



The foundation (stichting)

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Traditionally a foundation has always had the purpose of managing money and using it to support good causes. Since the 20th century the foundation as a form of enterprise has grown by leaps and bounds, particularly in areas such as the subsidized cultural sector.

The foundation has an objective, recorded in statutes, which cannot be aimed at payments being made without any return to board members or to its founders. A foundation can make profits but payments to others need to have an idealistic or social intent.

With artistic producers such as a theatre group or an ensemble, it can be useful for the members of the group to work for a foundation. Then they don't have to be involved with wage distribution declarations and 'fictitious' employment. The foundation sends an invoice (including sales tax) to the venue. Then the foundation pays wages and takes care of withholding and paying taxes and premiums. The foundation also has to be reported to the Income Tax inspectorate and the implementation agency.

Establishment

A foundation has to be set up by one or more people via a notarial act at a notary's office. Many notaries don't charge for a preliminary half-hour orientational meeting, so it is advisable to have all the necessary information ready in order that the notary can begin developing the memorandum of association right away. This commonly costs between € 200 and € 400.

Foundations have to be registered in the register of companies of the Kamer van Koophandel (KvK, Chamber of Commerce). The registration is usually done by the notary, but you can also do it yourself. To register it yourself you need an original memorandum of association and a form with details about the founders and board members. The KvK charges the foundation a small annual contribution. The costs differ per KvK and can be calculated on the website. It is compulsory to inform the KvK about changes in the statutes and the make-up of the management. Changes in the statutes can only be made by notarial act, thus by the notary.

Statutes

The foundation's statutes have to be recorded in the memorandum of association.

The following items must be included in the statutes:

- name of the foundation, with the word 'foundation' as part of the name;
- the place of business;
- the aim of the foundation;
- the method of hiring and firing board members; and
- what happens to the foundation's credit balance in the case of liquidation.

You can also include such matters as the number of board members, the way in which capital is obtained, the method of decision-making, the fiscal year and annual accounts, the personal details of the board members who take up office at the time of the formation, whether there are by-laws within the foundation, how dissolution and discontinuance take place, etc. A notary can offer advice about these matters. See also the *example of statutes* of a fictitious foundation, with explanation (in Dutch). There are also a number of affairs which can only be determined procedurally in the statutes, and recorded more precisely in the by-laws (the existence of which must be recorded in the statutes).

By-laws



All the other matters which affect the operation of the foundation can be included in the by-laws. It cannot be contrary to the statutes, but can be altered without the intervention of the notary. Alterations are made by management decision. In these by-laws you can, for instance, include items such as:

- agreements about the use of practice space or studios;
- premature resignation of board members;
- financial consequences of dissolution;
- financial consequences of resignation;
- how income is spent;
- method of meeting;
- division of tasks;
- tasks and job descriptions of staff;
- procedure for hiring staff.

Management

The founders of a foundation are not board members by definition. The board governs and represents the foundation, and is usually the only managing body. There are no members as there are in an association. Unless the statutes state otherwise, the board is not accountable or responsible to any third parties. In special circumstances the public prosecutor and the courts are authorized to inspect the board, and can even go as far as firing foundation administrators. The board's authority can be limited through the statutes. For instance you can arrange to have a number of the board members appointed only through nomination by the staff, or to have the board ask the staff for advice in cases of important decisions.

In principle board members are not employed by the foundation and they do their board work on a voluntary basis or only receive reimbursement for expenses. If an employee wants to become a board member, it can only happen when it states in the statutes that the board member concerned has no voting right in decisions regarding his/her own employment contract. This is important in relation to the WW (unemployment) regulations: if it isn't recorded in the statutes, the board member/employee can never be involuntarily unemployed and therefore can't be entitled to unemployment benefits.

These days one often encounters what is known as management 'from a distance,' in which the daily responsibility for the enterprise is delegated to a management board. But the administration doesn't remain at a distance if problems arise or threaten to arise.

It is important to consider what the foundation expects from the board members and what kind of profile that involves. A certain amount of financial and legal expertise should be present on the board. And a commercial or marketing expert can also be useful for foundations in the cultural sector.

Liability

The foundation is an independent legal entity. This means that the board members are responsible for the foundation, but not personally liable. When invoices, salaries or taxes couldn't be paid, than it is not possible to go for the assets of the board.

Only when the foundation has debts arising from (culpable) improper management which it can't pay, then the law assumes there is personal liability. It has to involve an indisputable failure about which no reasonably judging and sensible entrepreneur can have any doubts. In the case of bankruptcy the board members can be supposed personally and individually (thus each for the whole) liable, which means they could be required to pay the debts themselves.

An example of improper management: A foundation has applied for subsidy at Performance Art Fund for the 2013-2016 term. Positive reactions have been received, but no recommendation from the Raad van Cultuur (cultural council) yet, let alone a positive decision from the Ministry of



Education, Culture and Sciences. In anticipation of the subsidy being granted, production contracts have already been signed. Months later the subsidy request is denied. If the foundation then goes bankrupt the board can be blamed for improper performance and apparent inadequacy because the foundation had no formal certainty when they accepted financial responsibilities without any conditions.

It is recommended for a foundation to get an insurance for the risk of personal liability for its board members.

Taxes

The foundation can be involved with various kinds of *taxes*. If it is economically active it is involved with sales tax; if it employs people it is involved with income tax; if it makes a profit it must pay corporate tax; and finally, if it receives gifts or donations it is involved with succession duty.

More information

On BeroepKunstenaar.nl:

- find more on: *types of business* and *taxes*

Other (Dutch) websites:

- [Kamer van Koophandel](#) (Chamber of Commerce)
- [De notaris](#) (The notary) and [De goedkoopste notaris \(the least expensive notary\)](#)
- [The Belastingdienst](#) (Tax Service)