

Book 2
LEGAL PERSONS

TITLE 2.6 FOUNDATIONS

Article 2:285 Definition of a 'Foundation'; no members and no (profit) distributions allowed

1. A Foundation (*'stichting'*) is a legal person formed by means of a juridical act, that has no members, and that intends to realize an objective (purpose), mentioned in its articles of incorporation, by using capital (property) which has been brought in for this purpose.
2. If the articles of incorporation grant one or more persons the power to fill vacancies in a body of the Foundation (*'stichting'*), then solely on this ground the Foundation (*'stichting'*) cannot be regarded to have members.
3. The objective (purpose) of a Foundation (*'stichting'*) may not include the making of distributions to its founders (incorporators) or to those who are participating in its bodies or to others, except, as regards the latter, when these distributions are made for charitable (philanthropic) or social purposes.

Article 2:286 Formation of a Foundation

1. A Foundation (*'stichting'*) must be formed by notarial deed .
2. The notarial deed must be executed in the Dutch language. If the Foundation (*'stichting'*) has its seat in the province of Friesland (*'Fryslân'*), the notarial deed may be executed as well in the Frisian language. A procuration (power of attorney) to cooperate with the execution of the notarial deed, must be granted in writing. A Foundation (*'stichting'*) may be formed by means of a last will (testamentary disposition), embodied in a notarial deed which is executed in another language than Dutch or Frisian; yet, the articles of incorporation must also in that case be written in the Dutch or Frisian language.
4. The articles of incorporation include:
 - a. the name of the Foundation (*'stichting'*), with the word *"stichting"* ('Foundation') as part of the name;
 - b. the purpose (objective) of the Foundation (*'stichting'*);

- c. the method for the appointment and removal (dismissal) of the Directors of the Foundation (*'stichting'*);
- d. the municipality in the Netherlands where the Foundation (*'stichting'*) has its seat;
- e. the use of a surplus after the Foundation (*'stichting'*) has been wound up on account of its dissolution, or the way in which the use of such a surplus shall be determined in that event.

5. The notary, in front of whom the notarial deed of incorporation is executed, shall ensure that this deed is in accordance with the provisions of paragraph 2 up to and including 4. In the event of a defect, the notary is personally liable towards those who have suffered damage as a result.

Article 2:287 Absence of a seat in the articles of incorporation

Where the articles of incorporation do not designate any seat of the Foundation (*'stichting'*), the Foundation shall have its seat in the municipality where the notary, in front of whom the notarial deed of incorporation was executed, has his office at the time of the execution of that deed.

Article 2:288 [repealed on 01-01-2003]

Article 2:289 Registration of the Foundation in the commercial register

1. The Directors of a Foundation (*'stichting'*) are responsible for the registration of the Foundation (*'stichting'*) and of the name, surname and residence or last residence of the founder or founders in the commercial register, and must deposit a certified copy or an authentic extract of the notarial deed of incorporation at the office of that register (Chamber of Commerce).

2. As long as no application for an initial registration or deposit as meant in paragraph 1 has been lodged with the keeper of the commercial register, each Director is jointly and severally liable, next and in addition to the Foundation (*'stichting'*), for juridical acts through which he has committed (bound) the Foundation (*'stichting'*).

Article 2:290 [repealed on 01-01-1992]

Article 2:291 Duties and powers of the Board of Directors

1. Subject to any restrictions under the articles of incorporation, the Board of Directors is charged with the administration and management of the Foundation (*'stichting'*).
2. Only if this results from the articles of incorporation, the Board of Directors is empowered to resolve (decide) to enter into agreements for the acquisition, alienation (passage) and encumbrance of registered property, and to enter into agreements under which the Foundation (*'stichting'*) engages itself as surety or joint and several co-debtor or through which it guarantees performance by a third person or engages itself to provide security for the debt of someone else. The articles of incorporation may limit this power or attach conditions to it. Such exclusions, limitations and conditions apply as well to the authority of the Board of Directors to represent the Foundation (*'stichting'*) in performing the before mentioned juridical acts, unless the articles of incorporation provide otherwise.

Article 2:292 Authority to represent the Foundation

1. The Board of Directors represents the Foundation (*'stichting'*) as far as the law does not provide the contrary.
2. The articles of incorporation may empower one or more Directors with the authority to represent the Foundation (*'stichting'*). They may indicate that a Director is only allowed to represent the Foundation (*'stichting'*) with the cooperation of one or more other persons [usually another Director].
3. The authority to represent the Foundation (*'stichting'*), granted to the Board of Directors or to a Director, either solely or jointly with others, is unlimited and unconditional as far as the law does not provide the contrary. A legally permitted or prescribed limitation of or condition for the authority of representation may only be invoked by the Foundation (*'stichting'*).
4. The articles of incorporation may also grant authority of representation to other persons than Directors.

Article 2:293 Amendment of the articles of incorporation

The articles of incorporation of a Foundation can only be amended by the bodies of the Foundation if the articles of incorporation provide for such possibility. Such an amendment must be made by notarial deed, on the penalty that the amendment will be null and void. The Directors must deposit an authentic extract of the amendment and of

the amended articles of incorporation at the office of the register meant in Article 2:289 (commercial register).

Article 2:294 Amendment of the articles of incorporation by the court

1. If an unchanged continuation of the articles of incorporation would lead to consequences which reasonable could not have been wanted when the Foundation (*'stichting'*) was formed (incorporated), and the articles of incorporation do not provide a possibility to amend them or the persons empowered to make such amendments refuse to do so, then the District Court may amend the articles of incorporation upon the request of a founder, the Board of Directors or the Public Prosecution Service,.
2. When doing so, the District Court shall derogate as little as possible from the existing articles of incorporation; if it is necessary to amend the objective (purpose) of the Foundation, the District Court shall point out an objective (purpose) that is connected to the existing objective (purpose). With due observance of the foregoing, the District Court is empowered, where necessary, to amend the articles of incorporation in another way than as requested.
3. In conformity with the two preceding paragraphs, the District Court may amend the articles of incorporation to prevent the dissolution of the Foundation (*'stichting'*) on the basis of one of the grounds meant in Article 2:21 or Article 2:301, paragraph 1, under (a).

Article 2:295 Nullification of a resolution for an amendment which might lead to the dissolution of the Foundation

A resolution to amend the articles of incorporation may at any time, upon the request of the Foundation (*'stichting'*), an interested party or the Public Prosecution Service, be nullified by the District Court if the amendment would have the result that the Foundation could be dissolved on the basis of one of the grounds referred to in Article 2:21 or Article 2:301, paragraph 1, while this amendment does not lead to any conversion of the Foundation into another type of legal person. Articles 2:15, paragraph 3 and 4, and 2:16 shall be applicable in that event.

Article 2:296 District Court may exercise of its own motion the powers granted under the two preceding Articles

In legal proceedings in which the dissolution of the Foundation (*'stichting'*) is requested on the basis of one of the grounds as meant in Article 2:21 or 2:301, paragraph 1, under

(a), the District Court may exercise the powers, granted under the two preceding Articles, of its own motion.

Article 2:297 Supervision by the Public Prosecution Service

1. Where there is serious doubt as to whether the law or the articles of incorporation are observed in good faith, the Public Prosecution Service of the District Court is authorized to request the Board of Directors of the Foundation to provide it with information.
2. When the Board of Directors has not or not properly complied with such a request, the provisional relief judge of the District Court may order, upon request, that the books, records and other data carriers of the Foundation (stichting) are made available for inspection by the Public Prosecution Service and that the valuables of the Foundation (*'stichting'*) are shown to the Public Prosecution Service. No appeal or appeal in cassation is available against such a court order of the provisional relief judge.

Article 2:297a Persons who cannot be appointed as Director of a particular Foundation)

1. The present Article applies to a Foundation (*'stichting'*) which:
 - a. by or pursuant to law is obliged to make a financial account that is equal to or corresponding with the annual accounts meant in Title 2:9, and;
 - b. at two consecutive balance sheet dates, without interruption afterwards at two consecutive balance sheet dates, has not met at least two of the requirements referred to in Article 2:397, paragraph 1 and 2. Article 2:398, paragraph 5, is applicable. For the purpose of Article 2:397, paragraph 1, net-turnover is read as the total of revenues of the enterprise or, respectively, as the total of benefits insofar as the Foundation includes these in the financial account by or pursuant to law.
2. The following persons cannot be appointed as a Director of a Foundation (*'stichting'*) as meant in paragraph 1:
 - a. persons who are a Supervisory Director or who, if the tasks of the Directors within that legal person are divided between executive and non-executive Directors, are a non-executive Director for more than two legal persons;
 - b. persons who are chairman of the Supervisory Board of a legal person or of the Board of Directors of a legal person if the tasks of the Directors are divided between executive and non-executive Directors.

3. For the purpose of the present Article:

- a. a person who is a member of a supervisory body instituted by or pursuant to the articles of incorporation of a legal person is equated with a Supervisory Director;
- b. the appointments at various legal persons which are connected with each other in a group count as one appointment;
- c. the reference to legal persons concerns: the legal type of an Open Corporation (*'naamloze vennootschap'*) and a Closed Corporation (*'besloten vennootschap'*) that at two consecutive balance sheet dates, without interruption afterwards at two consecutive balance sheet dates, has not met at least two of the requirements as referred to in Article 2:397, paragraph 1 and 2, and a Foundation (*'stichting'*) as meant in Article 2:297a, paragraph 1.
- d. a temporary appointment in accordance with Article 2:349a, paragraph 2, or Article 2:356 under (c), is not regarded as an appointment;
- e. the appointment of a member of the Supervisory Board or a non-executive Director of a fund as meant in the Order in Council on the basis of Article 105a of the Pension Act and Article 110a of the he Obligatory Occupational Pension Schemes Act is counted in conformity with the standardisation in that Order in Council. .

4. Where an appointment is null and void pursuant to the previous paragraphs, this has no effect on the validity of the decision-taking (passing of resolutions) in which is participated.

Article 2:297b Persons who cannot be appointed in a supervisory body of a particular Foundation)

1. If a supervisory body has been instituted within a Foundation (*'stichting'*) as meant in Article 2:297a, paragraph 1, then the following persons cannot be appointed for that body: persons who are a Supervisory Director or a non-executive Director for five or more other legal persons. The chairmanship of the Supervisory Board or the Board of Directors, if the tasks of the Directors are divided between executive and non-executive Directors, counts twice.

2. For the purpose of the present Article:

- a. a person who is a member of a supervisory body instituted by or pursuant to the articles of incorporation of a legal person is equated with a Supervisory Director;

b. the appointments for various legal persons which are connected with each other in a group count as one appointment;

c. the reference to legal persons concerns: the legal type of an Open Corporation (*'naamloze vennootschap'*) and a Closed Corporation (*'besloten vennootschap'*) that at two consecutive balance sheet dates, without interruption afterwards at two consecutive balance sheet dates, has not met at least two of the requirements as referred to in Article 2:397, paragraph 1 and 2, and a Foundation (*'stichting'*) as meant in Article 2:297a, paragraph 1;

d. a temporary appointment in accordance with Article 2:349a, paragraph 2, or Article 2:356 under (c), is not regarded as an appointment.

e. the appointment of a member of the Supervisory Board or a non-executive Director of a fund as meant in the Order in Council on the basis of Article 105a of the Pension Act and Article 110a of the Obligatory Occupational Pension Schemes Act is counted in conformity with the standardisation in that Order in Council.

3. Where an appointment is null and void pursuant to the previous paragraphs, this has no effect on the validity of the decision-taking (passing of resolutions) in which is participated.

Article 2:298 Removal of a Director by the court

1. A Director:

a. who has done something or has omitted to do something in a way that is in violation of law or the articles of incorporation, or who can be blamed for maladministration (mismanagement), or;

b. who has not or not properly complied with a court order given by the provisional relief judge of the District Court pursuant to Article 2:297,

may be removed (dismissed) by the District Court. Such a removal (dismissal) may be ordered upon the request of the Public Prosecution Service or of any interested party.

2. Pending the investigations, the District Court may take interim measures to be effectuated within the Board of Directors, and it may suspend the involved Director.

3. A Director who has been removed (dismissed) by the District Court, is not allowed to be a Director of any Foundation for a period of five years.

Article 2:299 Vacancies within the Board of Directors to be filled by the court

Whenever the Board of Directors is partially or entirely not in conformity with the relevant provisions of the articles of incorporation, while the articles of incorporation do not enclose a provision for this matter, the District Court may, upon the request of any interested party or the Public Prosecution Service, fill the vacancies within the Board of Directors. In doing so, the District Court shall observe the articles of incorporation as much as possible.

Article 2:299a Reporting the net-turnover of the enterprises of the Foundation

A Foundation (*'stichting'*) which maintains one or more enterprises that pursuant to law have to be registered in the commercial register, reports the net-turnover of these enterprises in its profit and loss statement.

Article 2:300 Annual accounts and annual report of a Foundation with a so called 'large enterprise'

1. Annually, within six months after the end of the accounting year, except when this period has been extended by the body of the Foundation referred to in paragraph 3 with at the most five months in view of particular circumstances, the Board of Directors of a Foundation (*'stichting'*) as meant in Article 2:360, paragraph 3, draws up the annual accounts, and deposits these documents at the office of the Foundation (*'stichting'*) for inspection by those who participate in the body meant in paragraph 3. Within the same period, the Board of Directors also deposits the annual report and the data which are to be added pursuant to Article 2:392, paragraph 1, for inspection by those who participate in the body meant in paragraph 3, unless Article 2:396, paragraph 7, as far as it concerns the annual report, or Article 2:403 applies to the Foundation (*'stichting'*). Those who participate in the body meant in paragraph 3, are entitled to obtain, free of charge, a copy of the before meant documents.

2. The annual accounts are signed by the Directors and by those who are a member of the Supervisory Body; where the signature of one or more of them is missing, this shall be reported, mentioning as well the reason for this.

3. The annual accounts shall be adopted no later than one month after the end of the relevant period referred to in paragraph 1 by the body that is authorized to do so under the articles of incorporation. If the articles of incorporation do not grant such authorization to any body, this authorization may be exercised by the Supervisory Body and, in the absence of such a Supervisory Body, by the Board of Directors.

4. A Foundation (*'stichting'*) as meant in Article 2:360, paragraph 3, may only recover a deficit from the statutory reserves as far as this is permitted by law.

5. Upon request, the Minister of Economic Affairs may, for compelling reasons, grant relief from the obligation to draw up, submit and adopt the annual accounts.

Article 2:300a Liability of the Directors of a Foundation

Articles 2:131, 2:138, 2:139, 2:149 and 2:150 shall apply accordingly in the event of the bankruptcy of a Foundation (*'stichting'*) subjected to Company Tax.

Article 2:301 Dissolution of a Foundation by the court

1. The District Court shall dissolve a Foundation (*'stichting'*) upon the request of an interested party or the Public Prosecution Service, if:

a. the assets (property) of the Foundation (*'stichting'*) are absolutely insufficient to realize its objective (purpose), and the possibility that sufficient assets (property) may be acquired in the foreseeable future through contributions (donations) or in another way is highly unlikely;

b. the objective (purpose) of the Foundation (*'stichting'*) has been realized or can no longer be realized, while a change of the Foundation's objective (purpose) cannot be considered.

2. The District Court may, when it denies a request as referred to in Article 2:294, simultaneously dissolve the Foundation (*'stichting'*) of its own motion.

Article 2:302 Registration of judicial decisions in the commercial register

Final and binding judicial decisions that bring about:

- a deletion, addition or change of what has been registered in the commercial register;
 - an amendment of the articles of incorporation of the Foundation (*'stichting'*),
 - a change in or completion of the Board of Directors, or;
 - the nullification of a resolution for the amendment of the articles of incorporation,
- will be registered in the register meant in Article 2:289 (commercial register) by the clerk of the court before which the case was last pending.

Article 2:303 Announcement of a bankruptcy or moratorium on payment

When a Foundation (*'stichting'*) has been declared bankrupt (*'faillissement'*) or when a moratorium on payment (*'surseance van betaling'*) has been granted to a Foundation (*'stichting'*), then the announcement, which under the Bankruptcy Act (*'Faillissementswet'*) has to be published in the Government Gazette, will also be presented for registration to the keeper of the register meant in Article 2:289 (commercial register) by him who is charged with the publication thereof in the Government Gazette.

Article 2:304 A pension fund in the form of a Foundation

1. For the purpose of Article 2:285, participants in a pension fund or in a fund as referred to in Article 7:631, paragraph 3, under (c), will not be regarded as members of a Foundation (*'stichting'*) that operates as such a fund
2. For the purpose of Article 2:285, paragraph 3, distributions resulting from an entitlement to pension or from an entitlement on the basis of an employment agreement in which a stipulation as meant in Article 7:631, paragraph 3, under (c) is included, will not be regarded as distributions to the founders of such a Foundation (*'stichting'*) or to those who participate in its bodies.

Article 2:305 [repealed on 01-01-1984]

Article 2:306 [repealed on 01-01-1984]

Article 2:307 [repealed on 01-01-1984]