

Hessian Foundation Act of April 4, 1966, with latest amendment of June 23, 2020
Hessisches Stiftungsgesetz vom 4. April 1966, zuletzt geändert am 23. Juni 2020
(translated using DeepL)

§ 1 Scope

This law applies to foundations with legal capacity under civil law and public law which have their registered office in the State of Hessen.

§ 2 Foundations under public law

(1) Foundations under public law are foundations which exclusively or predominantly pursue public purposes and have an organic connection with the State, a municipality, an association of municipalities or any other corporation or institution under public law.

(2) Foundations under public law shall be expressly designated as such in the foundation deed and in the recognition.

(3) §§ 80 to 88 of the German Civil Code apply accordingly to foundations under public law, with the exception of § 82 sentence 2.

§ 3 Recognition

The supervisory authority is responsible for the recognition of a foundation under civil law, the state government for foundations under public law.

§ 4 (cancelled)

§ 5 Administration of the foundation

The foundation's bodies must manage the foundation in such a way that the realization of the foundation's purpose appears to be sustainably guaranteed in the long term, taking into account the recognizable or presumed will of the founder.

§ 6 Foundation assets

(1) The assets of the foundation are to be preserved undiminished. The supervisory authority may permit exceptions if the founder's will cannot be realized otherwise and the continued existence of the foundation is guaranteed for an appropriate period of time.

(2) The assets of the foundation must be kept separate from other assets.

(3) The income from the assets of the foundation and donations may only be used in accordance with the foundation's purpose. The same applies to the assets of the foundation in the case of para. 1 sentence 2.

§ 7 Notification of the supervisory authority

The body appointed to represent the foundation is obliged to submit to the supervisory authority

1.
notify any change in the composition of an organ without delay,
2.
to submit, within nine months of the end of the financial year, a proper annual statement of accounts including a balance sheet with separate disclosure of reserves and a report on the fulfilment of the foundation's purpose

§ 8 Liability of the foundation's bodies

The members of the foundation's bodies are obliged to manage the foundation's assets in an orderly manner. In case of intentional or grossly negligent violation of their obligations, they are obliged to pay damages to the foundation, without prejudice to liability provisions in other laws.

§ 9 Amendment of the constitution following recognition, dissolution and amalgamation of foundations

- (1) The Executive Board or other bodies appointed for this purpose may request that the constitution be amended, that the foundation be repealed or merged with another foundation. The will of the founder is to be taken into account as far as possible. The decision is made by the supervisory authority.
- (2) The dissolution, merger with another foundation or change of purpose can only take place if it appears appropriate due to a significant change in circumstances. The foundation transaction or the foundation deed may stipulate that such decisions are permissible even without a substantial change in circumstances.
- (3) The supervisory authority also decides on the change of purpose or the termination of the foundation in the case of § 87 of the German Civil Code.

§ 10 Foundation Supervisory Authority

- (1) The foundations are subject to the supervision of the State. Its purpose is to ensure that the foundations are managed in accordance with the law and with the constitution of the foundation. The supervision should be carried out in such a way that it does not impair the decision-making and responsibility of the members of the foundation bodies.
- (2) Insofar as foundations are administered by State authorities, the superordinate authorities exercise general supervision of the foundation. §§ 12 to 16 of this Act do not apply.

§ 11 Supervisory authorities

(1) The supervisory authority is the Regional Council in whose district the foundation has its seat.

(2) For civil law foundations, the supreme supervisory authority is the ministry responsible for foundation law, for public law foundations the ministry responsible for the subject matter.

§ 12 Information and examination

(1) The supervisory authority may inform itself about the affairs of the foundation to the extent necessary for proper supervision. In particular, it may inspect the foundation's facilities, request reports, files and other documents, as well as audit the management and cash management or have them audited at the foundation's expense.

(2) The supervisory authority shall examine the annual accounts together with the balance sheet and the report on the fulfilment of the purpose of the foundation in accordance with § 7 No. 2. In the case of foundations which have essentially constant income and expenditure each year, it may combine the examination of accounts for several years.

(3) If a foundation is audited by an independent auditor or another independent person or company authorized to issue an equivalent audit certificate, the audit must also cover the preservation of the foundation's assets and the use of the foundation's funds in accordance with the statutes. If an appropriate audit certificate is available, the supervisory authority may refrain from carrying out its own audit.

(4) The supervisory authority may demand that a foundation be audited by an independent auditor or other independent persons or companies authorized to issue an equivalent audit certificate. The audit mandate must cover the preservation of the foundation's assets and the use of the foundation's funds in accordance with the statutes. If a corresponding audit opinion is available, the supervisory authority may refrain from conducting its own audit.

§ 13 Complaints and instructions

(1) The supervisory authority may overturn decisions of the foundation's bodies that violate the law or violate the constitution. It may demand that measures taken on the basis of such decisions be reversed.

(2) If the foundation does not fulfil duties or tasks incumbent upon it by law or the constitution, the supervisory authority may instruct the foundation to take the necessary steps within a reasonable period of time.

§ 14 Substitute performance

(1) If the foundation does not comply with an instruction of the supervisory authority (§ 13 para. 2) within the period of time set for it, the supervisory authority may order and carry out the necessary measures in place of the foundation.

(2) The foundation shall bear the costs.

§ 15 Dismissal of members of the foundation's bodies

(1) The supervisory authority may dismiss members of a foundation body for good cause, in particular for gross breach of duty or inability to manage the foundation properly, and appoint others in their place. In the event of culpable conduct, a prior warning is required.

(2) The supervisory authority may temporarily prohibit the member of a foundation organ from managing the foundation if the welfare of the foundation so requires.

(3) Before a measure under para. 1 or 2 is taken, the other members of the foundation bodies should be heard.

§ 16 Appointment of an authorized representative

If and as long as the proper course of the administration of the foundation requires it and the powers of the supervisory authority according to §§ 12 to 15 do not suffice, the supervisory authority may appoint commissioners to carry out all or individual tasks of the foundation or a foundation body at the expense of the foundation.

§ 17 Announcements

The recognition, dissolution, amalgamation of foundations, change of name, seat, purpose and the decision on the legal nature of a foundation (§ 22) must be published in the State Gazette for the State of Hessen.

§ 17a List of foundations

(1) For foundations within the meaning of this Act, the supervisory authorities and, in the event of a transfer of supervisory powers under § 28, the City of Frankfurt am Main shall maintain a register of foundations.

(2) The following must be entered in the register of foundations

1.
the name of the foundation,
2.
the legal nature of the foundation,
3.
the seat of the foundation,
4.
the purpose of the foundation,
5.
the address of the foundation,
6.
the organs and persons authorized to represent the company and the nature of their powers of representation,
7.
the date of recognition,
8.
the competent supervisory authority.

The foundation must inform the supervisory authority of any changes without delay.

(3) The register of foundations is generally accessible. It may be published on the internet. Entries in the register of foundations do not justify the presumption of correctness.

(4) The ministry responsible for foundation law shall set up a common automated procedure for the maintenance of the register of foundations. The supervisory authorities are obliged to participate in the procedure. § Section 39 para. 2 of the Hessian Data Protection and Freedom of Information Act of 3 May 2018 (GVBl. p. 82), amended by the Act of 12 September 2018 (GVBl. p. 570), shall apply accordingly.

(5) Upon request, the supervisory authority shall issue a certificate stating who is entitled to represent the foundation in accordance with the statutes and the information provided by the foundation. Para. 3 sentence 3 applies accordingly.

§ 18 Local foundations

(1) Local foundations are those which fulfil purposes which the municipalities, districts or special-purpose associations perform or can perform as public tasks in their area.

(2) The administration of local foundations is governed by §§ 116 and 120, para. 1 of the Hessian Municipal Code.

(3) Notwithstanding § 120 para. 2 of the Hessian Municipal Code, local foundations may only be recognized as having legal capacity, converted, merged or dissolved with the agreement of the municipality, district or special-purpose association. The same applies to amendments to the constitution or the purpose of the foundation.

(4) If local foundations are administered by municipalities, administrative districts, special-purpose associations or their organs, the tasks of foundation supervision are performed by the competent local supervisory authorities in accordance with the provisions of the Hessian Municipal Code and the Hessian District Code. The other local foundations are subject to the supervision according to § 11.

§ 19 Foundations under the administration of the Landeswohlfahrtsverband Hessen

(1) Notwithstanding § 87 of the German Civil Code, foundations administered by the Landeswohlfahrtsverband Hessen or its own companies may only be recognized as having legal capacity, converted, merged or dissolved with the consent of the Landeswohlfahrtsverband Hessen. The same applies to amendments to the constitution or the purpose of the foundation.

(2) ...

§ 20 Church and ideological foundations

(1) Ecclesiastical foundations within the meaning of this Act are those foundations dedicated to a church for predominantly ecclesiastical, diaconal, charitable or religious purposes which are organizationally linked to the church or whose purposes can only be meaningfully fulfilled in connection with the church.

(2) Notwithstanding § 87 of the German Civil Code, ecclesiastical foundations may only be recognized as having legal capacity, converted, merged or dissolved with the consent of the church concerned. The same applies to changes in the purpose of the foundation.

(3) Local church foundations and pledge foundations acquire legal capacity by publication of the foundation deed in the Staats-Anzeiger für das Land Hessen. The announcement shall be arranged for by the minister responsible for the subject matter at the request of the competent church authority. The same applies to the conversion, merger, dissolution and amendment of the purpose of the foundation of such foundations.

(4) It is left to the churches to regulate the performance of the other tasks of foundation supervision.

(5) Church agreements remain unaffected.

(6) Paragraphs 1 to 5 are also applicable to corresponding foundations of a religious community or ideological community recognized as a public corporation.

§ 21 Family Foundations

(1) Family foundations within the meaning of this Act are foundations which, according to the foundation business, exclusively or predominantly serve the welfare of the members of one or more specific families.

(2) Family foundations are subject to the supervision of the state only in so far as it must be ensured that their existence and activity do not run counter to the public interest.

§ 22 Doubts about the legal nature of a foundation

If there is any doubt about the legal nature of a foundation, in particular whether it is a foundation under civil or public law, a family foundation, a local, church or ideological foundation, the supervisory authority shall decide.

§ 23 Asset accumulation

(1) If the constitution does not specify a beneficiary in the event of the extinction of a foundation, the assets of

1.
a local foundation shall fall to the municipality, the county or the special-purpose association

2.
a foundation administered by the Landeswohlfahrtsverband Hessen shall fall to the Landeswohlfahrtsverband Hessen,

3.
a church or ideological foundation shall fall to the church, religious community or ideological community,

4.
all other foundations shall fall to the State.

In the case of nos. 1 to 3, the regulations on an inheritance accruing to the tax authorities as the legal heir also apply.

(2) The beneficiaries must use the assets as far as possible in a manner that is in accordance with the purposes of the foundation.

§ 24 Legal status of existing foundations

With the exception of § 3, the provisions of this Act shall apply to foundations existing at the time of the entry into force of this Act.

§ 25 (canceled)

§ 26 (consummated)

§ 27 (consummated)

§ 28 Authorisation to delegate supervisory powers

The Regional Council in Darmstadt is authorized to transfer the powers of § 12 for foundations having their seat in Frankfurt am Main to the magistrate of the City of Frankfurt am Main.

§ 29 (cancelled)

§ 30 Entry into force; repeal

This Act shall enter into force on 1 May 1966 and expire at the end of 31 December 2024.