. *Content of the conversion decision*

When the conversion concerns the object of the foundation or another provision to which great importance must be assumed to have been ascribed when the foundation was established, the conversion shall, insofar as it is possible, be adapted to the original purpose on which the provision must be assumed to have been based.

If the conversion leads to the dissolution of the foundation pursuant to section 52, the capital that remains when the creditors' claims have been covered pursuant to the provision in question, shall be used in a manner that is in accordance with the foundation's object or a related purpose. If this is not possible, the capital shall be used for a charitable purpose.

Section 48. *Who can perform a conversion*

The Foundation Authority can convert foundations pursuant to the provisions of this chapter.

In the statutes, parties other than the Foundation Authority can be authorised to convert the foundation. The founder of a foundation cannot, however, be assigned such authority. Decisions to convert a foundation made pursuant to a provision in the statutes as mentioned in the first sentence are not valid until they have been approved by the Foundation Authority pursuant to section 51.

When a foundation is established by a public authority, the Foundation Authority can, by individual decision or regulations, decide who should be

deemed to be the founder pursuant to the second paragraph second sentence.

Section 49. *Conversion proceedings*

Before the Foundation Authority or whomsoever has been assigned conversion authority can decide to convert the foundation, an opinion should be obtained from the founder, unless it is the founder who has applied for conversion. If the founder is deceased, opinions should, insofar as it is possible, be obtained from relatives and others who were close to the founder, and from organisations, public authorities and others who are affected by the conversion. The opinion of the board shall also be obtained, unless the decision or application for conversion has been made by the board itself.

Section 50. *The Foundation Authority's conversion authority*

The Foundation Authority can only effect a conversion on the application of the founder or the board. The above notwithstanding, the Foundation Authority can effect a conversion on its own initiative if it is clear that circumstances as mentioned in section 46 first paragraph exist, and neither the founder nor the board of the foundation has applied for conversion.

Section 51. *The Foundation Authority's review of conversion decisions*

When the Foundation Authority is notified of a conversion decision, cf. section 48 second paragraph third sentence, it shall review the decision to see if it is in compliance with this Act and with the foundation's statutes before the decision is registered in the Foundations Register. If the Foundation Authority finds that the conversion decision is not in compliance with this Act or the statutes, registration of the decision shall be refused.

Section 52. *Dissolution of foundations*

When a decision has been made to dissolve a foundation and such decision has been approved pursuant to section 51, the Foundation Authority shall appoint a committee of liquidators for the foundation, which will take the place of the board and, if applicable, the general manager.

The Foundation Authority shall announce the decision to dissolve the foundation. The announcement shall notify the foundation's creditors that they must submit their claims to the chair of the committee of liquidators within two months of the announcement having been published on the Brønnøysund Register Centre's electronic public announcement site. The name and address of the chair of the committee of liquidators shall be stated in the announcement. The announcement shall be published on the Brønnøysund Register Centre's electronic public announcement site and, at least twice at an interval of at least two weeks, in a newspaper that is widely read locally. The announcement in the newspaper may be a summary one with reference to the electronic announcement, and may be completely left out if the Foundation Authority considers that the interests of the foundation's creditors

are sufficiently safeguarded without such announcement. If possible, separate notification shall be sent to all creditors with known addresses.

The committee of liquidators shall make a list of the foundation's assets, rights and obligations, and settle the balance with a view to winding up the foundation. Audited versions of the list and the balance sheet shall be sent to the Foundation Authority.

The foundation's assets shall be converted to cash insofar as necessary in order to meet its obligations. The liquidation committee shall ensure that the obligations are met insofar as the creditors do not waive their claims or agree to another debtor taking the place of the foundation. If a creditor cannot be found, or if he or she refuses to take receipt of what is owing to him or her, the amount shall be deposited in Norges Bank pursuant to the provisions of Act no 2 of 17 February 1939 relating to the right to deposit an item of debt. The assets remaining when the creditors' claims have been met pursuant to the second and third paragraphs, shall be distributed for purposes as mentioned in section 47 second paragraph; such, however, that distribution is subject to a reservation that the asset or amount can be reclaimed if and to the extent that it may be necessary in order to meet the claims of any creditors whose claims have not been met pursuant to the second and third sentence.

Once the claims have been settled, a revised statement of accounts shall be submitted to the Foundation Authority, who will approve the statement of accounts and register the dissolution of the foundation. The members of the committee of liquidators are severally and jointly liable, without limitation, in relation to any creditors whose claims have not been met pursuant to the fourth paragraph, unless they can be shown to have acted with due care. Claims against those in receipt of assets pursuant to the fourth paragraph last sentence, and claims against the members of the committee of liquidators lapse three years after the dissolution of the foundation was registered.

Amended by Act no 92 of 5 September 2003 (in force as from 1 January 2004 pursuant to Decree no 1119 of 5 September 2003) and Act no 36 of 15 June 2007.

Section 53. *Merger of two or more foundations*

A conversion decision may involve merging two or more foundations into a new foundation, or transferring all the assets, rights and obligations of one or more foundations to another foundation (merger).

The Foundation Authority can require the boards of each of the foundations being merged to prepare a written report on the merger and how it will affect the foundation. The report shall examine what impact the merger may have on the foundation's creditors and employees. The Foundation Authority can also demand the submission of the foundation's most recent annual report and accounts, and auditors report. It can also demand that interim balance sheets for the foundation be prepared and audited in accordance with the rules relating to annual accounts. If the foundation has employees, they shall be given an opportunity to state their opinion on the merger, and written statements from the employees or employee representatives shall be sent to the Foundation Authority.

When the Foundation Authority is to review a merger decision pursuant to section 51, or to make a merger decision itself, it shall examine whether the decision takes adequate account of the interests of the foundations participating in the merger, those foundations' creditors, employees, and others who are affected by the merger.

When a merger has been decided and the decision approved by the Foundation Authority, the Foundation Authority shall announce the decision and inform the foundations' creditors that they must notify their respective foundations of any objections they may have to the merger within two months of the final announcement of the merger. Section 52 second paragraph fourth and fifth sentences shall apply *mutatis mutandis*.

If a creditor with a claim that is undisputed or has fallen due raises objections before the deadline expires, the merger cannot be effected until the outstanding amount has been paid. A creditor with a claim that is disputed or that has not fallen due can require adequate security to be furnished if it has not already been provided. The Limited Liability Companies Act section 13-15 second paragraph second sentence, and third and fourth paragraphs, cf. section 18-3, shall apply *mutatis mutandis*.

When the deadline for raising objections has expired and no objections have been raised by the creditors, or when the creditors' claim(s) have been considered in light of the fifth paragraph, a confirmation from each of the foundations shall be submitted to the Foundation Authority stating that relations with creditors do not obstruct the implementation of the merger. Such confirmation shall be signed by the board and auditor. The Foundation Authority shall then register the merger in the Foundations Register. The merger takes effect at the time of registration.

Section 54. Division of foundations

A conversion decision may involve dividing a foundation into two or more foundations.

Section 53 shall apply *mutatis mutandis* to the implementation of a division, cf. however the third paragraph of this section.

The demerger decision shall state how the foundation's assets, rights and obligations shall be divided between the foundations involved. The Limited Liability Companies Act section 14-11 shall apply *mutatis mutandis*.

Section 55. Conversion of legal subjects other than foundations

The provisions of this chapter shall apply *mutatis mutandis* to:

- a) capital assets that by agreement, testament, letter of endowment or other act of private law have been transferred to an existing foundation or other legal person (natural person, association, company or partnership, public institution etc.), with a provision on how the capital assets are to be used. This shall not, however, apply to rights covered by the (Norwegian) Easement Act;
- b) capital assets collected for a particular cause;

c) capital assets belonging to an association, when it follows from the rules of law relating to associations that the association does not have free disposal rights over the assets.

The provisions of this chapter apply *mutatis mutandis* to public funds (funds allocated by an official body to a specific cause through appropriation or specific taxation) insofar as this is decided by the competent authority.

Applications for conversion pursuant to the first and second paragraphs can be made by the person who carries the obligation, or the person who otherwise controls the funds in question.

Chapter 7. Liability in damages and penal liability.

Section 56. *Liability in damages*

The foundation can claim compensation from board members, officers of bodies as mentioned in section 36, the general manager, the auditor and investigators for any loss that any of these people have willingly or negligently caused the foundation to suffer in the execution of their tasks. Liability in damages under this section can be made more lenient pursuant to the (Norwegian) Damage Compensation Act section 5-2.

Section 57. *Decision to file a claim on behalf of the foundation*

The board decides whether a claim shall be filed on behalf of the foundation against those mentioned in section 56.

If the claim for damages concerns one or more board members, the remaining board members shall decide whether to file the claim. If the claim concerns all board members or so many board members that the board does not form a quorum pursuant to section 32 first sentence, the claim can be filed by the person or the body that appoints the board.

The Foundation Authority can always file a claim against the board's members on behalf of the foundation, regardless of the circumstances.

Section 58. *Punishment*

A founder, board member or person holding office on a body as mentioned in section 36, a general manager or an auditor who willingly or negligently violates provisions under or pursuant to this Act, shall be punished by fines or, under aggravating circumstances, by imprisonment for up to one year. Aiding and abetting shall be punished in the same manner.

A senior employee who has been authorised to make decisions on behalf of the foundation in defined areas, and who willingly or negligently violates provisions under or pursuant to this Act in exercising his or her authority, shall be punished by fines or, under aggravating circumstances, by imprisonment for up to one year.

Violation of provisions under or pursuant to this Act is deemed to be a minor offence. The limitation period for bringing a criminal case before the courts is five years.

Amended by Act no 28 of 20 May 2005 (in force from such date as decided by law) as amended by Act no 74 of 19 June 2009.

Section 59. *Investigation*

The Foundation Authority can decide to investigate the establishment of a foundation, its management or more specific issues relating to its management or accounts. The Foundation Authority shall give the foundation or other person who will be comprised by the investigation, whichever is applicable, an opportunity to state their views before a decision is made.

The Foundation Authority can conduct the investigation itself or appoint one or more investigators to conduct the investigation on behalf of the Foundation Authority. The management of the Foundation shall ensure that the Foundation Authority or investigator, as the case may be, is given an opportunity to conduct necessary examinations in the foundation and that necessary information and assistance is provided. Specially appointed investigators have a duty of confidentiality pursuant to the (Norwegian) Public Administration Act section 13 and following sections.

A written report on the investigation shall be submitted. The report shall be sent to the foundation and other persons affected by the investigation.

The Foundation Authority can order the foundation to cover the costs to the public purse of the investigation in whole or in part.

Chapter 8. Entry into force and transition rules. Amendment of other acts of law

Section 60. *Entry into force*

The Act shall apply from such date as the King may decide.¹

¹ In force as from 1 January 2005 pursuant to Decree no 1489 of 19 November 2004, with the exception of the following provisions in section 62: no 1 on amendments to the Inheritance Tax Act (Act no 14 of 19 June 1964); no 3 on amendments to the Bankruptcy Act (Act no 58 of 8 June 1984); the in no 4 mentioned amendments to the Business Enterprise Registration Act (Act no 78 of 21 June 1985) section 4-4 (1) letter a) and letter e) second sentence; no 5 on amendments to the Financial Institutions Act (Act no 40 of 10 June 1988); and the in no 9 mentioned amendments to the Accounting Act (Act no 56 of 17 July 1998) section 9-1. The amendments to section 62 nos 1 and 3 were repealed by Act no 22 of 29 April 2005. Pursuant to Decree no 366 of 29 April 2005, the following provisions of section 62 entered into force immediately: the in no 4 mentioned amendments to the Business Enterprise Registration Act (Act no 78 of 21 June 1985) section 4-4 (1) letter a) and letter e) second sentence; and the in no 9 mentioned amendment to the Accounting Act (Act no 56 of 17 July 1998) section 9-1.

Section 61. *Transition rules*

For foundations established before the entry into force of this Act, the Act shall apply subject to the following exceptions and special provisions:

- a) The requirement of section 14 first paragraph that foundations must have a founding capital of at least NOK 100,000 on formation shall not apply to foundations established before the Act entered into force.
- b) Commercial foundations as mentioned in section 4 second paragraph

letters a) and b), and which, at the time of the entry into force of the Act, have a founding capital of less than NOK 200,000, must increase the founding capital to at least this amount within five years of the entry into force of the Act, at the latest, cf. section 22 first sentence. On application, the Foundation Authority may grant exemption from the first sentence.

- c) The Foundation Authority shall be notified of foundations established before the entry into force of the Act pursuant to section 11 first paragraph within two years of the entry into force of the Act, at the latest. Section 12 first paragraph letters a) and b) shall apply *mutatis mutandis*.
- d) Statutes that do not comply with the act shall be brought into compliance with the Act within two years of the entry into force of the act, at the latest. Any amendments required to bring the statutes into compliance with the Act shall be made pursuant to the rules set out in chapter 6; with the exception, however, of section 46.
- e) Any loans or security furnished that come into conflict with section 20, shall be terminated or brought into compliance with that section within two years of the entry into force of the Act, at the latest.
- f) Foundations established before the entry into force of the Act shall be organised in accordance with the rules of chapter 4 within two years of the entry into force of the Act, at the latest.
- g) Conversion decided or applied for before the entry into force of the Act shall be effected in accordance with the provisions of Act no 11 of 23 May 1980 relating to foundations etc.
- h) Until 1 January 2009, the Foundation Authority may refrain from announcing decisions to dissolve a foundation pursuant to the provisions of section 52 second paragraph, if the Foundation Authority finds that the interests of the foundation's creditors are sufficiently safeguarded without such announcement. If possible, separate notification shall be sent to all creditors with known addresses.

in The King may issue more detailed transition rules.

Amended by Act no 36 of 15 June 2007.

Section 62. Amendment of other acts of law

From the date of entry into force of this Act, the following amendments shall be made to other acts of law:

1. - - -

Repealed by Act no 22 of 29 April 2005.

2. Act no 11 of 23 May 1980 relating to foundations etc. shall be repealed.

3. - - -

Repealed by Act no 22 of 29 April 2005.

4. The following amendments shall be made to Act no 78 of 21 June 1985 relating to the registration of business enterprises: - - -

5. The following amendments shall be made to Act no 40 of 10 June 1988 relating to financing activity and financial institutions: - - -

Amended by Act no 22 of 29 April 2005.

9. The following amendments shall be made to Act no 56 of 17 July 1998 relating to annual accounts (the Accounting Act): - - -

Amended by Act no 22 of 29 April 2005.

- - -

In force as from 1 January 2005 pursuant to Decree no 1489 of 19 November 2004, with the exception of the following provisions in section 62: no 1 on amendments to the Inheritance Tax Act (Act no 14 of 19 June 1964); no 3 on amendments to the Bankruptcy Act (Act no 58 of 8 June 1984); the in no 4 mentioned amendments to the Business Enterprise Registration Act (Act no 78 of 21 June 1985) section 4-4 (1) letters a) and letter e) second sentence; no 5 on the Financial Institutions Act (Act no 40 of 10 June 1988); and the in no 9 mentioned amendment to the Accounting Act (Act no 56 of 17 July 1998) section 9-1. The amendments mentioned in nos 1 and 3 were repealed by Act no 22 of 29 April 2005. Pursuant to Decree no 366 of 29 April 2005, the in no 4 mentioned amendments to the Business Enterprise Registration Act (Act no 78 of 21 June 1985) section 4-4 (1) letter a) and letter e) second sentence, and in no 9 mentioned amendment of the Accounting Act (Act no 56 of 17 July 1998) section 9-1 entered into force immediately. Pursuant to Decree no 1608 of 21 December 2005 the in no 5 mentioned amendment to the Financial Institutions Act section 2-22 entered into force immediately.