

Bürgerliches Gesetzbuch - German Civil Code

The sections copied below are from the part of the Code dealing with Foundations - Book 1, Division 1, Title 2 (Legal persons), Subtitle 1 (Associations), Chapter 2 (Registered associations).

Subtitle 2 (Foundations)

Section 80

Formation of a foundation having legal personality

(1) The creation of a foundation with legal personality requires an endowment transaction and recognition of the foundation by the competent public authority of the Land in which the foundation is to have its seat.

(2) A foundation is to be recognised as having legal personality if the endowment transaction satisfies the requirements of section 81 (1) below, if the long-term and sustained achievement of the object of the foundation appears guaranteed and if the object of the foundation does not endanger the common good. In the case of a foundation which is established for a specific period the assets of which are to be depleted in pursuing its purpose (principal-depleting foundation), the ongoing performance of the object of the foundation is to be deemed secured if the foundation is to exist for a period defined in the endowment transaction which is at least ten years.

(3) Provisions of the Land legislation on church foundations are unaffected. The same applies with the necessary modifications to foundations which Land legislation treats as equivalent to church foundations.

Section 81

Endowment transaction

(1) A lifetime endowment transaction must be in writing. It must contain the binding declaration by the founder that he will dedicate assets, which may also be intended for depletion, to achieve an object specified by himself. The endowment transaction must give the foundation a charter with provisions on

1. the name of the foundation,
2. the seat of the foundation,
3. the objects of the foundation,
4. the assets of the foundation,
5. the composition of the foundation board.

If the endowment transaction does not satisfy the requirements of sentence 3 above and if the founder is dead, section 83 sentences 2 to 4 apply with the necessary modifications.

(2) Until the foundation is recognised as having legal personality, the founder has a right to revoke the endowment transaction. If an application has been made for recognition by the competent public authority, the revocation may be declared only to that public authority. The heir of the founder is not entitled to revoke the endowment transaction if the founder made the application to the competent public authority, or, if the endowment transaction was notarially recorded, the founder, at or after the notarial recording, instructed the notary to make the application.

Section 82
Duty of founder to make transfers

If the foundation is recognised as having legal personality, the founder has a duty to transfer to the foundation the assets promised in the endowment transaction. Rights that can be transferred by contract of transfer pass to the foundation on recognition, unless the endowment transaction indicates that the founder intended otherwise.

Section 83
Testamentary foundation

If the endowment transaction is a testamentary disposition, the probate court must inform the competent public authority of this for the purpose of recognition, unless application is made by the heir or the executor. If the endowment transaction does not satisfy the requirements of section 81 (1) sentence 3, the foundation shall be given a charter or additions shall be made to an incomplete charter by the competent public authority before recognition; when this is done, the will of the founder is to be taken into account. The seat of a foundation, unless otherwise provided, is the place where the management is carried out. In case of doubt, the last residence of the founder within the country is deemed the seat.

Section 84
Recognition after the death of the founder

If the foundation is recognised as having legal personality only after the death of the founder, then for the purpose of the endowment payments made by the founder it is deemed to have come into existence before his death.

Section 85
Constitution of foundation

The constitution of a foundation, to the extent that it is not based on federal or Land legislation, is determined by the endowment transaction.

Section 86
Application of law on associations

The provisions of sections 23 and 27 (3) and of sections 28 to 31a and section 42 apply with the necessary modifications to foundations; but the provisions of section 26 (2) sentence 1, of section 27 (3) and of section 28 apply only to the extent that the constitution, in particular the administration of the foundation by a public authority, does not lead to a different conclusion. The provisions of section 26 (2) sentence 2 sentence 2 and of section 29 do not apply to foundations whose administration is conducted by a public authority.

Section 87
Change of objects; termination

(1) If the objects of the foundation have become impossible to fulfil, or if they endanger the common good, the competent public authority may give the foundation another intended purpose or terminate it.

(2) When the objects are altered, the intention of the founder should be taken into account, and in particular, it should be ensured that the income of the foundation assets is maintained for the group of persons that it was meant to benefit, as intended by the founder. The public authority may amend the constitution of the foundation to the extent that the alteration of the objects requires this.

(3) Before the objects are altered and the constitution is changed, the board of the foundation should be heard.

Section 88
Devolution of property

When the foundation ceases to exist, the property devolves on the persons specified in the constitution. If no persons entitled are specified, the property devolves on the treasury of the Land in which the foundation had its seat, or on another person entitled to receive under the law of this Land. The provisions of sections 46 to 53 apply with the necessary modifications.