



The foundation

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The foundation (*stichting*) is a type of enterprise that is frequently found in the cultural sector. The foundation has a social or idealistic goal that is defined in articles of association. A foundation may make a profit, but the spending of that money must be to the benefit of the foundation's goal. Therefore, the profit may not just be paid out to the founders or board members without them doing something for that. Most funds only give (project) subsidies to types of enterprise with a legal personality, such as a foundation.

A foundation may also employ people, or give assignments to self-employed persons. In the case of arts producers, such as a company, band or ensemble, it may be useful to be employed by the foundation. The foundation will then send an invoice to the venue/client. The foundation will subsequently pay the salary, as an employer, and will take care of the deduction and payment of taxes and contributions. If it the first time that it is taking on an employee, the foundation must be registered as a new employer with the Dutch Tax and Customs Administration (*Belastingdienst*).

Formation

A foundation must be formed by one or more people at a civil-law notary (*notaris*) via a notarial deed. A civil-law notary charges money for the time that this takes. Make sure that you already have as many necessary details at hand as possible, so that you can get down to business quickly. The formation costs are mostly between €400 and €800. You can negotiate about this.

Foundations must be registers in the Commercial Register of the Chamber of Commerce (*Kamer van Koophandel, KvK*) The KvK charges a one-off fee of about €50 for that. The registration is usually done by the civil-law notary, but you can also do that yourself. An original deed of formation is needed for that and a form with the details of the founders and board members. It is obligatory to pass on amendments to the articles of association and the composition of the board to the Chamber of Commerce.

Amendments to the articles of association may only be implemented by notarial deed, thus at the civil-law notary. Be careful when drawing up the articles of association that you keep them concise and that you do not rule out too many activities. The civil-law notary will charge costs again for each amendment.

Articles of association

You can view articles of association as the handbook of your organisation: what is your objective and who is responsible for what? You must take the Management and Supervision of Legal Entities Act (*Wet Bestuur en Toezicht Rechtspersonen*) into account when drawing up the articles of association. The articles of association are also included in the deed of formation. The articles of association must, in any case, contain the following:

- name of the foundation with the word 'foundation' as part of that name;
- the location;
- the goal of the foundation;
- the manner of appointment and removal of board members;
- the arrangement in the event of absence or inability to act (temporary measure for when the foundation is without a board);
- where the money goes to if the foundation is wound up.



In addition, you can include things such as the number of board members, the way in which capital is obtained, the manner of decision-making, voting rights, the financial year and the annual report and accounts, the personal details of the board members who take up their positions upon formation or if there are internal rules and regulations within the foundation, the manner of dissolution and winding-up, etc. A civil-law notary can give advice on this. Moreover, a number of matters can only be regulated procedurally in the articles of association, and more precisely laid down in internal rules and regulations (the existence of which must be included in the articles of association).

Internal rules and regulations

The internal rules and regulations are a supplement to the articles of association. You can place agreements about the day-to-day affairs herein. They may not be contrary to the articles of association, but they can be amended without intervention of the civil-law notary. Amendments are established by a resolution of the board. You can regulate matters in these regulations like:

- early retirement of board members;
- the financial consequences in the event of retirement;
- the financial consequences in the event of dissolution;
- the spending of income;
- the procedure for holding meetings;
- the distribution of duties;
- duties and job descriptions of employees;
- the procedure of hiring employees;
- if applicable: agreements about use of communal spaces or studios.

Board

The founders of a foundation are not, by definition, the board members. The board manages and represents the foundation and is usually the only administrative body. The authority of the board can, however, be limited in the articles of association. For example, you can regulate that some of the board members may only be appointed on the recommendation of the employees, or that the board must ask the employees for advice in the event of important decisions. In addition, the board members may only be authorised to sign independently or jointly.

You will find all the rules which the board have to observe in the Management and Supervision of Legal Entities Act (*Wet Bestuur en Toezicht Rechtspersonen*). This includes, for example, that one board member may not cast more votes than the other board members together. And that a board member may not participate in the deliberations and decision-making process if one has a personal interest that is in conflict with the interest of the legal entity.

Board members are usually not employed by the foundation. They do their board work for free or receive an allowance for expenses. A fee per meeting or attendance fee is also possible. In exceptional cases, a board member may, however, be employed by the foundation under certain conditions.

Nowadays, there is often a 'remote' board, where the day-to-day responsibility for the enterprise is delegated to a management board. A board will not remain remote if there are, or if there is a threat of, difficulties. It is also important to think carefully about what the foundation expects from the board members and which profile that may lead to. It is important to have some financial and legal expertise in the board. Furthermore, it may be very nice to have someone with a large network, a commercial background or expertise in the field of marketing. Moreover, cultural institutions comply with the Cultural Governance Code. This includes guidelines for proper, responsible and transparent governance.

Liability

The foundation is an independent legal entity. This means that board members are responsible for the foundation, but not personally liable. If invoices, salaries or taxes cannot be paid, the person who



is entitled to money cannot recoup that from the bank account or assets of the board. Employee, including the director, are also not personally liable.

Directors' and officers' liability

Board members may be held liable, however, if the foundation cannot pay the taxes and contributions, and it is likely that this is attributable to mismanagement. The board members are also collectively responsible for the policy of the enterprise and each board member can be held liable if bills remain unpaid as a result of this policy. This means that board members may have to pay any debt themselves.

An example of mismanagement: a foundation has applied for a grant from Performing Arts Fund NL for the period 2021-2024. There have been positive reactions, but no official commitment yet. In anticipation of the awarding of a grant, contracts are already being concluded without reservation with regard to productions. Months later, it turns out that the grant request has been rejected. If the foundation subsequently goes into liquidation, the board may be blamed for improper performance of its duties and manifest shortcoming, because the foundation didn't have any formal security when it entered into financial obligations without any reservation.

Directors' and officers' liability insurance

The foundation can take out directors' and officers' liability insurance, as a result of which a board member will be insured in the event of a claim for compensation to their personal address. This kind of insurance offers a solution in order to protect the private assets of board members against mistakes or alleged mistakes that they make in their position.

Taxes

The foundation may be faced with various taxes. If it is economically active with turnover tax (unless the business operations are exempt from VAT), if it has people employed with income tax deducted at source, if it makes a profit with corporation tax and finally if it receives gifts or donations with inheritance tax. This also has consequences for the requirement to keep records.

Cultural ANBI / ANBI / SBBI

A foundation may apply for a public benefit organisation (*Algemeen Nut Beogende Instelling*, ANBI) or social benefit organisation (*Sociaal Belang Behartigende Instelling*, SBBI) status. The foundation will then receive certain tax benefits and donors of the foundation can deduct their gift (under certain conditions) from their tax. ANBI or SBBI status is applied for from the Dutch Tax and Customs Administration.

If an ANBI is a cultural institution, this ANBI can receive the status of 'cultural ANBI'. The ANBI must be at least 90% in the cultural field for this. Donors of cultural ANBIs receive an additional tax benefit, because an additional deduction for gifts applies to them. In this way, private individuals are allowed to multiply a gift to a cultural ANBI by 1.25 in their income tax return and deduct that as a gift. Businesses that fall under the corporation tax are allowed to deduct 1.5 times the amount of such a gift in the corporation tax return.

More information

You can find more information about law & contracts, types of enterprise and tax & income at [Beroepkunstenaar.nl](https://beroepkunstenaar.nl).

Other websites (information in Dutch only):

- [Chamber of Commerce](#)
- [Management and Supervision of Legal Entities Act factsheet](#)
- [De notaris](#) and [De goedkoopste notaris](#)
- [Foundations and associations \(belastingdienst.nl\)](#)