



# Analysis of the Non-Profit Sector in the EU10 for Monitoring and Control

Arunas Rakauskas and Anjula Garg



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European Commission

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The information contained in this report has not been confirmed as accurate or complete by competent legal experts in the aforementioned Member States and it should not, under any conditions, be considered as such.

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## Table of Contents

<b>Disclaimer</b> .....	<b>5</b>
<b>Table of Contents</b> .....	<b>7</b>
<b>Index of Tables</b> .....	<b>13</b>
<b>Acknowledgements</b> .....	<b>14</b>
<b>Abstract</b> .....	<b>15</b>
<b>Executive Summary</b> .....	<b>16</b>
<b>Abbreviations</b> .....	<b>17</b>
<b>Chapter 1. Definitions in the National Laws of EU10 for Different Types of Entities</b> .....	<b>18</b>
1. Association .....	18
1.1. Cyprus .....	18
1.2. Czech Republic .....	18
1.3. Estonia .....	19
1.4. Hungary .....	20
1.5. Latvia .....	20
1.6. Lithuania .....	20
1.7. Malta .....	22
1.8. Poland .....	23
1.9. Slovakia .....	24
1.10. Slovenia .....	24
2. Foundation .....	24
2.1. Cyprus .....	24
2.2. Czech Republic .....	25
2.3. Estonia .....	25
2.4. Hungary .....	26
2.5. Latvia .....	26

## TABLE OF CONTENTS

---

2.6. Lithuania.....	27
2.7. Malta.....	29
2.8. Poland.....	29
2.9. Slovakia.....	30
2.10. Slovenia.....	30
3. Non-Profit Organisations.....	30
3.1. Cyprus.....	30
3.2. Czech Republic.....	30
3.3. Estonia.....	30
3.4. Hungary.....	31
3.5. Latvia.....	31
3.6. Lithuania.....	31
3.7. Malta.....	31
3.8. Poland.....	31
3.9. Slovakia.....	31
3.10. Slovenia.....	31
4. Non-Governmental Organisation.....	32
4.1. Cyprus.....	32
4.2. Czech Republic.....	32
4.3. Estonia.....	32
4.4. Hungary.....	32
4.5. Latvia.....	32
4.6. Lithuania.....	32
4.7. Malta.....	32
4.8. Poland.....	32
4.9. Slovakia.....	32
4.10. Slovenia.....	32
5. Other legal forms.....	32
5.1. Cyprus.....	33
5.2. Czech Republic.....	33



5.3. Estonia .....	33
5.4. Hungary.....	33
5.5. Latvia .....	34
5.6. Lithuania.....	34
5.7. Malta .....	36
5.8. Poland .....	38
5.9. Slovakia.....	38
5.10. Slovenia.....	38
6. Definitions for Different Types of Entities in the National Laws of EU10 .....	39
<b>Chapter 2. Analysis and Assessment of Existing Systems .....</b>	<b>41</b>
1. Registration.....	41
1.1. Registration System .....	41
1.2. Country Overview .....	41
1.3. Registration Systems .....	57
2. Accreditation/Seal of Approval .....	61
2.1. Accreditation System .....	61
2.2. Country Information .....	61
3. Monitoring.....	63
3.1. Monitoring System .....	63
3.2. Country Information .....	64
4. Tax Status .....	73
4.1. Tax System .....	73
4.2. Country Information .....	74
5. Gambling sector.....	86
5.1. Gambling Sector System .....	86
5.2. Country Information .....	86
<b>Chapter 3. Research Recommendations .....</b>	<b>99</b>
1. Registration.....	99
2. Accreditation .....	99

## TABLE OF CONTENTS

---

3. Monitoring.....	100
4. Taxation .....	100
5. Gambling .....	100
<b>Chapter 4. Conclusions .....</b>	<b>101</b>
<b>Bibliography .....</b>	<b>102</b>
1. Books .....	102
2. Open Sources .....	102
<b>Annexes.....</b>	<b>105</b>
<b>Annex A. Presentations.....</b>	<b>106</b>
<b>Annex B. National Legislation and Other Material Concerning National Law .....</b>	<b>107</b>
3. Cyprus.....	107
3.1. Law on Associations .....	107
3.2. Law on Foundations.....	107
3.3. Law on NPO.....	107
3.4. Law on NGO .....	107
3.5. Law on Other Legal Forms.....	107
3.6. Other Laws.....	107
4. Czech Republic .....	107
4.1. Law on Associations .....	107
4.2. Law on Foundations.....	112
4.3. Law on NPO.....	123
4.4. Law on NGO .....	123
4.5. Law on Other Legal Forms.....	123
4.6. Other Laws.....	131
5. Estonia .....	150
5.1. Law on Associations .....	150
5.2. Law on Foundations.....	178
5.3. Law on NPO.....	195

---

5.4. Law on NGO .....	195
5.5. Law on Other Legal Forms.....	195
5.6. Other Laws.....	195
6. Hungary.....	263
6.1. Law on Associations .....	263
6.2. Law on Foundations.....	267
6.3. Law on NPO.....	269
6.4. Law on NGO .....	269
6.5. Law on Other Legal Forms.....	269
6.6. Other Laws.....	276
7. Latvia .....	302
7.1. Law on Associations .....	302
7.2. Law on Foundations.....	322
7.3. Law on NPO.....	322
7.4. Law on NGO .....	325
7.5. Law on Other Legal Forms.....	325
7.6. Other Laws.....	325
8. Lithuania.....	374
8.1. Law on Associations .....	374
8.2. Law on Foundations.....	378
8.3. Law on NPO.....	385
8.4. Law on NGO .....	385
8.5. Law on Other Legal Forms.....	385
8.6. Other Laws.....	391
9. Malta .....	420
9.1. Law on Associations .....	420
9.2. Law on Foundations.....	420
9.3. Law on NPO.....	420
9.4. Law on NGO .....	420
9.5. Law on Other Legal Forms.....	420

## TABLE OF CONTENTS

---

9.6. Other Laws.....	440
10. Poland .....	451
10.1. Law on Associations.....	451
10.2. Law on Foundations .....	458
10.3. Law on NPO .....	464
10.4. Law on NGO .....	464
10.5. Law on Other Legal Forms .....	464
10.6. Other Laws .....	464
11. Slovakia.....	481
11.1. Law on Associations.....	481
11.2. Law on Foundations .....	485
11.3. Law on NPO .....	509
11.4. Law on NGO .....	518
11.5. Law on Other Legal Forms .....	518
11.6. Other Laws .....	526
12. Slovenia.....	558
12.1. Law on Associations.....	558
12.2. Law on Foundations .....	558
12.3. Law on NPO .....	565
12.4. Law on NGO .....	565
12.5. Law on Other Legal Forms .....	565
12.6. Other Laws .....	565

## Index of Tables

Table 1. Definitions in the national laws of EU10 for different types of entities .....	39
Table 2. Registration Systems .....	57

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## Abstract

The report "Analysis of the EU10 Non-profit Sector for Monitoring and Control" has been written in the context of the European Commission forum "Support against Terrorist Financing" by Directorate General Justice, Liberty and Security (JLS), and of a Joint Research Centre (JRC) research project to support monitoring and control for EU aid funds. The report's purpose is to give an overview of the non-profit sector in EU10 with specific attention to the prevention of fraudulent use of funds in this sector, in general, and terrorist financing in particular. This report is complementary to the report "Analysis of the EU15 Non-profit Sector for Monitoring and Control" which sets out the context of the current work in detail and also contains information regarding the classification and definitions used for the non profit sector.

The main aim of the analysis is to present an overview of the non-profit sector in EU10<sup>1</sup> with regard to the prevention of fraudulent use of funds in the non-profit sector, in particular for financing of terrorism. The basic purpose of this report is to support EU regulatory work for the non-profit sector with a comparative analysis of information for standardisation of terms, requirements for registration, monitoring, accreditation and tax status of these organisations.

The regulatory framework for Non-Governmental Organisations consists of a series of different laws and regulations, including public benefit provisions, tax legislation and the legal framework for public participation. The majority of information on the non-profit sector was collected from state institutions and organisations of the Member States. Collected information was analysed and then compared. Due to the difficulties in handling various languages, the diversity of the non-profit sector and the short time available to complete this work, the report should be regarded mainly as a reference document. The information contained in this document may not be complete.

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<sup>1</sup> It includes the following countries: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

## Executive Summary

The expansion of the European Union marks a changing and defining period for the non profit sector of the accession countries. The issues related to expansion were numerous and complex. This process has resulted in the governments and parliaments of the accession countries creating institutions and mechanisms to facilitate the integration process.

The work "Analysis of the EU10 Non-Profit Sector for Monitoring and Control" contributes to the main objective of supporting EU regulatory work for the non-profit sector and the transparency and traceability for aid funds. This report is complementary to the report "Analysis of the EU15 Non-profit Sector for Monitoring and Control" which sets out the context of the current work in detail and also contains information regarding the classification and definitions used for the non profit sector.

Primarily the aim of this work is to present an overview of the non-profit sector in EU10 with regard to the prevention of fraudulent use of funds in the non-profit sector. The basic purpose of this report is to support the EU regulatory work for the charitable/non-profit sector through a comparative analysis of information with a view to standardising terminology, comparing requirements for registration, accreditation, and monitoring. The report also includes an overview of the tax status of Non-Governmental Organisations, as well as short overview of the gambling sector in the EU10.

This work can be seen as an auxiliary means to support transparency and traceability for aid funds. The work presented pertains to the JRC research project "Transparent Aid – A System to Support Monitoring of Aid Funds" (TR-AID) to build automated IT-based tools to support monitoring and control tasks for activities financed through aid funds. TR-AID started in 2004 in the Unit "Support to External Security" of the Institute for the Protection and Security of the Citizen, at JRC-Ispra. The main objective of TR-AID is to contribute towards the effective use of aid funds by helping to avoid the misuse of such funds. The data collection effort that it entails is meant to complement official aid activity databases. Sources of information will include European Commission databases, OECD databases, open sources (e.g. web sites of both non-profit and donor organisations) and third-party databases, such as company directories.

It needs to be noted that due to the language difficulties, the diversity of the sector and the short time available to complete this work, the report may not contain complete information regarding the non profit sector in the EU10.



## Abbreviations

AFF	Article on Foundations and Funds, Act No. 227/1997, Czech Republic
CTDT	Corporate Tax and Dividend Tax
EU 10	It includes the following countries: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia
FIA	Foreign Income Account
LCS	Law on Charities and Sponsorship
LCSF	Law on charity and sponsorship funds
LVAT	The Law on Value Added Tax
MI	Ministry of Interior
NGO	Non-Governmental Organisation
NPO	Non-Profit Organisation
NPOPBS	Non-Profit Organisations Providing Publicly Beneficial Services
PBC	Public Benefit Company
PBO	Public Benefit Organisation
STI	State Tax Inspection
VAT	Value Added Tax

## Chapter 1. Definitions in the National Laws of EU10 for Different Types of Entities

Many diverse types of bodies are described as being NGOs. There is no generally accepted definition of an NGO and the term carries different connotations in different countries. At the same time there are some fundamental features. An NGO must be independent of the government, an NGO may not be constituted as a political party and it may be non-profit-making organisation.

In most EU10 countries, the two common fundamental NGO legal forms are associations and foundations. Association is recognised/accepted as a basic form of membership organisation and foundation is considered as a basic form of non-membership organisation. Other terminology has also been used in both common and civil law countries, including charities, funds, societies, non-profit organisations and others, such as public institutions in Lithuania, non-investment funds in Slovakia, institutes in Slovenia.

### 1. Association

Associations are membership-based organisations whose members, or their elected representatives, constitute the governing body of the organisation. They can be formed to serve the public benefit or the mutual interest of members. Associations can generally pursue activities directed for the public benefit or for the mutual interest of members.

An association's highest governing body is the general assembly of its members (or for certain large associations, their duly elected representatives). Several countries require associations to have a management body in addition to the general assembly to deal with the everyday affairs of the association. Countries may also specify (or require the organisation's statute to specify) a variety of other features of associations, such as the criteria for accepting/expelling members, members' rights and duties, as authority to represent the NGO, and other issues of internal governance.

In order to found an association, laws of Hungary and Slovenia require ten founders for an association, and Poland requires fifteen. Estonia and Latvia require only two founders.

### 1.1. Cyprus

No information is available

### 1.2. Czech Republic

Associations of Citizens (hereinafter "Associations") are membership organisations established by Czech Republic citizens to pursue common interests. Associations are generally regulated by the Law on Associations<sup>2</sup>. Associations are permitted to engage in both mutual benefit and public benefit activities<sup>3</sup>. Associations are, however, prohibited from engaging in functions reserved for the government or public administration<sup>4</sup>. Members of associations may be natural persons, including foreigners, and legal bodies.

At least three citizens, one of them should be over the age of 18, can form a Preparatory (Founding) Committee that may establish an association.

The association becomes a legal entity upon obtaining certification of registration from the Ministry of Interior, or it becomes a legal entity by default if the Ministry does not inform the Preparatory Committee of its negative decision within 40 days of submission of the Establishment Proposal.

The association must not resemble a political party or religious congregation, for which there are specific laws. There should also be no evident military or paramilitary activities inherent in the purpose and the Statute of the association, nor any membership's restrictions, benefits or obligations, which would violate basic human rights and freedoms.

<sup>2</sup> Act No. 83/1990 on Associating of Citizens ("Law on Associations"), as amended by Act. No. 68/1993, [http://web.mvcr.cz/rs\\_atlantic/ftp/sbirka/1990/sb019-90.pdf](http://web.mvcr.cz/rs_atlantic/ftp/sbirka/1990/sb019-90.pdf)

<sup>3</sup> Article 4, Law on Associations.

<sup>4</sup> Article 5, Law on Associations.

### 1.3. Estonia

A non-profit association is a voluntary association of persons, both physical and legal, the objective or main activity of which shall not be the earning of income from economic activity.

The income of a non-profit association may be used only to achieve the objectives specified in its articles of association. A non-profit association shall not distribute profits among its members. A non-profit association is governed by the members and its internal documents (e.g. the Articles of Association).

The Non-profit Associations Act<sup>5</sup> regulates the activities of all membership non-profit organisations. The Act states clearly that profit cannot be the principal purpose of the not-for-profit association and revenues raised may only be used to achieve statutory goals. The Act also specifies requirements for the members, order of admission, secession, exclusion of members, and the rights and obligations arising from membership. Members can be individuals as well as juridical persons.

Transformation of a non-profit association into a legal person of a different class is prohibited.

A non-profit association may be founded by at least two persons. The founders may be natural persons or legal persons.

In order to found a non-profit association, the founders shall enter into a memorandum of association. A memorandum of association shall set out:

1. the name, location, address and objectives of the non-profit association being founded;
2. the names and residences or locations, and the personal identification codes or registry codes of the founders;
3. the obligations of the founders with regard to the non-profit association;
4. the names, personal identification codes and residences of the members of the management board.

Upon conclusion of a memorandum of association, the founders shall also approve the articles of association of the non-profit association as an annex to the memorandum of association.

The memorandum of association and articles of association approved thereby shall be signed by all founders. A representative of a founder may sign the memorandum of association if the representative has been granted an authorisation document therefore. Articles of association shall be amended after entry in the register of the non-profit association and shall not require amendment of the memorandum of association.

The articles of association of a non-profit association shall be in writing. The articles of association shall set out:

1. the name of the non-profit association;
2. the location of the non-profit association;
3. the objectives of the non-profit association;
4. the conditions and procedure for membership in the non-profit association and for leaving and exclusion from the non-profit association;
5. the rights of members;
6. the obligations of members or the procedure for establishment of obligations for members;
7. upon the existence of departments, their rights and obligations;
8. the conditions and procedure for calling the general meeting and the procedure for adoption of resolutions;
9. the number of members of the management board or the maximum and minimum number of members;
10. the distribution of assets of the non-profit association upon dissolution of the association;
11. other conditions provided by law.

The articles of association may also prescribe other conditions which are not contrary to law. If a provision of the articles of association is contrary to a provision of law, the provision of law applies.

If the articles of association do not prescribe a term for the non-profit association, it shall be deemed to be founded for an unspecified term.

In the articles of association different names may be used for bodies and departments of non-profit associations than those provided by the law, however, in such case the articles of association shall indicate to which names provided by the law these names correspond to.

<sup>5</sup> Non Profit Associations Act.

#### 1.4. Hungary

An association is a self-governed, voluntarily established organisation which is formed for a purpose defined by its charter and which organises its members' activities in order to achieve its aim<sup>6</sup>. An association has members – called a "registered membership" under local law. At least ten natural persons and/or juridical entities are required to form an association<sup>7</sup>. An association cannot be formed for the primary purpose of performing economic activities, nor can it be formed for criminal, military, totalitarian, or unlawful purposes.

#### 1.5. Latvia

Association is a voluntary association of persons, founded to realize the goals stipulated by the Statute and having an unprofitable nature.

The administrative bodies of an association are a general meeting (meeting of the members) and the board. The articles of association may also provide for other administrative bodies and determine the procedure for their creation and their competence.

The highest body of an association is a general meeting.

All members of an association have the right to participate in general meeting, unless otherwise provided for by law. A member may also participate in a general meeting with the intermediation of a representative, unless otherwise provided for by law. An authorisation to participate and vote in a general meeting shall be issued in writing.

The board shall call a general meeting in accordance with the procedures prescribed by law or the articles of association in the cases determined by law or the articles of association, or if the calling of a general meeting is necessary in the interests of the association.

The board shall manage and represent the association.

The board may consist of one member or more members. The general meeting shall elect a chairperson of the board from the board members

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<sup>6</sup> § 61 of the Act IV/1959, as amended by Act XCII of 1993 Act IV, <http://www.icnl.org/library/cee/laws/hunactiv.htm#61>, August 2005.

<sup>7</sup> Act II/1989, Law on Associations § 2 (1) and § 3 (4), <http://www.icnl.org/library/cee/laws/hunactii.html#2>

unless otherwise provided for by the articles of association.

Board members shall be natural persons with legal capacity. Not less than half of the board members shall be persons whose place of residence is Latvia.

The board shall administrate and manage the affairs of the association. It shall administrate the assets of the association and shall deal with its funds in accordance with laws, the articles of association, and decisions of the board or other bodies.

The board shall organise bookkeeping accounts for the association in accordance with legislative enactments and shall carry out other responsibilities in accordance with its competence as set out in the articles of association.

An association shall consist of at least two members if the articles of association do not provide for a larger number of members. After the association is registered in the register, the founders of the association gain the status of members of the association.

Each association shall keep a register of its members which shall indicate the name, surname, personal identity code and home address (name and address of a legal person) of each member. Information about member of the association shall be accessible only to the members of the relevant association, and to controlling and law enforcement institutions.

#### 1.6. Lithuania

The law on associations<sup>8</sup> (Therein and after LA) defines the concept of an association revealing its main purpose - to coordinate the activities of the members of an association, to represent and protect the interests of the members of an association or to meet other public interests.

An association is a public legal person of limited civil liability, with objective to coordinate activities of the association members, meet, represent and protect public interests of the members of the association. The registered office of the association shall be situated in the Republic of Lithuania. The association shall maintain at least one bank account.

No less than three legal entities or natural persons may form an association. The applicable statutory requirements are based strictly on membership

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<sup>8</sup> Law on Associations.

and there is no capital requirement. There are also no provisions concerning a minimum age requirement for natural persons.

An association shall be a voluntary union of legal and natural persons which performs managerial, economic, social, cultural, educational, scientific research tasks and functions which are established by the association members.

The objectives of the activities, main functions and tasks of the association must relate to the activities or needs of the association members and must be laid down in its statutes.

Legal and natural persons may unite into associations by the type of activities, consumption, functions, and area. A person may be a member of several associations.

#### 1.6.1. The Status of the Association

The association shall be a legal person from the day of its registration, having the seal with its name and a settlement account. The association shall be liable for its obligations to the full extent of its property and shall not be liable for the commitments assumed by its members.

The association shall be a non-profit organisation. It cannot distribute a gained profit among its members. A non-profit organisation shall be an entity possessing the rights of a legal person which has been set up in accordance with the procedure established by the laws and the objective of activities whereof is not profit seeking.

The name of the association must contain the word "association". The name of the association must conform to the requirements of the Regulations of Firm Names which are approved by the Government.

The association shall enjoy the freedom of activities, initiative and decisions, granted by the Constitution of the Republic of Lithuania, this and other laws of the Republic of Lithuania, decrees of the Government, and the determined duties, and in its activities shall abide by the association statutes registered in accordance with the procedure established by this and other laws.

#### 1.6.2. Association Members

Legal and natural persons of the Republic of Lithuania and other states may be association members. Restrictions on membership of foreign legal and natural persons in the association may be set in the statutes.

The members must observe the association statutes. The person who pursues interests

contrary to the objectives of the association may not be admitted to the association.

The list of all the members must be held in the association, and the list of the members who belong to an affiliate must be held in that affiliate. Each association member shall have the right to familiarise himself with these lists.

The association member shall have the right to:

1. make use of the services rendered by the association;
2. acquire the information concerning the activities of the association;
3. use the information collected by the association;
4. dispute in court the resolutions of the general meeting of the members and the collective managing body, and the decisions of the administration.

#### 1.6.3. Establishment

An association may be established on the initiative of legal and natural persons. The association shall consist of at least 3 members.

The initiators of establishment of the association must convene a constituent assembly in which the persons (representatives authorised by them) who have expressed in writing their desire to be the members of the association which is being established shall have the right to vote. The constituent assembly shall adopt the decision concerning establishment of the association, its statutes and shall elect managing bodies.

#### 1.6.4. The Statutes

The statutes shall be a legal document which governs the activities of the association.

The following must be stated in the statutes:

1. the name of the association;
2. the registered office (address) of the association;
3. the objectives, functions and tasks of the association;
4. the rights and duties of the association members;
5. the procedure and conditions of admitting, withdrawal and expulsion of the members from the association;

6. the procedure for forming the managing bodies, their competence, functions and responsibility, the procedure for removing of the elective managing bodies and their members, the procedure for the payment for work of the members of the elective managing bodies;
7. the procedure for establishing and liquidating affiliates;
8. the sources of the property and funds;
9. control of financial activities;
10. the procedure for amending and supplementing the statutes;
11. duration of the activities of the association;
12. the procedure for reorganising and liquidating the association.

The statutes may also contain other provisions which are in compliance with the laws.

#### 1.6.5. Affiliates

The association shall have the right to set up affiliates. They shall be set up in the procedure established in the statutes.

An affiliate shall be a subdivision of the association with a separate registered office. The affiliate is not a legal person and shall use the name of the association as a legal person. The affiliate shall operate in compliance with the association statutes and the powers granted by the general meeting of the members which must be specified in the statutes of the association and the regulations of the affiliate.

The affiliate shall be registered, re-registered and removed from the register in accordance with the procedure established by laws.

#### 1.6.6. The Union of Associations

In order to solve their general tasks associations may unite into unions (confederations). The unions (confederations) of associations shall be established and operate in the manner prescribed by this Law.

An association shall join the union (confederation) at the resolution of the general meeting (conference, congress) of the members, which is adopted in accordance with the established procedure.

Enterprises, provided that they are not the members of the associations which are the

members of the union, may be the members of that union (confederation).

### 1.7. Malta

#### 1.7.1. Overview

From a regulatory point of view, there is no overall authority responsible for NGOs. There are no provisions for their registration and there are no monitoring or supervisory structures. In Malta companies with the particular features of NGOs are currently affected by the absence of proper NGO legislation. There is no current full updated directory of NGOs in Malta, due mainly to the fact that there is no law that requires NGOs to register.

Malta volunteers operate either within organised bodies such as cooperatives, clubs, federations or outside such structures<sup>9</sup>

On 2005 some initiative was taken and all interested NGOs were brought together to propose recommendations for future NGO legislation in Malta. At present time Ministry for the Family and Social Solidarity presented the White Paper<sup>9</sup> to the general public.

In order to fill substantial gaps in Maltese Non-Governmental sector, Ministry for the Family and Social Solidarity prepared and published sector related White Paper. Above mentioned White Paper briefly outlines the attached proposed legislation for the voluntary sector, namely, the Voluntary Organisations Act. The Voluntary Organisations Act assumes a detailed legal structure which emerges from another proposed Act which will amend the Civil Code.

The White Paper explains the rules on enrolment, outlines the functions of the Commissioner for Voluntary Organisations, of the Voluntary Organisations Fund and of the National Council for the Voluntary Sector. It addresses the important challenges of instilling and achieving transparency and accountability by allowing for monitoring without the need of undue interference.

#### 1.7.2. Associations

According to the proposed amendments of the Civil Code some associations may be of private interest (such as when set up to support a specific person or group of named persons, or when it is set up to carry on a trade or profession) and

<sup>9</sup> Ministry for the Family and Social Solidarity, [http://www.msp.gov.mt/services/subpages/content\\_index.asp?id=ngo&section=laws](http://www.msp.gov.mt/services/subpages/content_index.asp?id=ngo&section=laws)

others can have 'social purposes' or be 'non-profit', even if its purposes are not technically defined as being of a public nature.

Private Associations can register under this law and then the rules of law must be observed and all information required by law on registration and annually must be filed at the Registry. The law lists those items which must be stated in the statute and hence publicly disclosed for the various public interest reasons which have been mentioned above.

Associations are made up of persons. Persons associate together to achieve the purpose defined in the statute. These are organisations with members and need a democratic structure to determine decision-making powers (sports clubs, charitable or environmental groups and etc.).

## 1.8. Poland

### 1.8.1. Associations

Associations are membership organisations comprised of natural persons that are voluntary, self-governed and lasting non-profit unions<sup>10</sup>.

Sources of financing for Associations - Associations with legal entity can profit from different sources of financing:

1. public collections,
2. donations from companies and individuals, legacies,
3. subsidies from public administration,
4. incomes from real property, endowment or other capital revenues,
5. economic activity.

The right to found associations is vested in Polish citizens who have full capacity to conduct legal transactions and who have not been deprived of public rights.

At least 15 people who want to found an association adopt the association's statute and select the founding committee.

The Law on Associations<sup>11</sup> requires that an association's statute must include:

1. a name of the association that distinguishes it from other associations, organisations, and institutions;
2. the seat and the territory of activities;
3. the goals of the association and the means for their achievement;
4. the ways of acquiring and losing membership, the rights and responsibilities of the members;
5. authorities of the association, the method of their election, the method of electing supplementary authority members, and the competence of the authorities;
6. the methods of representing the association and property obligations, as well as conditions under which resolutions of the associations are binding;
7. the ways of obtaining financial means and deciding upon members dues;
8. principles of changing the statute;
9. the method of dissolution.

If branches are contemplated, information about their creation and structure must also be stated.

(Article 40) A simple association must adopt regulations that specify its name, location, goals, territory, types of activities, and representative.

The highest authority of an association is a general assembly of its members. A general assembly of members decides upon all the matters on which the statute does not specify the competence of association's authorities.

The statute may provide for a delegate's assembly instead of a general assembly of members, or the substitution of a general assembly of members with a delegate's assembly if membership of the association reaches a certain number specified in the statute. In such cases, the statute specifies the principles governing the election of delegates and their terms of office.

An association must have a board and an internal auditing organ.

The founding committee submits to the registry court a motion for registration with the following enclosures: the statute, a list of founders

<sup>10</sup> Article 2, Law on associations, 7 April 1989, Journal of Law of the Republic of Poland, No. 20, item 104, Journal of Law of the Republic of Poland, 1990, No. 14, item 86.

<sup>11</sup> Article 10.

containing each founder's first name, last name, date and place of birth, present address and signature, a protocol of founding committee selection and the address of the association's temporary seat.

### 1.8.2. Simple Associations

A simple association is a simplified form of association, and it does not have the status of a legal person. At least 3 persons who wish to found a simple association adopt regulations for the association. The regulations must particularly specify the name of the simple association, its goals, territory, its kinds of activities, its seat, and representative. In writing, the founders notify the supervising agency that is appropriate for the seat about the founding a simple association. The notice must include the data mentioned in section 2 above.

If the activities of a simple association are not forbidden within 30 days from the day the supervising agency receives notice of the associations founding, the association may start its activities.

A simple association may not:

1. create local branches;
2. enter unions of associations;
3. include legal persons;
4. conduct economic activity;
5. accept donations, legacies or inheritances, receive public grants or use public support.

A simple association gains financial means for its activities from member contributions.

### 1.9. Slovakia

Associations are membership organisations created by citizens to pursue common interests. Three citizens are required to found an association (Article 6 (1), Law on Associations)<sup>12</sup>, and legal entities may be members of an association (Article 2(2), Law on Associations). No limitations are placed on the ability of foreign natural or legal persons to participate as members of associations.

Within broad parameters, associations are permitted to engage in both mutual benefit and

public benefit activities (Article 4, Law on Associations). Associations are, however, prohibited from engaging in functions reserved to the government or public administration (Article 5, Law on Associations), and they are banned from being established for military activities or for purposes violating the human rights of others.

According to the Act No. 83/1990 on Associating of Citizens, the members of an association may be natural persons, including foreigners, as well as legal entities. However, only citizens of Slovak Republic may form the Preparatory Committee of minimum three members, one of which must be adult, which submits the Establishment Proposal and Association's Statute to the Ministry of Interior for registration in order to obtain the status of a legal entity.

### 1.10. Slovenia

Associations are membership-based organisations established by and consisting of natural persons to pursue common interests<sup>13</sup>. Associations are generally regulated by the Associations Law, although specialized associations such as political parties, political movements, churches, and religious organisations are regulated under separate legislation. Foreigners who are permanent residents of Slovenia as well as temporary residents who have resided in Slovenia more than one year may found an association<sup>14</sup>. Associations cannot be established for the purpose of generating a profit, although they may engage in economic activities if the activities are related to and help promote the association's objectives<sup>15</sup>.

Associations may engage in both mutual benefit and public benefit activities

## 2. Foundation

Generally foundations require property dedicated to a specific purpose and are governed by a self-perpetuating board of directors. Foundations are generally described as capital based bodies without members. Most foundations must be dedicated to the public benefit.

### 2.1. Cyprus

No information available yet.

<sup>12</sup> Act No. 83/1990 on Associating of Citizens ("Law on Associations").

<sup>13</sup> Associations Law, nos. 60/95, 49/98, 89/99, Article 1.

<sup>14</sup> Associations Law, nos. 60/95, 49/98, 89/99, Article 6.

<sup>15</sup> Associations Law, nos. 60/95, 49/98, 89/99, Article 22.



## 2.2. Czech Republic

Foundations and funds are grant-making, asset-based organisations established by legal or natural persons for public benefit purposes<sup>16</sup>. Foundations must maintain an endowment of at least 500 000 Czech Koruna (approximately € 19.000). Funds have no endowment requirements and may use all of their assets to pursue their statutory purposes<sup>17</sup>. Although neither form may engage in economic activities, both foundations and funds may organise cultural, social, sporting, and educational events, as well as lotteries, in order to raise funds<sup>18</sup>. Foundations may hold up to 20% of the shares of joint stock companies and are subject to other investment rules. Funds are prohibited from investing in capital markets.

Self-perpetuating Board of Directors should govern both foundations and funds. The founder(s) should appoint the first board. Both must publish annual reports describing in detail their activities, income sources and use of property.

Both natural persons and legal bodies, including foreigners, may establish a foundation or a fund. To register, the founder(s) must present the proposal for registration to the district court, which is responsible for keeping the register of foundations and funds. The same court operates the register of commercial legal bodies. The proposal must be accompanied by the Articles of Incorporation in the form of a Founders' Agreement, if there are two or more founders, or in the form of a Notary Act, if the founder is a single person. The Founder's Agreement must be signed on authority.

According to the Law on Foundations and Funds, the information provided in the Articles of Incorporation and in the Application for Registering must include the following:

1. the unique name of the foundation or the fund and address of its headquarters (seat);
2. the name of and other identification information about its founder(s) and their share in the property endowed;
3. the purpose for which the entity is being established (which must be for public benefit, compatible with examples set by the law);

<sup>16</sup> Act No. 227/1997 on Foundations and Funds ("Law on Foundations"), as amended by Act No. 201/2002, Article 1(1).

<sup>17</sup> Article 2(3) of Law on Foundations.

<sup>18</sup> Article 23, of Law on Foundations.

4. in the case of a foundation, the list of endowment components and their identification together with certified overall value of listed endowment assets;
5. the names of the members of the first board of directors (no less than three natural persons) and of the supervisory board (for smaller funds there might be one single person – the Inspector);
6. the way in which the board of directors acts on behalf of the entity;
7. general rules by which the granting procedure to third persons will be regulated; and
8. a "ceiling" restricting the administrative expenses.

Within 30 days of registration, the board of directors of a foundation/fund must submit its Statute, which specifies in more detail the governing structure and proceedings, as well as grant-making rules and any other specific internal regulations.

## 2.3. Estonia

The Foundations Act states that a foundation is a non-membership legal entity set up to manage property and to pursue stated objectives. The Act sets limits on the activities of foundations, stating that a foundation is allowed to engage in economic activities, but that disbursements can only be made for charitable or social purposes. Founders of a foundation may be individuals as well as juridical persons, and further that it may be established by the last will and testament.

A foundation, recognized as a legal person in private law, is established to administer and use assets to achieve the objectives specified in its Articles of Association. Since a foundation has no members, it is governed according to the law and its Articles of Association. Upon the transfer of assets to a foundation, the founders' right to direct their use is generally extinguished.

Founders of a foundation must adopt a foundation resolution, which may also be a part of a notarized will<sup>19</sup>. Registration takes place in the registration departments of city and county courts, where registers of non-profit associations and foundations are maintained. Foundations may be founded by only one person.

<sup>19</sup> Estonian Foundations Act, Articles 6 and 7.

A foundation shall be founded by a foundation resolution which shall set out:

1. the name, location and address of the foundation;
2. the names and residences or locations and addresses of the founders and their personal identification codes or registry codes;
3. the sum of money or other assets, and their value, to be transferred to the foundation by the founders;
4. the names, residences and personal identification codes of the members of the management board and supervisory board.

The founders shall also approve the articles of association of the foundation as an annex to the foundation resolution.

All founders shall sign a foundation resolution and the articles of association approved thereby. A foundation resolution and the articles of association approved thereby shall be notarised. A representative of a founder may sign if the authorisation document granted to the representative there for is notarised. Articles of association shall be amended after entry in the register of the foundation pursuant to the procedure provided for in Estonian Foundations Act.

#### 2.4. Hungary

A foundation is an organisation established through a "Letter of Establishment" by any natural or legal person or by a business partnership without legal personality. A foundation must be established for long-term (or long-lasting) public interest purposes<sup>20</sup>. After establishing a foundation, founders have only a limited power over its operations.

Organisations based on designated property, without members and that have stipulated objectives that serve a long-term public interest; the principal purpose cannot be to perform economic activities. They can either be "closed" foundations where the founder contributes all capital at the creation of the foundation, or "open" foundations where contributions from donors other than the founder are permitted in the future.

<sup>20</sup>Act IV/1959, as amended by Act XCII of 1993, §74/A(1), <http://www.icnl.org/library/cee/laws/hunactiv.htm#74A>

Private persons, legal persons, and unincorporated business associations (jointly referred to hereinafter as "founders") shall be entitled to form a foundation in a charter in order to serve a long-term public interest. A foundation may not be formed for the principal purpose of performing economic activities. A foundation shall provide sufficient assets for achieving its objectives. A foundation is a legal person.

A foundation is deemed established once it has been registered by the court.

Founders may be "private persons, legal persons and unincorporated business associations."<sup>21</sup> "Individuals or private organisations" may found public benefit companies<sup>22</sup>.

With regard to foundations, registration applications must be submitted by the founder together with the organisation's charter. The charter must contain the group's name, purpose, location, available assets and the manner in which the assets will be used. An open foundation needs to show sufficient capital to start operations, while a closed foundation must have enough capital to achieve its objectives. The law does not state a precise minimum amount or the manner by which it is calculated. In practice, the amount has generally been low, e.g., for open foundations, approximately € 1.100 is often considered sufficient. The amount needed for a closed foundation will vary depending upon its objectives. The founder may not withdraw a foundation after it is registered<sup>23</sup>.

A foundation's founder has significant powers. The founder appoints and can change the governing body while retaining controlling influence on the use of assets and only the founder is entitled to amend the charter "without causing any injury to the foundation's name, purpose, or assets"<sup>24</sup>.

#### 2.5. Latvia

Foundations an aggregate of property that has been detached to achieve the goals set by founders and that has a non-profit nature.<sup>25</sup>

A foundation, also fund, is a body of assets which has been set aside to achieve the objective

<sup>21</sup> Act IV/1959, as amended by Act XCII of 1993, Article 74A(1).

<sup>22</sup> Act IV/1959, as amended by Act XCII of 1993, Article 71.

<sup>23</sup> Act IV/1959, as amended by Act XCII of 1993, Articles 74A and 74B.

<sup>24</sup> Act IV/1959, as amended by Act XCII of 1993, Article 74B, 74C.

<sup>25</sup> Latvian Association and Foundations Law.

determined by the founder, and which is not of a profit gaining nature.

The administrative body of a foundation is the board. The articles of association may provide for the creation of other administrative bodies, prescribing the procedure for their creation and their competence, and the granting of administrative competence to other subjects or their bodies.

#### Founders

A foundation may be founded by one or more persons. If a foundation has several founders, they shall realise their founder rights only jointly. Persons, who have granted assets to the foundation, after it has been registered in the register, shall not be considered founders.

A foundation is founded based on the decision of a person to found a foundation or on a will.

The articles of association of the foundation shall set out:

1. the name of the foundation;
2. the objective of the foundation;
3. the procedure according to which assets shall be transferred to the foundation;
4. the procedure according to which the funds of the foundation shall be used;
5. the period of operation of the foundation (if the foundation is set up for a specific time period);
6. the procedure for division of assets in the case of liquidation of the foundation;
7. the procedure for appointing and recalling board members and the term of office;
8. the procedure for appointing and recalling members of other administrative bodies (if such are provided for) and the term of office;
9. the structure of the business and financial operations auditing body, procedure for election, competence, procedure for adopting decisions and term or office, or the procedure for appointing a sworn auditor and term of office; and
10. procedure for making amendments to the articles of association.

The articles of association may prescribe a set of beneficiaries. In case of doubt, a beneficiary shall

be considered to be a person to whom funds may be paid from the assets of the foundation in accordance with the articles of association of the foundation.

A founder shall submit an application to the register institution to register the foundation in the register. The application shall be signed by the founder, and when founding a foundation based on a will, the executor of the will, heir or guardian.

Attached to the application shall be:

1. the founding decision;
2. the articles of association;
3. the written consent of each board member to be a board member.

#### 2.6. Lithuania

Charity and sponsorship funds are established primarily to fund charitable and sponsorship-type efforts. They are the only forms of not-for-profit organisations that are permitted to provide aid to natural persons. While business organisations may provide such support, the funds they provide can only come from their after-tax profits.

According to the "Law on Charity and Sponsorship Funds"<sup>26</sup> (therein and after LCSF) such a fund is a separate organisational form different from associations, community organisations, and public institutions. Charity and sponsorship funds are not permitted to engage in economic activities. Furthermore, there are no minimum capital or membership requirements for the creation of charity and sponsorship funds.

A fund is a public legal person of limited civil liability having its own name and the objective of providing charity and/or sponsorship and other support to legal and natural persons in the fields of science, culture, education, arts, religion, sports, health care, social care and assistance, environmental protection as well as in other fields recognised as selfless and beneficial to society.

The name of the fund shall contain the words "charity" or "sponsorship" or "charity and sponsorship". Office of the fund shall be situated in the Republic of Lithuania. The fund shall maintain at least one bank account.

<sup>26</sup> Law on charity and sponsorship funds, <http://www3.lrs.lt/cgi-bin/preps2?Condition1=30964&Condition2=>

The founders of a fund may be legal and natural persons who have concluded a memorandum of association and who have undertaken, prior to the fund's registration in the Legal Entities' Register, an obligation to make monetary or property contributions and provide services to the fund. Where the fund is established by a single person, he shall execute a founding act, instead of a memorandum of association, subject to the requirements applied to the memorandum of association.

The memorandum of association (founding act) of the fund shall be signed by all of its founders. All founders of the fund shall become its stakeholders as of the date of the fund's registration in the Legal Entities' Register.

The following shall be indicated in the fund's memorandum of association (founding act):

1. the founders (full names, personal identification codes and addresses of natural persons, business names and identification codes of legal persons as well as their registered offices, full names or business names and personal identification codes (identification codes) of their representatives);
2. the name of the fund;
3. property and non-property obligations of the founders;
4. the fund's objectives;
5. the date of the memorandum of association (founding act).

The memorandum of association (founding act) may also specify:

1. the procedure of compensation of founding costs;
2. the procedure of settlement of disputes between the founders;
3. persons who have the right to represent the fund, their rights and powers;
4. the procedure for convening a founding meeting and the procedure of adopting decisions by the founding meeting;
5. other provisions that do not contravene this Law and other laws<sup>27</sup>.

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<sup>27</sup> LCSF Article 5.

The fund shall hold general meetings of stakeholders and shall set up a managing body. The fund may also set up other structural bodies.

The general meeting of stakeholders shall be the supreme governing body of the fund<sup>28</sup>.

The general meeting of stakeholders shall:

1. amend the fund's Articles of association;
2. make decisions on the removal of stakeholders from the fund and conferring stakeholder rights to supporters;
3. elect (appoint) and remove members of a collegiate managing body and single-person managing body, the chairman of a collegiate managing body and the auditor, unless otherwise provided by the Articles of association;
4. elect (appoint) and remove members of other collegiate bodies, where such bodies are stipulated in the fund's Articles of association and where the Articles do not provide otherwise;
5. approve the annual financial accounts of the fund;
6. decide on the restructuring or dissolution (reorganisation or liquidation) of the fund;
7. decide on the establishment of other legal persons or becoming member of other legal persons, unless otherwise provided by the Articles of association.

The fund shall be registered in the Legal Entities' Register<sup>29</sup>. The fund may be registered only after its memorandum of association (founding act) has been concluded, its founding meeting has been convened, its Articles of association have been adopted, at least one of its managing bodies has been set up and other obligations stipulated in the memorandum of association (founding act) have been fulfilled. The following documents shall be submitted to the Legal Entities' Register for the registration of a fund: memorandum of association (founding act) and Articles of association of the fund. The fund shall be deemed to be established as of the date of its registration in the Legal Entities' Register. The Legal Entities' Register shall also include the following information concerning the fund:

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<sup>28</sup> LCSF Article 8.

<sup>29</sup> LCSF Article 6.

1. period of activity, if limited;
2. dates of the beginning and end of the financial year.

The fund shall hold general meetings of stakeholders and shall set up a managing body (single-person and/or collegiate).

All of the stakeholders shall have the right to vote at the general meeting of stakeholders, each of the stakeholders having one vote. Members of the managing bodies and other collegiate bodies of the fund, where they are not the fund's stakeholders, may attend a general meeting of stakeholders without the right to vote.

## 2.7. Malta

According to the Malta White papers Foundation is dedicated to a purpose for the benefit of persons and administered by administrators. All Foundations must register as legal persons. These are artificial persons and are treated as persons.

The proposed Civil Code deals in detail with Foundations. These could be for a private interest with beneficiaries or for a "social purpose" and established as "non-profit making". Foundations can be created by public deed or will, which must contain statutory information about various matters listed in the law, and must be registered in the Public Registry.

Foundations must be established with at least 500 Lira and additional funds can be endowed after establishment.

It is possible for a purpose Foundation to have beneficiaries only when the dominant purpose of a Foundation is to support a class of persons which constitute a sector within the community as a whole. In that case the public interest overcomes the problem of private interest of the individual beneficiaries.

The provisions then deal with rights of founders, administrators and beneficiaries including the rights of information of beneficiaries. It should be noted that as the Continental Law of Foundations is not very developed in so far as it relates to rights of beneficiaries, the proposed provisions of the Civil Code track those in the Trusts and Trustees Act where beneficiaries are very much the focus. This also results in harmony within the legal system for similar cases.

## 2.8. Poland

Foundations are organisations established "to pursue socially or economically useful objectives

that are consonant with the basic interests of the Republic of Poland"<sup>30</sup>. Foundations in Poland operate according to the Law on Foundations, which came into force in 1984 (See annex). Any individual and legal person (including an association) can establish a foundation.

Foundations have to be registered in the National Judicial Register (KRS)

The foundations statute must include: its name, address, assets, purposes, principles, forms and scope of activity, composition and organisational structure of governing board, and the procedure for appointing members of that body, as well as the responsibilities and powers of that body and its members. The statute may also contain other provisions, in particular those concerning the foundation's conduct of economic activity, the admissibility and terms of its linkage with another foundation, changes in objectives or amendments to the statute, and it may also provide for establishing other foundation bodies in addition to the governing board<sup>31</sup>.

For both associations and foundations the description of purposes and activities in the statute is important as work determined to be outside of these provisions may result in restrictions or sanctions.

Governing structures: The Law on Associations states that an association independently sets its structures<sup>32</sup> but goes on to state general requirements including:

The highest authority is the general assembly of members or in some situations, an assembly of delegates<sup>33</sup>.

There must be a board and an internal auditing organ.

The Law on Foundations states only that the structure of a foundation is to be determined by the founder and identified in its statute and that the governing board shall direct a foundations activities and represent it to the world<sup>34</sup>.

<sup>30</sup> Article 1 of the Polish Law on Foundations, 6 April 1984 (Journal of Law of the Republic of Poland of 1991 No 46, item 203).

<sup>31</sup> Law on Foundations, Article 5.

<sup>32</sup> Law on Foundations, Article 2(2).

<sup>33</sup> Law on Foundations, Article 11.

<sup>34</sup> Law on Foundations, Articles 5 and 10.

## 2.9. Slovakia

According to the Act No. 34/2002 on Foundations and Amendments of the Civil Code<sup>35</sup>, the Foundation is an interest association of property, which serves to public benefit (see below). The Foundation is a legal entity incorporated into the Foundation Register kept by the Ministry of Interior of the Slovak Republic (hereafter only "MI"). Any natural or legal person (hereafter only "the founder") may establish a foundation. To do so, the founder(s) need sign under authority the Foundation Deed, which must contain the unique name containing the word "nadácia", its public benefit purpose, identification of all founders, value of the endowment and proportions of it as endowed by individual founders, identification of its first Board of Directors and the basic procedural rules for decision-making and grant giving to third persons.

In the case of Foundations the law is based on the principle of the first choice left to the founder(s) as regards the members of the Board of Directors and the Supervisory Board, as well as the person appointed as Custodian of the Foundation, who is the Chief Executive Officer employed by the Foundation. However, according to § 22 of the Foundation Act the founder(s) may specify in the Foundation Deed the length of the term of service in the boards, as well as to specify the prerequisites for the membership. Therefore, long-term membership is possible and as a prerequisite for membership may be e.g. the nomination by a certain body or person. However, general principle calls for separation of the Foundation from its founder(s) and a shift of the control to the boards representing general public.

## 2.10. Slovenia

Foundations are grant-making, asset-based organisations established by foreign or domestic legal or natural persons<sup>36</sup> for generally beneficial or charitable purposes. "Generally beneficial" activities are those in the fields of science, culture, sport, education, health care, child and disabled care, social welfare, environmental protection, conservation of natural and cultural heritage, or religion<sup>37</sup>. A foundation may engage in economic activities to the extent they advance the purpose for which the foundation was established<sup>38</sup>.

<sup>35</sup> Act No. 34/2002 on Foundations and on the Change of Civil Code, as amended ("Law on Foundations").

<sup>36</sup> Foundations Law, no. 60/95, Article 4.

<sup>37</sup> Foundations Law, no. 60/95, Article 2.

<sup>38</sup> Foundations Law, no. 60/95, Article 27.

Foundations are required to pursue public benefit objectives

## 3. Non-Profit Organisations

Non-profit organisations are legal or social entities created for the purpose of producing goods and services whose status does not permit them to be a source of income, profit, or other financial gain for the units that establish, control or finance them.

Non-Profit Organisations could be defined as organisations that:

1. are not-for-profit; that means that Non-Profit Organisations are organisations that do not exist primarily to generate profits, either directly or indirectly.
2. do not distribute any benefit they may generate to those who own or control them; that means that Non-Profit Organisations may be profit-making, but they are "non-profit distributing."
3. are institutionally separate from government; that means that the organisation is not part of the state machinery and does not exercise state authority in its own right.
4. are self-governing; that means that the organisation is able to control its own activities and is not under the effective control of any other entity.
5. non obligatory. That means that membership and contributions of time and money are not required or enforced by law.

### 3.1. Cyprus

No definition for NPO could be found for Cyprus.

### 3.2. Czech Republic

No definition for NPO could be found for Czech Republic.

### 3.3. Estonia

No definition for NPO could be found for Estonia.

### 3.4. Hungary

Non-profit companies are legal persons, serving the common interests of society on a regular basis, without aiming to acquire profits or accumulate assets. Non-profit companies may carry on business-type economic activities in the interest of promoting their non-profit activities. Profits generated by a company's activities may not be distributed among the members.

In respect of non-profit companies, the common regulations pertaining to business associations and the provisions on limited liability companies prescribed in the Act on Business Associations shall be duly applied, with due regard to the differences set forth in this Act.

The articles of incorporation of non-profit companies shall specify the public service activities and, when applicable, any business-type economic activities performed by the non-profit company. The articles of incorporation shall also prescribe the mode of utilizing the assets for public purposes in the event of the company's termination<sup>39</sup>.

### 3.5. Latvia

Non-profit organisation established for provision of services, charity.

Production or other purposes: the aim of participants of which is other than profit.

Founders: natural persons and legal entities having established any non-profit organisation by investment of assets in its statutory fund and having signed documents on foundation of such organisation.

Participants: natural persons and legal entities including founders, having invested their assets in the statutory fund of any non-profit organisation.

Donors: natural persons and legal entities who donate assets for operation of any non-profit organisation without becoming its participants.

Statutory fund: material assets and money of participants and donors earmarked for operation of any non-profit organisation.

Legal Status of Non-Profit Organisations - Non-Profit organisations may exist in a form of an entrepreneurial company, single owner's enterprise enjoying the rights of legal entity, or non-governmental organisation.

<sup>39</sup> Act IV/1959, as amended by Act XCII of 1993, Section 57.

Non-governmental organisations shall operate in accordance with the Law on Non-Governmental Organisations.

Non-profit organisations may be established by any natural person or any family only in the form of a company with limited liability.

### 3.6. Lithuania

No definition for NPO could be found for Lithuania.

### 3.7. Malta

No definition for NPO could be found for Malta.

### 3.8. Poland

No definition for NPO could be found for Poland.

### 3.9. Slovakia

Not-for-Profit Organisations Providing Publicly Beneficial Services<sup>40</sup> (hereafter only "NPOBPS") are defined as a legal entity established according to the cited Act, which means that they are not neither association nor foundation. A NPOBPS may be established by one or more natural or legal persons or by the State to provide public benefit services (see below) on equal and well-defined conditions without distributing any of its profits to its founders or members of its Board of Directors or to its employees. The founder(s) of a NPOBPS need to sign under authority the Establishment Deed, which must contain the unique name of the NPOBPS containing the words "nezisková organizácia" (non-profit organisation), or abbreviation "n.o.", time for which the Fund is established, kind of public benefit services to be provided, identification of all founders, value of the contribution of each of the founders or description of contributed property, whose value has been officially certified, identification of the members of the first Board of Directors. The Establishment Deed must be submitted for registration to regional office together with the Statute issued by the founder(s).

### 3.10. Slovenia

No definition for NPO could be found for Slovenia.

<sup>40</sup> Act No. 213/1997 on Non-Profit Organizations Providing Generally Beneficial Services, as amended by Act No. 35/2002 ("Law on NPOBPSs").

#### 4. Non-Governmental Organisation

During our research we could not find any definitions of Non-Governmental organisations for all EU 10 countries. It appears that associations and foundations are more widely used in the region.

Non-Governmental Organisations have been defined by the Council of Europe in its Fundamental Principles<sup>41</sup> as follows:

1. NGOs are essentially voluntary self-governing bodies and are not therefore subject to direction by public authorities. The terms used to describe them in national law may vary, but they include associations, charities, foundations, funds, non-profit corporations, societies and trusts. They do not include bodies which act as political parties.
2. NGOs encompass bodies established by individual persons (natural and legal) and groups of such persons. They may be national or international in their composition and sphere of operation.
3. NGOs are usually organisations which have a membership but this is not necessarily the case;
4. NGOs do not have the primary aim of making a profit. They do not distribute profits arising from their activities to their members or founders, but use them for the pursuit of their objectives.
5. NGOs can be either informal bodies or organisations which have legal personality. They may enjoy different statuses under national law in order to reflect differences in the financial or other benefits which they are accorded in addition to legal personality.

##### 4.1. Cyprus

No definition for NPO could be found for Cyprus.

##### 4.2. Czech Republic

In Czech Republic there is no definition for NGOs.

##### 4.3. Estonia

There is no definition on NGOs in Estonia.

##### 4.4. Hungary

There is no definition of NGOs in Hungary.

##### 4.5. Latvia

There is no definition of NGOs in Latvia.

##### 4.6. Lithuania

No definition for NGO could be found for Lithuania.

##### 4.7. Malta

No definition for NGO could be found for Malta.

##### 4.8. Poland

There is no definition of NGOs in Poland.

##### 4.9. Slovakia

No definition for NGO could be found for Slovakia.

##### 4.10. Slovenia

No definition for NGO could be found for Slovenia.

#### 5. Other legal forms

This section handles other legal forms of entities that can form part of the non-profit sector.

Most part of the EU 10 countries has at least one new form in addition to associations and foundations. Some countries have distinguished between grant-making and service-providing organisations. They define foundations as primarily grant-making organisations, and create a separate form for non-membership NGOs that are mainly dependent on grants or income from economic activities to carry out their mission. Some countries have created open foundations, organisations that have characteristics of both associations and foundations.

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<sup>41</sup> Council of Europe, Fundamental Principles, <http://www.coe.int/T/E/Legal%5Faffairs/Legal%5Fco%2Doperation/Civil%5Fsociety/FP%20version%20finale%20E.asp#TopOfPage>



Other countries such as Czech Republic have Public Benefit Corporations, Lithuania have Public institutions.

Also we found two other forms: Non-Investment Funds in Slovakia and Institutes in Slovenia.

### 5.1. Cyprus

No definition for other legal forms could be found for Cyprus.

### 5.2. Czech Republic

#### 5.2.1. Public Benefit Corporations

Public Benefit Corporation is service-providing, non-membership, and non-profit organisations governed by a Board of Directors appointed by the founder(s) from the general public unrelated to the Public Benefit Corporation employees.

PBC have no membership and render "generally beneficial services" to the public on equal terms and conditions<sup>42</sup>. This legal form is commonly used by government-dependent NGOs such as theatres, hospitals, homes for the elderly, drug rehabilitation clinics, etc.

Public Benefit Corporations may engage in economic activities if the income is used to improve the utilization of the organisation's assets without negatively affecting the quality, scope, and availability of the public services it offers<sup>43</sup>. Public Benefit Corporations may not invest in the entrepreneurial activities of other persons.

### 5.3. Estonia

No definition for other legal forms could be found for Estonia.

### 5.4. Hungary

#### 5.4.1. Public Benefit Company

A public benefit company is an organisation which is set up to regularly pursue a public benefit activity and to conduct accompanying economic activities. A public benefit company may not distribute any profits to its members. The goal of this form is to facilitate the privatization of public

<sup>42</sup> Act No. 248/1995 on Public Benefit Corporations ("Law on PBCs"), as amended by Act No. 208/2002, Article 2.

<sup>43</sup> Article 17, Law on Public Benefit Corporations.

services through a non-profit service-providing institution. A "public benefit company" is regulated by the rules for limited liability companies and for business companies<sup>44</sup>.

#### 5.4.2. Public Chamber (Public Body)

A public chamber is a self-governed organisation with a registered membership, which is established by an act of Parliament. A public chamber fulfils a public task connected with its members or the activity performed by its members<sup>45</sup>. Legislation may delegate certain public responsibilities to public chambers (such as certifying professional qualifications) and may prohibit non-members from engaging in those activities<sup>46</sup>. Where not stated otherwise, the rules for associations apply to public chambers<sup>47</sup>.

#### 5.4.3. Public Corporations

Public corporations are self-governing organisations with registered membership whose establishment has been ordered by law. Public corporations perform public duties related to their membership and/or the activities performed by their membership. Public corporations are legal persons.

Public corporations are, in particular, the Hungarian Academy of Sciences, the chamber of commerce, and professional associations.

The law can prescribe certain public duties that must be performed by public corporations. Public bodies have the authorization, defined by law, to fulfil public duties, and they shall exercise such rights through self-management.

The law may prescribe that certain public duties be performed exclusively by public corporations and that certain activities may only be performed by members of public corporations.

Data relating to public duties performed by public corporations are of public interest.

Unless otherwise provided by law, the provisions pertaining to societies shall be duly applied to public corporations<sup>48</sup>.

<sup>44</sup> Act IV/1959, as amended by Act XCII of 1993, § 57 (2).

<sup>45</sup> Act IV/1959, as amended by Act XCII of 1993, §65(1).

<sup>46</sup> Act IV/1959, as amended by Act XCII of 1993, §65(3,4).

<sup>47</sup> Act IV/1959, as amended by Act XCII of 1993, §65(6).

<sup>48</sup> Act IV/1959, as amended by Act XCII of 1993, Section 65.

#### 5.4.4. Public Foundation

A public foundation is an organisation established by Parliament, the national government, or the representative body of local government, for the purpose of ensuring continuous performance of certain public responsibilities<sup>49</sup>.

A public foundation may be established by Parliament, the Government, or the representative body of a local government for the purpose of continuous performance of public responsibilities. The establishment of public foundations can be made mandatory by law.

For the purposes of Subsection (1), the state or local government responsibilities that are prescribed by legal regulation to be provided by the state or local government shall be deemed as public responsibilities. The establishment of a public foundation shall not affect the obligation of the state or local government for fulfilling such responsibilities.

A public foundation may also be formed by a foundation donating its entire assets, with the consent of the founder, to a duly authorized body in order to establish a public foundation with the same objective. The party entitled to form a public foundation, if it accepts the donation, shall establish the public foundation together with the foundation's founder. The foundation shall be terminated upon the establishment of the public foundation, which shall thereby become its legal successor, and the founders of the public foundation shall, unless otherwise provided in the charter, exercise the founders' rights together.

A body entitled to found a public foundation shall only be entitled to establish foundations that are public foundations.

When a public foundation is established, the charter shall also specify the managing body; or a separate body, including the body entitled to supervise the managing body, and shall be created for this purpose.

The charters of public foundations must be published in an official gazette.

Unless otherwise provided by law, anybody shall be entitled to join a public foundation without conditions; however, the charter can stipulate that joining is contingent upon the approval of the managing body (organisation).

The managing body (organisation) shall report to the founder annually on the operation of the

public foundation, and it shall publish the most important details of its financial affairs. The legitimacy and propriety of the financial management of public foundations, with the exception of public foundations founded by the representative body of a local government, shall be overseen by the State Audit Office.

The court shall, upon the founder's request, terminate a public foundation in a non-litigious proceeding if there is no longer any need for the public responsibility, or if the public responsibility can be performed more efficiently in another way or through a different organisational structure. When a public foundation is terminated, the foundation's assets shall, after satisfying any creditors, remain with the founder, who shall use the assets for a purpose similar to that of the terminated public foundation and shall appropriately inform the public thereof<sup>50</sup>.

#### 5.5. Latvia

No definition for other legal forms could be found for Latvia.

#### 5.6. Lithuania

A public institution is a non-profit organisation, founded according to the procedure established by the Law on Public Institutions<sup>51</sup> from the assets of partners (owner) engaged in social, educational, scientific, cultural, sport or any other analogous activities and public to the members of the community as regards to the services it provides. Public institutions - is the only type of NGO that is clearly permitted to perform economic activities. The organisational form is similar to limited companies: the capital (which has no minimum requirement) is divided between owners, whose meeting (or decision of owner in the case of sole owner) is the supreme body of the public institution. The law also requires that a public institution have an administration, which conducts the day-to-day activities of the institution.

A public institution is an entity with the rights of legal person, established in accordance with the procedure for a purpose other than profit-making. Its profit can not be distributed to its founders, members, partners (owner).

A public institution shall develop its activities pursuant to the bylaws registered in accordance

<sup>49</sup> Act IV/1959, as amended by Act XCII of 1993, §74/G(1).

<sup>50</sup> Act IV/1959, as amended by Act XCII of 1993, Section 74G.

<sup>51</sup> Law on Public institutions, July 1996, No. I1428.

with the procedure established by the Law on Public Institutions and other laws.

The name and symbols of the public institution must be in compliance with the requirements on the regulations, approved by the Government, concerning the names of firms, and legal acts on the appropriate sphere of activities wherein the public institution is engaged.

In order to perform the activities provided for in the bylaws, a public institution may:

1. hold bank accounts in accordance with the procedure established by laws;
2. purchase or otherwise acquire property, manage it, use it and dispose thereof in accordance with the procedure established by laws and institution bylaws;
3. conclude contracts and assume obligations;
4. provide paid services, perform contractual work and set the costs thereof;
5. provide and obtain charity and sponsorship;
6. establish branches;
7. reorganise, establish non-profit organisations and enterprises in accordance with the procedure established by laws;
8. use funds for the purpose of implementing the goals established in the bylaws;
9. announce public tenders for the purpose of implementing measures;
10. establish international connections, exchange experts, students and pupils; and
11. join non-profit organisation associations, including international associations, and take part in their activities.

A public institution shall conduct accounting, furnish state institutions with financial accounting and statistical information and pay taxes in accordance with the procedure established by laws.

The founders of public institutions shall be natural and legal persons who have concluded a public institution contract of founding, or a person who has concluded a contract of founding. Natural and legal persons of the Baltic Republic of Lithuania and foreign states may become founders of public institutions.

State and municipal institutions shall have the right to transfer state (municipal) property to a public institution only on a use basis.

The legal grounds for the establishment of a public institution shall be the contract of founding of an institution formed by legal or (and) natural persons in accordance with the procedure established by the Law on Public Institutions. The number of founders shall be unlimited.

The contract (act) founding of a public institution must indicate:

1. founders (forenames, surnames, names of legal persons) and their addresses;
2. name of public institution;
3. sphere of activities and objectives of public institution;
4. liabilities of founders;
5. compensation of founding expenses;
6. duration of activity of the public institution;
7. procedure of resolving the disputes among founders; and
8. founders by which the public institution may be represented.

The contract of founding of a public institution shall be signed by all of its founders or their authorised representatives. If at least one founder is a natural person, the contract of founding must be certified by a notary. If the founder is an enterprise or a legal person, the signature of the chief or authorised person shall be approved with a seal. A foreign legal person, not having a seal, shall be applied the procedure established for natural persons.

The founders of a public institution shall adopt the bylaws of the institution upon having formed the contract of founding.

If a state or municipal institution shall assign property to a public institution on a use basis, a contract shall be concluded specifying the terms and conditions and duration of such property use and the non-property and property rights of the property owner. The head of the institution shall sign the contract on behalf of the state or municipal institution. The contract of use of state or municipal property formed prior to the registration of the institution shall be signed by the authorised representative of the founders.

Prior to the constituent meeting, the persons indicated in the contract of founding shall have

the right to conclude transactions on behalf of the public institution being founded. These transactions shall create obligations for the institution upon being approved by the constituent meeting. If these transactions are not approved by the meeting, the founders shall be jointly liable for the obligations based upon these transactions.

The constituent meeting shall be applied the provisions, established by this Law, for the general meeting of a public institution. The founders shall have the right of a deciding vote in it.

#### Public Institution Bylaws

The bylaws constitute a legal document which the public institution must base its activities upon.

The following must be stated in the bylaws of the public institution:

1. the name of the institution;
2. the registered office;
3. the spheres and objectives of the institutions activities;
4. the rights and obligations of the partner (owner), the procedure for granting and deprivation of the partners (owners) rights and the procedure for transferring a part of the capital belonging to the partner (owner), to other persons property;
5. the rights of the institution which has transferred property on a use basis;
6. powers of the general meeting of the public institution and the procedure for convening it and adopting resolutions;
7. the procedure of forming and revoking the collective bodies of management, their competence, functions and liability;
8. appointment procedure and powers of the head of the administration;
9. procedure for disposal of the institutions property;
10. sources of funds and procedure of fund utilisation;
11. control of financial activities;
12. procedure of amending and supplementing the bylaws;

13. procedure of establishing and liquidating branches;

14. procedure of reorganisation and liquidation of the institution; and

15. duration of the institutions activities.

The bylaws may also contain other provisions related to the specific character (specifics) of the public institution which are in compliance with the laws.

The bylaws of a public institution must be signed by all of its founders, and the signatures must be verified: those of natural persons must be certified by a notary, those of legal persons, by the head or an authorised representative, by signature and seal of a legal person.

The right of initiative to amend and supplement the bylaws shall be vested in the administration of the public institution, the collective body of the public institution and the general meeting of the public institution. The amended or supplemented bylaws shall be approved by the general meeting of the public institution.

The amendments and supplements of the bylaws shall become effective upon their registration in accordance with the procedure established by laws.

#### 5.7. Malta

In terms of legislation there is no single instrument for NGO sector regulation and there are no commonly-used definitions on important terms.

In order to fill the gap, overview of Maltese conventional companies are presented below:

Types of companies:

- International Trading Company which trades from Malta but not in Malta (e.g. a manufacturing company which exports its products as it cannot sell to local customers).

- International Holding Company which has its objects limited to the ownership, management and administration of other companies.

- Ship Management Company which is set up to manage, administer or operate ships whether they are registered in Malta or elsewhere.

- Shipping Company whose objects are limited to the ownership, sale, operation and charter of Maltese ships.

- The private limited Liability Company.

Capital requirements: Minimum share capital of 500 Malta Lira (approx. US\$1 500) which has to be 20% paid up (i.e. US\$300). Any foreign currency may be used.

Incorporation process: 4 days

Minimum members: Every company must have at least 2 shareholders. However, a private exempt company may have a single member. Venture Services Limited may subscribe for 1 share on a nominal basis to satisfy the two-shareholder rule.

Nominee shareholders: Beneficial owners may choose to remain anonymous by utilising a licensed nominee shareholder. In this case shares would be held by Venture Services Limited.

Registered office: An International Trading Company, International Holding Company, Ship Management or Shipping company must have a registered office in Malta.

Directors: All companies must have at least 1 director. The director need not be a Maltese resident.

Audit requirements: Audited accounts are required.

Accounts requirements: Accounts must be presented at an Annual General Meeting (AGM) to be held every year not later than 10 months from the end of the company's accounting year and thereafter delivered to the Registrar of Companies. An AGM must be held every year not later than 15 months from the last AGM.

Annual Returns An Annual Return must be filed with the Registrar of Companies every year and must be drawn up to a date 10 months after the end of the company's accounting year. It must be filed within 42 days from the date as at when the annual return is made up.

Tax returns: The company's annual Income Tax Return must be submitted to the Inland Revenue together with the Audited Accounts by not later than the 30th June of each year.

Stationery: The following details must be shown on the company's stationery:

1. name of company;
2. registered office of company;
3. company registration number.

Accounts

All companies must maintain proper books of accounts which give a true and fair view of the state of their affairs and which explain their transactions thereby enabling the balance sheets and profit and loss accounts to be prepared. In so doing, companies are bound to follow 'generally accepted accounting principles and practices'. This requires adherence to International Accounting Standards.

All companies must prepare individual accounts comprising the:

1. balance sheet;
2. profit and loss account;
3. directors' report; and
4. notes to these accounts.

These accounts must be delivered to the Registrar of Companies by the accounting reference date. A company may, in the first 9 months from registration, choose its accounting reference date. In the absence of any request to the Registrar of Companies, a company's accounting reference date shall be the 31<sup>st</sup> December.

Private exempt companies, which qualify as 'small', need only deliver to the Registrar of Companies an abridged balance sheet, all the notes to the balance sheet and the auditors' report (i.e. without the profit and loss account and the directors' report).

A company shall draw up its accounts in the same currency of its share capital.

In addition, all companies are bound to file with the Registrar of Companies an Annual Return Form wherein details about the company's share capital, shareholders, directors and secretary are laid out together with payment of a registration fee which is calculated depending on the authorised share capital of the company. This varies between a minimum of 50 and a maximum of 250 Malta Lira (approximately US\$ 125 - 625).

Legal and judicial representation of the company

Generally speaking, the director/s is vested with the legal representation of the company. With respect to the judicial representation of the company, this is generally vested in one or more of the directors or shareholders of the company, though any advocate of our Firm may appear in such capacity.

#### 5.7.1. Incorporation

Incorporation of a company under Maltese law takes place by filing a document known as a

Memorandum and Articles of Association. This document essentially constitutes a contract between the shareholders that are forming the company.

The Memorandum describes the nature of the company in formation and must contain the following information:

1. the name of the company;
2. an indication whether the company is a public or private company;
3. personal details of each of the shareholders (i.e. name, address in full and passport number);
4. the objects of the company;
5. the registered office in Malta of the company;
6. the authorized and issued share capital of the company, divided into shares of a fixed nominal value;
7. the number of shares taken up by each shareholder and the amount paid up in respect of each share;
8. the number of directors and their personal details;
9. the manner in which the legal and judicial representation of the company is to be exercised and the name of the first person/s vested with such representation; and
10. personal details of the first company secretary.

### 5.8. Poland

No definition for other legal forms could be found for Poland.

### 5.9. Slovakia

#### Non-Investment Funds

A Non-Investment Fund accumulates assets for publicly beneficial purposes, as defined in the law, or for humanitarian assistance benefiting individuals whose lives are at risk or who have suffered from a natural disaster<sup>52</sup>. The Non-

<sup>52</sup> Act No. 147/1997 on Non-Investment Funds ("Law on Non-Investment Funds"), Article 2.

Investment Fund's governing documents should indicate those persons who are eligible to receive benefits from the fund or the geographic region in which benefits will be distributed<sup>53</sup>. Any legal or natural person may establish a Non-Investment Fund<sup>54</sup> with a minimum founder's contribution of at least 2 000 Slovak koruna.

### 5.10. Slovenia

#### Institutes

Institutes are non-membership organisations established to conduct activities in the areas of education, science, culture, sports, health, social welfare, children's care, care of the disabled, social security, or other non-profit activities<sup>55</sup>. Private institutes may be established by domestic or foreign legal entities<sup>56</sup>.

Public institutes are required to engage in "public services," a term which is not defined. Public institutes must be established by a public entity, such as a local municipality; other legal or natural persons may serve only as co-founders of public institutes (Article 3, Institutes Law). Public Institutes are legal entities unless otherwise provided by law or by a municipal or city decision (Article 4, Institutes Law). More generally, Public Institutes may be established under regulations on state administration or by municipal/city decision, but this Note addresses only those Public Institutes established and governed pursuant to the Institutes Law.

Private institutes may provide public benefit services if they meet the conditions established by the relevant authorities<sup>57</sup>. Institutes may engage in economic activities provided that they are intended to further the performance of those activities for which the institute was formed<sup>58</sup>.

Institutes may engage in any lawful not-for-profit activity

<sup>53</sup> Act No. 147/1997 on Non-Investment Funds ("Law on Non-Investment Funds"), Article 6.

<sup>54</sup> Act No. 147/1997 on Non-Investment Funds ("Law on Non-Investment Funds"), Article 3.

<sup>55</sup> Institutes Law, nos. 12/91, 45/94, 8/96, Article 1.

<sup>56</sup> Institutes Law, nos. 12/91, 45/94, 8/96, Article 2.

<sup>57</sup> Institutes Law, nos. 12/91, 45/94, 8/96, Articles 24-25.

<sup>58</sup> Institutes Law, nos. 12/91, 45/94, 8/96, Article 18.

## 6. Definitions for Different Types of Entities in the National Laws of EU10

**Table 1.** Definitions in the national laws of EU10 for different types of entities

	Associations	Foundations	NGO	NPO	Other
Cyprus	No data	No data	No data	No data	No data
Czech republic	Association	Foundation	No separate legal form	No separate legal form	Public Benefit Corporations
Estonia	Non profit association	Foundation	No separate legal form	No separate legal form	No separate legal form
Hungary	Association	Foundation Public Foundation	No separate legal form	No separate legal form	Public Benefit Company Public Chamber
Latvia	Association	Foundation	No separate legal form	NPO	No separate legal form
Lithuania	Association	Charity and sponsorship funds	No separate legal form	No separate legal form	Public institutions
Malta	At present no separate legal form. Form of association, foundation and voluntary organisations are defined in WP <sup>59</sup>	At present no separate legal form. Form of Foundation is defined in WP <sup>59</sup>	No separate legal form	No separate legal form	Private limited Liability Company. Form of Voluntary organisation is defined in WP <sup>59</sup>

<sup>59</sup> White papers from ministry.

40	Poland	Association	Foundation	No separate legal form	No separate legal form	No separate legal form
	Slovakia	Association	Foundation	No separate legal form	Not-for-Profit Organisations	Non-Investment Funds
	Slovenia	Association	Foundation	No separate legal form	No separate legal form	Institutes



## Chapter 2. Analysis and Assessment of Existing Systems

Transparency in the non profit sector may be better achieved by the regulation of the entities mentioned in the following sections. These sections give basic information on the non-profit sector in the EU10 countries.

### 1. Registration

#### 1.1. Registration System

##### 1.1.1. Registration of Associations, Foundations, NPOs and NGOs

EU 10 countries are divided between vesting registration authority in the courts or in ministries. The trend, however, is to place the registration body in the courts. EU 10 countries differ significantly in how much they centralize the registration process. While some countries have a single entity competent to register NGOs, the trend is to delegate registration authority to the local level to ease the formality of registration.

Registration procedures vary widely, depending on the country and the organisational form. Typically NGOs applying for registration must submit the following documents to the registration authority: the act of establishment, the governing statutes and the registration application. The documentation must contain the basic information (name, address, goals and activities, founders, internal governance procedures, etc.) required by law.

Generally speaking, the obligation to register an associative body arises with the establishment of this entity and serves to verify the compliance with the establishing requirements.

##### 1.1.2. Registration of Public Benefit Organisations

Most countries in the region treat Public Benefit status as a necessary condition to grant tax benefits or other types of state support. The benefit granted to Public Benefit Organisations generally come in form of tax exemptions, tax benefits to donors, preferred status for government funding, etc.

While organisations that receive public benefit status are entitled to more benefits than others, in

turn they are subject to greater supervision by the government and have to comply with rules on accountability. The purpose is to protect the public from possible fraud and ensure that the benefits these organisations get are not wrongfully used<sup>60</sup>.

In determining the registration (or certification) procedures for a public benefit status organisation, countries have adopted a variety of different approaches. In some countries, this authority is vested in the tax authorities. In other countries, the courts or a governmental entity, such as the Ministry of Justice, confers public benefit status.

Generally, NGOs applying for public benefit status must submit documentation indicating (1) the qualifying public benefit activities; (2) compliance with internal governance requirements, including safeguards against conflict of interest and self-dealing; and (3) compliance with activity requirements (extent of public benefit activity) and limitations on activity (for-profit, political, etc.). For example, Hungary and Poland both list the specific provisions that must be included in the organisation's founding instrument to attain public benefit status. In addition, as with initial registration as an NGO, PBO certification procedures typically include procedural safeguards to protect applicants, such as time limits for the registration decision and the right to appeal an adverse decision to an independent arbiter.

### 1.2. Country Overview

The following is meant to give an overview of the national registration systems for EU10. Also information about responsible registration authority, the documents that have to be filed with the authority and the content of the register entry has been examined.

#### 1.2.1. Cyprus

No information available yet.

<sup>60</sup> A Supportive financing framework for social economy organisations. Katerina Hadzi-Miceva, European Centre for Not-for-Profit Law, <http://www.ecnl.org>

### 1.2.2. Czech Republic

#### *(a) General Rules for Becoming a Legal Entity*

As a general rule, an entity acquires legal personality status only after the relevant authority has decided formally on its registration. Therefore, any legal action taken by the entity prior to this date is deemed invalid. The incorporation of the legal entity in the relevant register is essential to its legal status<sup>61</sup>. To prove the legal status, the legal entities must obtain either a registration certificate or a stamped, registered copy of their statute, which was filed with the Ministry of Interior. When the registering authority is the court, a registration decision is issued, containing all the information filed in the register.

Registration of associations usually takes several days. Registration of PBCs, foundations or funds may take several months because the courts are not limited by any terms in their decision-making.

#### *(b) Foundations*

Both natural persons and legal bodies, including foreigners, may establish a foundation or a fund. To register, the founder(s) must present the proposal for registration to the district court, which is responsible for keeping the register of foundations and funds. The same court operates the register of commercial legal bodies. The proposal must be accompanied by the Articles of Incorporation in the form of a Founders' Agreement, if there are two or more founders, or in the form of a Notary Act, if the founder is a single person. The Founder's Agreement must be signed on authority.

According to the Law on Foundations and Funds, the information provided in the Articles of Incorporation and in the Application for Registering must include the following:

1. the unique name of the foundation or the fund and address of its headquarters (seat);
2. the name of and other identification information about its founder(s) and their share in the property endowed;
3. the purpose for which the entity is being established (which must be for public benefit, compatible with examples set by the law);
4. in the case of a foundation, the list of endowment components and their identification together with certified overall value of listed endowment assets;

5. the names of the members of the first board of directors (no less than three natural persons) and of the supervisory board (for smaller funds there might be one single person – the Inspector);
6. the way in which the board of directors acts on behalf of the entity;
7. general rules by which the granting procedure to third persons will be regulated; and
8. a "ceiling" restricting the administrative expenses.

Within 30 days of registration, the board of directors of a foundation/fund must submit its Statute, which specifies in more detail the governing structure and proceedings, as well as grant-making rules and any other specific internal regulations.

#### *(c) Associations*

At least three citizens, one of them should be over the age of 18, can form a Preparatory (Founding) Committee that may establish an association. Associations are registered at the Department for Civic Affairs of the Ministry of Interior of the Czech Republic. To register an association, the Preparatory (Founding) Committee must present an Establishment Proposal, properly signed by the members of the Founding Committee and containing their full identification – home address and the Personal Identity Number or the date of birth, in the case of a foreigner. The document must also explicitly define the person, which is authorized to represent the association during the registration period. Two copies of the by-laws (statute) of the association must be attached to the Establishment Proposal. The name of the association may not be identical to any other name of an already registered legal entity. In practice, it is often difficult to check for the required uniqueness of the association's name because the register of associations, maintained by the Ministry of Interior, is not treated as a public document and, therefore, is not open to the general public. However, the Ministry must make it possible to provide the necessary data from the register on written request.

Registration of an association may be rejected only if the Ministry finds the purpose of the association not to be in compliance with the requirements of the law, as described above. The association must not resemble a political party or religious congregation, for which there are specific laws. There should also be no evident military or paramilitary activities inherent in the purpose and the Statute of the association, nor any membership's restrictions, benefits or obligations, which would violate basic human rights and

<sup>61</sup> Global Civil Society, p. 286.

freedoms. The Ministry should identify minor faults in the application for registration to the Preparatory Committee within five days of the submission of the proposal, so that the documents may be corrected and resubmitted. More serious objections to the Establishment Proposal must be conveyed to the Preparatory Committee within ten days. The association becomes a legal entity upon obtaining certification of registration from the Ministry of Interior (usually in a form of a certified copy of the Statute submitted for registration), or it becomes a legal entity by default if the Ministry does not inform the Preparatory Committee of its negative decision within 40 days of submission of the Establishment Proposal. A rejection of registration may be appealed to the Supreme Court.

*(d) Other Forms*

Public Benefit Corporations (PBCs)

A PBC may be established by a natural person or by a legal entity, including the Czech Republic or any municipality. The founder may be a single person or several persons acting together. The founder(s) present the proposal for registration to the district court, which is responsible for keeping the register of public benefit corporations. The proposal must be accompanied by the Articles of Incorporation in the form of a Founders' Agreement, if there are two or more founders or in a form of the Notary Act, if the founder is a single person. The Founder's Agreement must be signed on authority.

According to the Law on Public Benefit Corporations, the information in the Articles of Incorporation and in the Application for Registering a PBC must include the following:

1. the unique name and address of the PBC;
2. the name and identification information for its founders and their share in the property endowed to the PBC, if there is such;
3. the public benefit services which the PBC is to provide;
4. the conditions upon which the public benefit services will be provided;
5. the names of members of the board of directors (no less than three natural persons) and the supervisory board, if such a body is established;
6. the way in which the board of directors acts on behalf of the entity;

7. the specification, whether the PBC is being established for an indefinite period of time or for a specific one;
8. the type of additional economic activities, if such activities are to be allowed to the PBC;
9. the means by which the obligatory annual report on activities will be published.

Some additional aspects of the law as well as other legal requirements include the following:

The founder(s) or board of directors must also obtain a license for any licensed additional economic activities in which the PBC is to engage (e.g. health services, social care).

The law is not explicit about the kind of services that might be proclaimed as public benefit services. As mentioned above, the only requirement is to make these services available to the general public under well-defined and equal conditions.

The PBC may refuse to accept any obligation incurred in its name by the founder(s) during the period of time between its establishment and the date of registration, at which point the PBC becomes a legal entity.

Within six months of registration, the board of directors of the newly registered PBC must decide on the Statute of the PBC. The Statute describes in more detail the governing structure and proceedings as well as rules for the provision of services together with any other specific internal regulations.

1.2.3. Estonia

The register of non-profit associations and foundations is managed by special registration departments in the county and city courts. Entries in the register are public and everyone has the right to examine the card register and the public files of non-profit associations and to obtain copies of registry cards and of documents in the public files of non-profit associations. At the request of a person, a registrar shall issue a certificate attesting that an entry has not been amended or that a particular entry is not in the register. A registry file may be examined by any person with a legitimate interest.

The only expense required by law is the fee to the notary for the authorization of the foundation agreement or resolution, the notarization of signatures on the application for registration and the signatures of the members of the management board. The cost is approximately 500-1000 Estonian Kroons (€ 35-70). For a "new" non-profit association and foundation, it is

necessary also to pay the state fee of 300 Estonian Kroons (€ 22) for the initial registration. If changes are required on the entries, the state fee is 100 Estonian Kroons (€ 8).

*(a) Foundations*

Founders of a foundation must adopt a foundation resolution<sup>62</sup>, which may also be a part of a notarized will. Registration takes place in the registration departments of city and county courts, where registers of non-profit associations and foundations are maintained. Foundations may be founded by only one person.

More detailed a foundation shall be founded by a foundation resolution which shall set out:

1. the name, location and address of the foundation;
2. the names and residences or locations and addresses of the founders and their personal identification codes or registry codes;
3. the sum of money or other assets, and their value, to be transferred to the foundation by the founders;
4. the names, residences and personal identification codes of the members of the management board and supervisory board.

The founders shall also approve the articles of association of the foundation as an annex to the foundation resolution.

All founders shall sign a foundation resolution and the articles of association approved thereby. A foundation resolution and the articles of association approved shall be notarised. Articles of association shall be amended after entry in the register of the foundation.

An application for entry in the register shall set out information concerning the foundation as provided by law and the documents provided by law and the certificate of registration of the foundation in the enterprise register shall be appended to the application.

Upon entry in the register as a foundation of a non-profit organisation the objective of which is the accumulation and distribution of assets for specific purposes and which is entered in the enterprise register, a corresponding notation shall be made in the entry of the enterprise register on the basis of a notice from the registrar.

*(b) Associations*

A non-profit association may be founded by at least two persons. The founders may be natural persons or legal persons.

In order to found a non-profit association, the founders shall enter into a memorandum of association. A memorandum of association shall set out:

1. the name, location, address and objectives of the non-profit association being founded;
2. the names and residences or locations, and the personal identification codes or registry codes of the founders;
3. the obligations of the founders with regard to the non-profit association;
4. the names, personal identification codes and residences of the members of the management board.

Upon conclusion of a memorandum of association, the founders shall also approve the articles of association of the non-profit association as an annex to the memorandum of association.

The memorandum of association and articles of association approved thereby shall be signed by all founders. A representative of a founder may sign the memorandum of association if the representative has been granted an authorisation document therefore.

The articles of association of a non-profit association shall be in writing. The articles of association shall set out:

1. the name of the non-profit association;
2. the location of the non-profit association;
3. the objectives of the non-profit association;
4. the conditions and procedure for membership in the non-profit association and for leaving and exclusion from the non-profit association;
5. the rights of members;
6. the obligations of members or the procedure for establishment of obligations for members;
7. upon the existence of departments, their rights and obligations;
8. the conditions and procedure for calling the general meeting and the procedure for adoption of resolutions;

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<sup>62</sup> Foundations Act, Articles 6 and 7.

9. the number of members of the management board or the maximum and minimum number of members;
10. the distribution of assets of the non-profit association upon dissolution of the association;

In order to enter a non-profit association in the register of its location, the management board of the non-profit association shall submit a petition signed by all members of the management board. The following shall be appended to the petition:

1. the memorandum of association and the articles of association approved thereby;
2. notarised specimen signatures of the members of the management board;
3. telecommunications numbers (telephone, facsimile, etc.);
4. other documents provided by law.

A registrar shall not enter a non-profit association in the register if its articles of association or other documents do not comply with the requirements of law.

The following shall be entered in the register:

1. the name of the non-profit association;
2. the location and address of the non-profit association;
3. the date of approval of the articles of association;
4. the names, personal identification codes and residences of the members of the management board;
5. the specifications for the right of representation of the management board pursuant to 27 of this Act;
6. the term of the association if the non-profit association has a specified term;
7. other information provided by law.

Entries in the register are public. Everyone has the right to examine the card register and the public files of non-profit associations and to obtain copies of registry cards and of documents in the public files of non-profit associations.

At the request of a person, a registrar shall issue a certificate attesting that an entry has not been

amended or that a particular entry is not in the register.

An assistant judge or an authorised registry secretary shall certify the authenticity of copies of registry cards and copies of other documents preserved in a registration department.

The following information concerning a non-profit association is entered in a registry card of a non-profit association:

1. the registry code and consecutive numbers of registry entries;
2. the name;
3. the location and address;
4. information on the members of the management board;
5. information on the trustee in bankruptcy;
6. information on the liquidators;
7. the right of representation of the members of the management board and the liquidators if such right differs from the general rule prescribed by the Act;
8. the time of approval and amendment of the articles of association;
9. the term of operation if the non-profit association is founded for a specified term;
10. the dissolution;
11. the merger or division;
12. the declaration of bankruptcy and termination of bankruptcy proceedings;
13. the deletion from the register;
14. information on the depositary of documents of a liquidated non-profit association;
15. the date of entry, and signature, name and title of the person enforcing the judgment on entry and of the person competent to make the judgment on entry;
16. references to earlier and later entries, and notations.

#### 1.2.4. Hungary

All types of organisations acquire legal personality through registration with courts, either the county

court in the area of the organisation is based or with the Metropolitan Court of Budapest<sup>63</sup>.

While all non-profit organisations must be registered with a court, registration cannot be refused if the requirements of the law are met. If a court does not register the organisation within 60 days of its application, it will be registered.

*(a) Foundations*

Founders may be "private persons, legal persons and unincorporated business associations." "Individuals or private organisations" may found public benefit companies<sup>64</sup>.

Registration applications must be submitted by the founder together with the organisation's charter. The charter must contain the group's name, purpose, location, available assets and the manner in which the assets will be used. An open foundation needs to show sufficient capital to start operations, while a closed foundation must have enough capital to achieve its objectives. The law does not state a precise minimum amount or the manner by which it is calculated. In practice, the amount has generally been low, e.g., for open foundations, approximately € 1 100 is often considered sufficient. The amount needed for a closed foundation will vary depending upon its objectives. The founder may not withdraw a foundation after it is registered<sup>65</sup>.

A foundation's founder has significant powers. The founder appoints and can change the governing body while retaining controlling influence on the use of assets and only the founder is entitled to amend the charter "without causing any injury to the foundation's name, purpose, or assets"<sup>66</sup>.

A company's charter must specify the name of the founding legal person, the company's initial assets, and other facts and circumstances stipulated by legal regulations.

Private persons, legal persons, and unincorporated business associations (jointly referred to hereinafter as "founders") shall be entitled to form a foundation in a charter in order to serve a long-term public interest. A foundation may not be formed for the principal purpose of performing economic activities. A foundation shall provide sufficient assets for achieving its objectives. A foundation is a legal person.

<sup>63</sup> Act II, Article 15; Act IV articles 62 and 74A.

<sup>64</sup> Act IV, Article 74A(1) and 71.

<sup>65</sup> Act IV, Articles 74A and 74B.

<sup>66</sup> Act IV, Article 74B and 74C.

A foundation is deemed established once it has been registered by the court.

The charter of a foundation shall contain:

1. the name,
2. the purpose,
3. the available assets and the manner in which they are to be utilized, and
4. the registered office.

A founder shall be entitled to designate a managing body in the charter or create a separate organisation for such purpose. The managing body (organisation) shall represent the foundation.

The court shall order the appointment of a managing body (organisation) if the founder has failed to provide for one or if the managing body (organisation) does not undertake to perform this task.

*(b) Associations*

There must be at least 10 members<sup>67</sup>.

With regard to associations, registration applications must be submitted by a duly authorised person and include a copy of the group's statute or by-laws with the minutes of the meeting where the group was established. The statute or by-laws should insure "democratic operation" and provide details of the name, purpose, location and structure<sup>68</sup>. The court's consideration of the application is to be non-contentious and once decided, the result is to be reported by the court to the public prosecutor's office<sup>69</sup>.

The main governing document of an association (statute or by-laws) or foundation (charter) must accompany the group's application for registration and should contain:

1. the name
2. the purpose
3. for foundations, the available assets and the manner in which they are to be utilised

<sup>67</sup> Law on the Right of Association Article 3(4).

<sup>68</sup> Act II/1989 Law on Associations, Article 6; Act IV, Article 62.

<sup>69</sup> Act II/1989 Law on Associations, Article 15.

4. the address of its registered head office
5. the appointment of the Board
6. the appointment of the group's representatives

*(c) Other Forms*

Public benefit organisation

With regard to public benefit companies, the Civil Code states that the rules applicable to the creation of business associations apply, but requires that the articles of incorporation specify the public service activities that the company plans to undertake<sup>70</sup>. "Public Benefit Company" or its abbreviation ("kht") must appear in a company's name<sup>71</sup>.

A group seeking PBO status must include in its founding document rules concerning:

1. as to the highest body and - if they are not the same - the administrative as well as the representative body,
2. the frequency of the meetings, which cannot be less than once a year,
3. the order of convening the meetings and the way of communicating the agenda,
4. the publicity and the quorum of the meetings and the decision-making procedure
5. conflicts of interest of operating officers of public benefit organisations;
6. the establishment, powers and operation of the body controlling the operation and management of the public benefit organisation, which is separate from the governing body, if its establishment or appointment is mandatory; and
7. the manner of approving the public benefit organisation's annual report<sup>72</sup>.

The founding document or - on the basis of its authorization - the internal regulations of a public benefit organisation shall regulate:

1. the keeping of a register on the content, date and scope of the governing body's decisions

and on the proportion (and the names, if possible) of those supporting and opposing the decisions;

2. the manner of communicating the governing body's decisions to those concerned and the manner of publicizing them;
3. the right of inspection of the documents originating in the course of the operation of a public benefit organisation; and
4. the public nature of the operation, the manner of receiving services, and communication of the reports of a public benefit organisation<sup>73</sup>.

If the annual income of a PBO exceeds 5 million Hungarian Forint, the establishment of a supervisory body separate from the governing body is mandatory<sup>74</sup>.

1.2.5. Latvia

*(a) Foundations*

A foundation may be founded by one or more persons. If a foundation has several founders, they shall realise their founder rights only jointly.

A foundation is founded based on the decision of a person to found a foundation or on a will.

The articles of association of the foundation shall set out:

1. the name of the foundation;
2. the objective of the foundation;
3. the procedure according to which assets shall be transferred to the foundation;
4. the procedure according to which the funds of the foundation shall be used;
5. the period of operation of the foundation (if the foundation is set up for a specific time period;
6. the procedure for division of assets in the case of liquidation of the foundation;
7. the procedure for appointing and recalling board members and the term of office;

<sup>70</sup> Act IV, Article 57.

<sup>71</sup> Act IV, Article 58.

<sup>72</sup> Act IV, Articles 29, 62 and 74B.

<sup>73</sup> Law on PBOs Article 7.

<sup>74</sup> Law on PBOs Article 10.

8. the procedure for appointing and recalling members of other administrative bodies (if such are provided for) and the term of office;
9. the structure of the business and financial operations auditing body, procedure for election, competence, procedure for adopting decisions and term or office, or the procedure for appointing a sworn auditor and term of office; and
10. procedure for making amendments to the articles of association<sup>75</sup>.

A founder shall submit an application to the register institution to register the foundation in the register. The application shall be signed by the founder, and when founding a foundation based on a will, the executor of the will, heir of guardian. Attached to the application shall be:

1. the founding decision;
2. the articles of association;
3. the written consent of each board member to be a board member.

*(b) Associations*

The founders of an association may be natural or legal persons, or partnerships with legal status. The number of founders may not be less than two.

In order to found an association, the founders shall take a decision to found the association. In the decision to found the association shall be indicated:

1. the name of the association;
2. the objective of the association;
3. the name, surname and personal identity code of the founders, and for a legal person or partnership — the name, registration number and legal address;
4. the rights and responsibilities of the founders if the founders have agreed on such;
5. the authorisation (if such is given) to individual founders to sign the articles of association and application for the register institution; and

6. other information which the founders consider to be necessary.

After the decision to found an association has been taken, the founders approve the articles of association, elect the association's executive body (hereafter – board), which may be collegial or consist of one person, and other bodies if such are provided for in the articles of association. The decision to found an association is prepared in written form, and it is signed by all the founders of the association. The decision may be signed on behalf of a founder by a person authorised by him, who has participated in the taking of the decision. A written authorisation shall be attached to the decision<sup>76</sup>.

The articles of association shall indicate:

1. name of the association;
2. objective of the association;
3. term of operation of the association (if the association is founded for a certain period of time);
4. prerequisites for members to join or leave the association;
5. rights and responsibilities of the members;
6. procedure by which the rights and responsibilities of territorial and other units of the association (if such are founded) shall be determined;
7. procedure for calling a general meeting and taking decisions;
8. name of the executive body, and its numerical composition, denoting the rights of the members of the executive body to represent the association individually or together; and
9. structure of the auditing body of business and financial operations, procedure for elections, competence, procedure for taking decisions and term of office, or the procedure by which a sworn auditor is appointed and terms authority.

The articles of association shall be signed by all founders or at least two of their authorised representatives and the date of approval shall be indicated in the articles of association<sup>77</sup>.

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<sup>75</sup> LAF Article 86.

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<sup>76</sup> LAF Article 24.

<sup>77</sup> LAF article 25.



The founders shall submit an application to the register institution to enter the association in the register. Attached to the application shall be:

1. decision to found the association;
2. articles of association; and
3. list of board members.

The application shall be signed by all founders or at least two of their authorised representatives.

#### Register of Associations and Foundations

Information on associations and foundations is recorded in the register of associations and foundations (hereafter register). The register is kept by a state institution which is authorised by law to do so.

Everyone has the right to access the records of the register and the documents submitted to the register institution.

After submitting an appropriate written application and paying a state fee, everyone has the right to receive an information statement of the records of the register, and an extract or copy of a document in the register files.

The following information shall be entered into the register:

1. the name of the association or foundation;
2. the legal address of the association or foundation;
3. the objective of the association or foundation;
4. the date of the founding decision and when the articles of association were signed;
5. the name, surname and personal identity code of the board members, indicating whether they have the right to represent the association or foundation separately or together;
6. the time of operation for the association or foundation if the association or foundation is founded for a period of time;
7. information about the prohibition of public activities or other activities, termination or continuation of activities of the association or foundation, and insolvency, liquidation and reorganisation of the association or foundation;

8. information on the appointment of a liquidator, indicating his or her name, surname and personal identity code;
9. information on the appointment of an administrator in an insolvency case, indicating the name, surname and personal identity code of the administrator;
10. the date the entry is made;

After the association or foundation is registered in the register, a certificate of registration shall be issued which is issued and stamped by a register institution official.

The certificate of registration shall contain:

1. name;
2. registration number;
3. place of registration; and
4. date of registration.

#### 1.2.6. Lithuania

All types of NGOs are registered in the Register of Legal Entities, which is operated by the state enterprise Centre of Registers. The registration fees are established by Government Regulation No. 1649 of 24 December 2003. The Registration fee for associations, public organisations or charity funds is 25 Lithuanian Litas (€ 7); the fee for alteration of data in the register is 5 Lithuanian Litas (approximately € 1.45) per entry.<sup>78</sup>

Registration takes effect 30 days after submitting documents for registration. An organisation is considered to be established from the moment of registration in the Register of Legal Entities.

Registration procedures and relevant legal acts are accessible in the Website of the Centre of Registers - [www.kada.lt](http://www.kada.lt).

##### *(a) Foundations*

The fund shall be registered in the Legal Entities' Register. The fund may be registered only after its memorandum of association (founding act) has been concluded, its founding meeting has been convened, its Articles of association have been adopted, at least one of its managing bodies has been set up and other obligations stipulated in the memorandum of association (founding act) have been fulfilled. The following documents shall be

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<sup>78</sup> Vyriausybės nutarimas.

submitted to the Legal Entities' Register for the registration of a fund: memorandum of association (founding act) and Articles of association of the fund.

The fund shall be deemed to be established as of the date of its registration in the Legal Entities' Register<sup>79</sup>.

The fund shall hold general meetings of stakeholders and shall set up a managing body (single-person and/or collegiate). The fund may also set up other structural bodies. The structure of the fund's bodies, the scope of their competence, the procedure of convening meetings and adopting decisions shall be set out in the Articles of association. Minutes shall be made of all meetings of stakeholders and collegiate bodies<sup>80</sup>.

The general meeting of stakeholders shall be the supreme governing body of the fund. Where the fund has only one stakeholder, his written decisions shall be equal to the decisions of a general meeting of stakeholders. The general meeting of stakeholders shall:

1. amend the fund's Articles of association;
2. make decisions on the removal of stakeholders from the fund and conferring stakeholder rights to supporters;
3. elect (appoint) and remove members of a collegiate managing body and single-person managing body, the chairman of a collegiate managing body and the auditor, unless otherwise provided by the Articles of association;
4. elect (appoint) and remove members of other collegiate bodies, where such bodies are stipulated in the fund's Articles of association and where the Articles do not provide otherwise;
5. approve the annual financial accounts of the fund;
6. decide on the restructuring or dissolution (reorganisation or liquidation) of the fund;
7. decide on the establishment of other legal persons or becoming member of other legal

persons, unless otherwise provided by the Articles of association<sup>81</sup>.

*(b) Associations*

An association can be registered if the minimum three founders sign a founding agreement, organise a constitutive meeting, appoint at least one governing body, and meet other requirements provided in the founding agreement<sup>82</sup>.

The following documents should be presented to the Register of Legal Persons:

1. founding agreement,
2. statute of the organisation
3. other documents (application form, founding document, authentication by notary and confirmation of compliance with legal acts, etc.).

The founding agreement must indicate:

1. founders (forenames, surnames, names of legal persons) and their addresses;
2. name of association;
3. the date of contract conclusion;
4. liabilities of founders;
5. compensation of founding expenses;
6. procedure of resolving the disputes among founders;
7. founders by which the public institution may be represented.

Registration takes effect 30 days after submitting documents for registration. An organisation is considered to be established from the moment of registration in the Register of Legal Persons.

The general meeting (conference, congress) of the members shall be the supreme managing body of the association. The meeting (conference, congress) shall have the power to:

1. adopt, amend and supplement the statutes;
2. set objectives and main tasks of the association;

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<sup>79</sup> LCSF Article 6.

<sup>80</sup> LCSF Article 7.

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<sup>81</sup> LCSF Article 8.

<sup>82</sup> Law on Associations, Article 6.

3. establish the procedure for the formation of the collective managing bodies, elect their members and remove them from office;
4. fix the amount of contributions and taxes of the association members and the procedure of payment thereof; and
5. establish enterprises, mass media facilities belonging to the association, reorganise or liquidate the association<sup>83</sup>.

During the period between general meetings of the members a collective managing body (bodies) shall guide the activities of the association, which is elected in accordance with the procedure established in the statutes and for the set period of time. The collective managing bodies may be: the Board, the Council, the Presidium. The association statutes shall establish which managing bodies are set up, the number of their members, functions and powers of the managing bodies<sup>84</sup>.

The operative activities of an association shall be organised and carried out by the administration. The association must have the head of the administration and chief financier (book-keeper). One and the same person cannot hold both posts concurrently. The head of the administration and chief financier shall be appointed and their official salaries shall be fixed by the collective managing body which concludes employment contracts with them.

The head of the administration shall:

1. direct the administration;
2. according to the granted powers enter into transactions on behalf of the association and represent the association in other institutions; and
3. take on a job and dismiss employees of the administration as well as fix their official salaries<sup>85</sup>

*(c) Other Forms*

Public institution

The founders of public institutions shall be natural and legal persons who have concluded a public institution contract of founding, or a person who has concluded a contract of founding. State and

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<sup>83</sup> Law on Associations, Article 13.

<sup>84</sup> Law on Associations, Article 14.

<sup>85</sup> Law on Associations, Article 15.

municipal institutions shall have the right to transfer state (municipal) property to a public institution only on a use basis. The legal grounds for the establishment of a public institution shall be the contract of founding of an institution formed by legal or (and) natural persons in accordance with the procedure established by this Law. The number of founders shall be unlimited.

The contract (act) founding of a public institution must indicate:

1. founders (forenames, surnames, names of legal persons) and their addresses;
2. name of public institution;
3. sphere of activities and objectives of public institution;
4. liabilities of founders;
5. compensation of founding expenses;
6. duration of activity of the public institution;
7. procedure of resolving the disputes among founders; and
8. founders by which the public institution may be represented.

The contract of founding of a public institution shall be signed by all of its founders or their authorised representatives. If at least one founder is a natural person, the contract of founding must be certified by a notary. If the founder is an enterprise or a legal person, the signature of the chief or authorised person shall be approved with a seal. A foreign legal person, not having a seal, shall be applied the procedure established for natural persons.

The founders of a public institution shall adopt the bylaws of the institution upon having formed the contract of founding<sup>86</sup>.

The bylaws constitute a legal document which the public institution must base its activities upon. The following must be stated in the bylaws of the public institution:

1. the name of the institution;
2. the registered office;
3. the spheres and objectives of the institutions activities;

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<sup>86</sup> LPI Article 5.

4. the rights and obligations of the partner (owner), the procedure for granting and deprivation of the partners (owners) rights and the procedure for transferring a part of the capital belonging to the partner (owner), to other persons property;
5. the rights of the institution which has transferred property on a use basis;
6. powers of the general meeting of the public institution and the procedure for convening it and adopting resolutions;
7. the procedure of forming and revoking the collective bodies of management, their competence, functions and liability;
8. appointment procedure and powers of the head of the administration;
9. procedure for disposal of the institutions property;
10. sources of funds and procedure of fund utilisation;
11. control of financial activities;
12. procedure of amending and supplementing the bylaws;
13. procedure of establishing and liquidating branches;
14. procedure of reorganisation and liquidation of the institution; and
15. duration of the institutions activities.

The bylaws may also contain other provisions related to the specific character (specifics) of the public institution which are in compliance with the laws.

The bylaws of a public institution must be signed by all of its founders, and the signatures must be verified: those of natural persons must be certified by a notary, those of legal persons, by the head or an authorised representative, by signature and seal of a legal person<sup>87</sup>.

Public institutions shall be registered, only in accordance with the procedure established by laws and only after the contributions stipulated in the contract of founding have been made. Public institutions shall be reregistered and stricken from

the register in accordance with the procedure established by law<sup>88</sup>.

The managing bodies of a public institution shall be the general meeting and the administration. A collective managing body (council, board, etc.) may be established by the decision of the general meeting of the public institution. The general meeting of the public institution shall be the supreme managing body of the public institution. At a general meeting, the partners (owner) of the public institution and the state or municipal institution, which has transferred to the public institution property on a use basis, shall have the decisive vote, if this has been stipulated in the contract of use. If the founder of a public institution is an individual person, his written decisions shall rank equally with the decisions of the general meeting.

The administration must convoke a scheduled general meeting annually, within 3 months from the close of the business year.

The administration shall organise and implement the operations of the public institution. The administration shall base its work on the laws, bylaws of the public institution, its own labour regulations, department and office statutes and the resolutions adopted by other managing bodies of the public institution and the decisions of the head of the administration.

A public institution must have a head of administration and chief finance officer (accountant). The functions of a chief finance officer may be performed under contract by a legal person.

The head of administration shall establish the list of staff and shall employ and dismiss the employees from office. The powers and functions of the head of administration shall be established in the bylaws.

Collective managing bodies of a public institution (council, board) shall be formed by resolution of the general meeting. The number of members of a collective managing body, their duties, rights and liabilities, the procedure for its formation and removal, as well as payment of remuneration shall be established in the bylaws of a public institution. The work of only one member of the collective managing body may be remunerated<sup>89</sup>.

The procedure of internal control of the financial activity of a public institution shall be established

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<sup>87</sup> Law on Public Institutions, Article 7.

<sup>88</sup> Law on Public Institutions, Article 8.

<sup>89</sup> Law on Public Institutions, Article 11.

in the bylaws. The State and municipal control institutions shall have the right to investigate the activities of a public institution in accordance with the procedure established by laws. The Administration of a public institution must furnish the state (municipal) control institutions and entities of financial activity control, provided for in the bylaws of an institution, with the documents of the public institution, requested by them<sup>90</sup>.

#### 1.2.7. Malta

According to the Malta White papers<sup>91</sup> they are proposing a Register of Voluntary Organisations (hereinafter - Register) which shall be maintained by the Commissioner and shall contain the following information:

1. the name of the organisation;
2. the address of the organisation;
3. the registration number of the organisation if registered as a legal person, whether in Malta or overseas;
4. the names and addresses of the administrators;
5. in case of foreign or international organisations, the name of the local representative of such organisation;
6. a copy of the constitutive deed and any amendments thereto;
7. annual reports;
8. annual accounts.

The Register and supporting documentation shall be available to the public. The Register shall be divided into two parts:

1. Part A shall include all voluntary organisations which satisfy the Commissioner that they have been established for a social purpose and are non-profit making; and
2. Part B shall include all other voluntary organisations which are established for any other lawful purpose, not being a private purpose, and being non-profit making.

Organisations shall be classified in each Part of the Register according to their principal purposes

<sup>90</sup> Law on Public Institutions, Article 12.

<sup>91</sup> <http://www.doi.gov.mt/EN/bills/2006/Bill%2080E.pdf>

in such a manner as the Commissioner may deem appropriate.

On enrolment, the Commissioner shall allocate a unique number to the voluntary organisation preceded by the letters "VO" and followed by either the letter "A" or "B" in accordance with the Part of the Register in which the organisation is enrolled and that number shall at all times be quoted by the organisation on any published materials, letters, notices, advertisements and other documents issued by the organisation.

Every voluntary organisation may apply for enrolment in the established form and it shall be accompanied by such documents as are required by appropriate act.

In considering any application, the Commissioner may request the applicant to provide all information reasonably available about:

1. the promoters, the founders, the administrators, the donors and the beneficiaries;
2. the assets and liabilities;
3. the past, if any, present and intended activities of the organisation; and
4. the purposes of the organisation.

In considering such application, the Commissioner shall conclude:

1. whether the applicant is eligible for enrolment;
2. in which Part of the Register an applicant is eligible to be enrolled;
3. the classification of the organisation's purposes, and shall notify the applicant in writing of his preliminary conclusion and provide the applicant with at least ten days notice to make written representations on his conclusions prior to determining the application according to this article.

The Commissioner shall give due regard to all representations made and in the absence thereof shall proceed with the determination of the application.

The Commissioner shall seek to determine all applications within three months of the date of submission, including the completion of the preliminary process and failure to so determine shall be deemed to mean that enrolment has been refused. The applicants shall enjoy a right of appeal against such decision.

Upon being satisfied that the organisation is eligible for enrolment, the Commissioner shall:

1. enter such particulars in the Register;
2. issue a certificate of enrolment with the identification number of the organisation;
3. specify its legal form and enrolment classification.

Certificates of enrolment are deemed to be public instruments and shall be surrendered to the Commissioner on simple demand in writing.

The Commissioner may refuse to enrol an organisation if it appears to him that the requirements of the Act are not satisfied and in so doing he shall state the reasons for such refusal in writing.

#### 1.2.8. Poland

Information on charity organisations active in Poland are registered in:

1. the National Judicial Register (Krajowy Rejestr Sądowy – KRS) (registration documents of charitable foundations and associations);
2. appropriate Ministries – competent in view of the foundations' scope of activity (the Ministries perform the function of a supervisory body for foundations);
3. notary public offices [kancelarie notarialne] (foundations are incorporated through a declaration of will of the founding person);
4. databases run by institutions which are not connected either with government or local government administration. The biggest database available on the internet belongs to the "Bank of Information on NGOs Klon\Jawor" (Bank Informacji o Organizacjach Pozarządowych Klon\Jawor).

##### *(a) Foundations*

Foundations have to be registered in the National Judicial Register (KRS)

The foundations statute must include: its name, address, assets, purposes, principles, forms and scope of activity, composition and organisational structure of governing board, and the procedure for appointing members of that body, as well as the responsibilities and powers of that body and its members. The statute may also contain other provisions, in particular those concerning the foundation's conduct of economic activity, the admissibility and terms of its linkage with another foundation, changes in objectives or amendments

to the statute, and it may also provide for establishing other foundation bodies in addition to the governing board<sup>92</sup>.

For both associations and foundations the description of purposes and activities in the statute is important as work determined to be outside of these provisions may result in restrictions or sanctions.

Governing structures: The Law on Associations states that an association independently sets its structures (Article 2(2)) but goes on to state general requirements including:

The highest authority is the general assembly of members or in some situations, an assembly of delegates (Article 11).

There must be a board and an internal auditing organ. (Id.)

The Law on Foundations states only that the structure of a foundation is to be determined by the founder and identified in its statute (Article 5) and that the governing board shall direct a foundations activities and represent it to the world (Article 10).

##### *(b) Associations*

Association have to be registered in the National Judicial Register (KRS)

The Law on Associations (Article 10) requires that an association's statute must include:

1. a name of the association that distinguishes it from other associations, organisations, and institutions;
2. the seat and the territory of activities;
3. the goals of the association and the means for their achievement;
4. the ways of acquiring and losing membership, the rights and responsibilities of the members;
5. authorities of the association, the method of their election, the method of electing supplementary authority members, and the competence of the authorities;
6. the methods of representing the association and property obligations, as well as conditions

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<sup>92</sup> Article 5, Law on Foundations.

under which resolutions of the associations are binding;

7. the ways of obtaining financial means and deciding upon members dues;
8. principles of changing the statute;
9. the method of dissolution.

If branches are contemplated, information about their creation and structure must also be stated.

(Article 40) A simple association must adopt regulations that specify its name, location, goals, territory, types of activities, and representative.

*(c) Other Forms*

The 2003 Law on Public Benefit Activity and Volunteerism includes additional requirements for groups that seek public benefit status. They must have a statutory collegiate institution of monitoring or supervision that is separate from the management board and not supervised by the management board as far as internal monitoring or supervision are concerned<sup>93</sup>.

### 1.2.9. Slovakia

*(a) Foundations*

Foundations have to be registered in the Ministry of interior. Foundations the law is based on the principle of the first choice left to the founder(s) as regards the members of the Board of Directors and the Supervisory Board, as well as the person appointed as Custodian of the Foundation, who is the Chief Executive Officer employed by the Foundation. However, according to § 22 of the Foundation Act the founder(s) may specify in the Foundation Deed the length of the term of service in the boards, as well as to specify the prerequisites for the membership. Therefore, long-term membership is possible and as a prerequisite for membership may be e.g. the nomination by a certain body or person. However, general principle calls for separation of the Foundation from its founder(s) and a shift of the control to the boards representing general public.

*(b) Associations*

Associations have to be registered in the Ministry of interior. One has to take into consideration the basic democratic principles the law implicitly provides for establishment, governance and control over an association.

*(c) Other Forms*

The solution in this case is nearly identical to that of Foundations. However, in this case the founder(s) do not have those special rights to specify the way of election and prepositions for membership in the second and following terms in the boards of a NPOPBS.

### 1.2.10. Slovenia

All entities (foundations, associations and institutes) must be registered and their founding acts approved in order to acquire legal personality.

Any NGO can be formed by natural person at age 18. Minors (age below 18) can be members in membership-based organisations (associations) if they are at least 15 years old and have the accordance of their legal representative or at least 7 years old if their legal representatives signs the membership form for them.

*(a) Foundations*

Following documentation must be submitted for the registration of foundation: Founding act, evidence on certain property or money for the purpose of foundation, names of all members of the first management board and their approval.

Period for taking the decision on registration: 30 days.

Body responsible for registration: ministry responsible for the main field of the foundation purpose.

Foundations must adopt a statute in 30 days after gaining legal personality and it's subject to approval by registration body.

*(b) Associations*

Following documentation must be submitted for the registration of association: Personal data of all founders, statute, authenticated sign(s) of representative(s), fee must be paid.

The body responsible for registration: local administrative office

Period for taking the decision on registration: 30 days. Responsible body: local administrative office

*(c) Institutes*

Following documentation must be submitted for the registration of institute: Personal data of all founders, personal data of representative(s), authenticated sign(s) of representative, list of

<sup>93</sup> Law on Public Benefit Activity and Volunteerism, Article 20(6).

activities form catalogue of activities, founding act, and fee must be paid.

Body responsible for registration is district court.

A legal person can only form an Institute if it is out of debts in its relations with the state.

Institutes can also have statutes, but this acts are not founding acts and therefore not subject of obligatory approval.



### 1.3. Registration Systems

**Table 2.** Registration Systems

Country	Type of entity	Registration Authority	Acquisition of legal personality with	Obligation to register	Documents to be filled in
Czech Republic	Association	Department of civic Affairs of the Ministry of Interior of the Czech Republic	Registration	Yes	Statutes  Establishment proposal of founding committee
	Foundation	District court	Registration	Yes	Proposal for registration  Statutes  Articles of incorporation in the form of a founders agreement (or Notary Act)
	Public benefit corporations	District court (keeping the register of Public Benefit Companies and the commercial register)	Registration	Yes	Proposal for registration  Articles of incorporation in the form of a founders agreement (or Notary Act)
Estonia	Non profit association	Registration departments of county and city courts	Registration	Yes	Memorandum of association  Articles of association  Petition
	Foundation	Registration departments of county and city courts	Registration	Yes	Statutes  Foundation resolution  Articles of association of the foundation
Hungary	Association	County court (in the area of the organisation is based) or	Registration	Yes	Registration application

Country	Type of entity	Registration Authority	Acquisition of legal personality with	Obligation to register	Documents to be filled in
		Metropolitan Court of Budapest			Statute (or by-laws)
	Foundation	County court (in the area of the organisation is based) or Metropolitan Court of Budapest	Registration	Yes	Registration application Organisations charter
	Public Benefit Company, public chamber	County court (in the area of the organisation is based) or Metropolitan Court of Budapest	Registration	Yes	Founding document
Latvia	Foundation	Register of associations and foundations			Application Articles of association Founding decision The written consent of each board member to be a board member.
	Association	Register of associations and foundations	Registration	Yes	Decision to found the association Articles of association Application to the register institution
Lithuania	Association	Register of Legal Entities	Registration	Yes	Founding agreement Statute of the organisation Other documents (application form, authentication by notary and confirmation of compliance with legal acts, etc.)
	Charity and sponsorship	Register of Legal Entities	Registration	Yes	Memorandum of association (founding act);

Country	Type of entity	Registration Authority	Acquisition of legal personality with	Obligation to register	Documents to be filled in
	fund				Articles of association
	Public institution	Register of Legal Entities	Registration	Yes	Contract of founding of an institution By-laws
Malta	All types	Register of Voluntary Organisations	Registration	No	Documents as will be required by appropriate act
Poland	Association	National Judicial Register	Registration	Yes	Statute
	Foundation	National Judicial Register	Registration	Yes	Statute Information required by local law
Slovakia	Association	Ministry of Interior	Registration	Yes	Foundation deed Establishment proposal of founding committee
	Foundation	Ministry of Interior	Registration	Yes	Proposal for registration Statutes
	NPO	Regional office	Registration	Yes	
	Non-Investment fund	Regional office	Registration	Yes	
Slovenia	Association	Local state administrative bodies	Registration	Yes	Personal data of all founders Statue Authenticated sign(s) of representative(s)

Country	Type of entity	Registration Authority	Acquisition of legal personality with	Obligation to register	Documents to be filled in
	Foundation	Ministry responsible for the main field of the foundation purpose	Registration	Yes	<p>Founding act</p> <p>Evidence on certain property for the purpose of foundation</p> <p>Names of all members of the first management board and their approval.</p>
	Institutes	District court	Registration	Yes	<p>Personal data of all founders</p> <p>Personal data of representative(s)</p> <p>Authenticated sign(s) of representative</p> <p>List of activities form catalogue of activities</p> <p>Founding act</p>

## 2. Accreditation/Seal of Approval

### 2.1. Accreditation System

Apart from registration system, accreditation system can be used. Generally the certifying body certifies the conformity to the standards and the gained status may lead to the granting of funds or subsidies.

In many countries, various organisational forms are eligible to receive the public benefit status. Some countries<sup>94</sup> have adopted specific public benefit legislation. To qualify as a "public benefit status" organisation, an association or foundation (or other NGO legal form) must be dedicated to public benefit purposes and activities. The list of public benefit purposes will vary from country to country.

In determining the registration procedures for a public benefit status organisation, countries have adopted a variety of different approaches. In some countries, this authority is vested in the tax authorities. In other countries, the courts or a governmental entity, such as the Ministry of Justice, confers public benefit status.

Generally, NGOs applying for public benefit status must submit documentation indicating:

1. the qualifying public benefit activities;
2. compliance with internal governance requirements, including safeguards against conflict of interest and self-dealing;
3. compliance with activity requirements (extent of public benefit activity) and limitations on activity (for-profit, political, etc.).

For example, Hungary and Poland both list the specific provisions that must be included in the organisation's founding instrument to obtain public benefit status. Public Benefit Organisation certification procedures typically include procedural safeguards to protect applicants, such as time limits for the registration decision and the right to appeal an adverse decision to an independent arbiter.

<sup>94</sup> Hungary adopted public benefit legislation in 1997, Lithuania adopted a Law on Charity and Sponsorship in 2002, and Poland enacted a Law on Public Benefit Activities and Volunteerism in 2003.

## 2.2. Country Information

### 2.2.1. Cyprus

No information available yet

### 2.2.2. Czech Republic

The Law on Public Benefit Corporations explicitly allows Public Benefit Corporations to apply for grants and donations from the state or municipal budget.

Substantial government resources are available at line ministries of the Czech Government, which operate in the field of interest of associations and Public Benefit Corporations.

All state donations are registered in a register, which should become available to the general public and which will be combined with the database of NGOs, compiled by the Information Centre of NGOs. This practice is supported by governmental tenders being published in the Bulletin of NGOs and in a Journal of Public Administration.

### 2.2.3. Estonia

There is no system of accreditation or approval for the charitable/non-profit sector.

Government finance single projects which are accepted by responsible ministry.

### 2.2.4. Hungary

Public Benefit Organisation – Any organisation registered as one of the five general legal forms--with the exception of insurance associations, political parties, and interest groups of employees or employers may register as a PBO in order to receive certain tax advantages<sup>95</sup>. For an organisation to register as a PBO, its governing documents must contain the following provisions:

1. description of the activity of the organisation and a statement that the organisation does not exclude non-members from its services;
2. statement that the organisation pursues economic activity only in the interest of realizing its public benefit objectives, without jeopardizing them;
3. statement that the organisation does not distribute profits;

<sup>95</sup> Act CLVI of 1997 on Public Benefit Organizations, Article §2(1).

4. statement that the organisation does not pursue direct political activity<sup>96</sup>.

Subsets of Public Benefit Organisations, known as “outstanding” or “prominent” Public Benefit Organisations, perform governmental responsibilities and receive added tax advantages<sup>97</sup>.

The following organisations, registered in Hungary, may be qualified as public benefit organisations:

1. civil society organisations, except insurance associations, political parties and interest groups of employers or employees,
2. foundations,
3. public foundations,
4. public benefit companies,
5. public chambers, if allowed by the act regulating their establishment.<sup>98</sup>

To be registered as a public benefit organisation, the founding document of the organisation shall include:

1. description of the sort of public benefit activity - defined in this Act - the organisation pursues, and a statement that the organisation, if a membership organisation, does not exclude non-members from public benefit services;
2. a statement that the organisation pursues business activity only in the interest of realizing its public benefit objectives, without jeopardizing them;
3. a statement that the organisation does not distribute profits, but spends them on the activity defined in its founding document;
4. a statement that the organisation does not pursue direct political activity, is independent of political parties and does not provide financial support to them.<sup>99</sup>

To be registered as a prominently public benefit organisation, the founding document of the

organisation shall include a statement that the organisation:

1. in the course of its public benefit activity fulfils a public duty which must be provided by state organs or local governments pursuant to an act or other law in accordance with the act’s authorization, and
2. shall disclose through the local or national press the most important data regarding its activities as defined in the founding document and its management.

Preferences due to public benefit organisations, supporters of public benefit organisations and recipients of public benefit services.<sup>100</sup>

#### 2.2.5. Latvia

There is no system of accreditation or approval for the charitable/non-profit sector.

#### 2.2.6. Lithuania

In order to receive tax exemptions, legal persons must have a status of sponsorship donee. Traditional Lithuanian religious communities, communions, and centres as well as legal persons established for such religious purposes need not have a status of sponsorship donee. Donees (except for budgetary institutions) have a right themselves to be donors of sponsorship and charity.

Legal persons wishing to receive a status of sponsorship donee must provide the Register of Legal Persons with a donee application and a document proving payment of registration fees. Within 5 working days the Register must make decision on granting a status of sponsorship donee to the legal person and registers relevant data if the Articles of association of the legal person concerned contain provisions for being a sponsorship donee and for activities useful for society as provided for in the Law on Charity and Sponsorship. Having made a decision whether to grant a status of sponsorship donee or not, the Register informs in written the legal person concerned.

In some cases, affirmative steps have been taken to spur official support. For example, Article 28 of the Law on Provision of Information to the Public states that the state shall support the cultural and educational activity of public information producers.

<sup>96</sup> Act CLVI of 1997 on Public Benefit Organizations, Article §4.

<sup>97</sup> Act CLVI of 1997 on Public Benefit Organizations, Article §5.

<sup>98</sup> Act CLVI of 1997 on Public Benefit Organizations, Article §2.

<sup>99</sup> Act CLVI of 1997 on Public Benefit Organizations, Article §4.

<sup>100</sup> Act CLVI of 1997 on Public Benefit Organizations, Article §5.

### 2.2.7. Malta

There is no seal of approval/accreditation system according to all the referred documents/books.

### 2.2.8. Poland

There is no seal of approval/accreditation system according to all the referred documents/books.

### 2.2.9. Slovakia

There is no seal of approval/accreditation system according to all the referred documents/books.

### 2.2.10. Slovenia

An association that engages in public benefit activities may apply to the appropriate ministry for the status of "association in the public interest"<sup>101</sup>. Criteria for obtaining this status vary depending on the ministry. Foundations and public institutes must pursue public benefit objectives as their primary activity. Specifically, foundations must pursue either charitable or "generally beneficial purposes," defined as activities in the fields of science, culture, sport, education, health care, child and disabled care, social welfare, environmental protection, conservation of natural and cultural heritage, or religion<sup>102</sup>. Public institutes must provide "public services" in the spheres of education, science, culture, sports, health, social welfare, children's care, care of the disabled, social security, or other non-profit activities<sup>103</sup>.

## 3. Monitoring

### 3.1. Monitoring System

Monitoring is determined as a system to control organisations and safeguard their conformity to appropriate regulations and to provide the donors with steady and reliable information concerning the efficiency of the non-profit organisations.

Basically this is safeguarded by holding the organisations accountable.

The highest governing body of the NGOs is responsible for ensuring that the NGO is accountable to the community (including government, beneficiaries, and the general

public). The highest governing body therefore has the authority and duty to review and approve the annual budget, the annual financial report, and the annual activity report (if applicable). The highest governing body is empowered to set policy, to elect or appoint officers, to decide on transformation, termination and dissolution, and to decide on changes to the organisation's governing documents.

Members of governing bodies may be personally liable for harm to the NGO or to third parties. In Czech Republic the liability to third parties lies with the organisation, and not with the individual members of the board. Estonia imposes joint liability on board members for damages wrongfully caused to the NGO or to creditors of the NGO for failures to perform their duties in the manner required.

#### 3.1.1. Supervisory Authorities

In Hungary it is the public prosecutor of the district where the NGO is registered that is responsible for NGOs' compliance with the law. In Poland, it is the line ministry that supervises NGOs in its field of competence. In Estonia and Slovakia, the Ministry of Interior regulates the activities of associations and foundations; in the Czech Republic, the Ministry of Interior oversees associations, and the court of registry oversees the activities of foundations, funds and public benefit companies.

In addition, the tax authorities ensure compliance with tax regulations. Other regulatory bodies may focus on compliance with labour law regulations and money laundering provisions. In Lithuania, for example, State Tax Inspection monitors the activities of charitable/non-profit organisations as far as tax exemption is concerned. Lithuanian Stated Tax Inspection supervises how a tax-payer carries out its duties as prescribed by relevant legislation. If an infringement is found which does not fall into the remits of the State Tax Inspection, it is forwarded to the Financial Crime Investigation Service.

All NGOs must undertake annual financial reviews, and reports of charity and sponsorship funds must be made available to anyone who is interested.

#### 3.1.2. Annual Reports

Many NGOs must produce annual reports of their finances. Some are required to submit more detailed information about their activities to a body other than the tax authority, often the body responsible for registering NGOs or the ministry with responsibility over the area of the organisation's activities. In several countries associations are exempt from these reporting requirements. For example, Hungarian and Polish

<sup>101</sup> Articles 3 and 38, Associations Law, Slovenia.

<sup>102</sup> Article 2, Foundations Law, Slovenia.

<sup>103</sup> Articles 1 and 3, Institutes Law, Slovenia.

associations do not have to produce any reports, at least as long as their income is below a certain level. However, they may be audited and therefore need to keep records. In both countries, reporting is also tied to having the status of a public benefit organisation, which demands a higher level of accountability from both foundations and associations.

### 3.1.3. Activity Reports

Some countries require certain NGO organisational forms to file reports about their activities. Slovakia, for example, requires summaries of activities and an explanation of how they relate to the organisation's purpose and a separate accounting for expenses related to business activity; for foundations, it also requires a division of expenses into administrative and purpose-related expenses. Public benefit organisations in Hungary are required to produce detailed reports. Foundations are also often required to report specifically on their management of their endowments, as in Slovenia. Independent audits are required in certain cases, as for foundations in Estonia and Slovakia.

Authorities can apply government audits and inspections. Hungarian public benefit organisations are also subject to supervision by the State Audit Office for the use of budgetary subsidies. In Poland, the Ministry of Social Security has the right to access an organisation's property, documents and other carriers of information, as well as to demand written and oral explanations. The inspecting officials must prepare a written report; the head of the public benefit organisation then has the opportunity to submit a written explanation or objections to the content of the report, within 14 days.

### 3.1.4. Tax reports

NGOs are typically required to file tax reports under the terms and conditions of the tax laws. NGOs are often subject to a variety of other reporting requirements, including reports to management bodies, reports to licensing authorities if the NGO engages in an activity subject to licensing, reports to state funding bodies, and reports to private donors.

## 3.2. Country Information

### 3.2.1. Cyprus

Information is not available yet.

### 3.2.2. Czech Republic

The Ministry of Interior is expected to monitor the activities of associations, but in no case it may

interfere with its activities. In the case, when the Ministry learns about an activity of an association, which violates the requirements of law, the Ministry is obliged to issue a warning to the association and if the warning does not lead to remedy, the Ministry may decide to dissolve the association. This decision may be appealed to the Supreme Court.

Public benefit companies, foundations and funds are supposed to act in compliance with the law and their own statutes. They are also required to report their activities in an annual report, which includes an overview of their property, provided grants or services and acceptance of substantial donations. Any person, who proves a legal interest, may apply to the court of registry for permission to bring proceedings against a Public benefit companies, foundation or fund. The court may decide on the winding-up or, in the case of a Public benefit companies, on financial sanctions, i.e. the loss of tax benefits for one calendar year.

The court will issue the decree on dissolution of the foundation, if its endowment does not permanently yield revenues and the foundation has no other assets to be able to fulfil the purpose for which it was established. Similarly, a fund may be dissolved by the court decision, if its property has been totally spent and the fund is no more able to fulfil the purpose for which it was established. Upon a proposal of a founder, the Testimonial Administrator or a person which proves legal standing, the court will issue the decree on dissolution of the foundation/fund as well, if it violates in a serious manner or repeatedly the law or its own Statute, if during the previous year there was not convened any single meeting of its board of directors or if the members of the boards were not elected for more than a year to replace persons whose membership in a board terminated, or if the foundation/fund does not fulfil the purpose for which it was established for a period of time longer than two years. In all this cases, there is issued a period of time within which there is a possibility given to remedy the violation determined by the court.

Every legal entity must file an annual tax report that includes information on its overall income and expenditures for the previous calendar year. Organisations earning over 5 000 000 Czech Crowns and all foundations are expected to use a cross-account method for keeping their financial records and must attach an audited financial report signed by an independent auditor. The tax report of all corporate persons must also include the account numbers at all banks where income is deposited. The district financial administration offices are the bodies that supervise the compliance of the legal entities registered in the district with the tax laws.

Frequency of monitoring



The specific rules on tax reporting are discussed above. Civil organisations with income of less than 100 000 Czech Crowns or only with exempt income are not required to file a tax return. However, they must be able to document their incomes and expenses for the past 10 years should the relevant authority of the Ministry of Finance decide to review the organisation's accounting books.

Strict requirements are imposed on the annual reporting of Public benefit companies, foundations, and funds by the new laws. They must produce and publish an annual report on their activities and economic results not later than six months after the close of the fiscal year and not later than 18 months after the original registration. The report should include summaries of all activities and their relationship to the public benefit services for which the Public benefit companies was established or to the granting and other activities of a foundation or a fund. The report must also include the annual balance sheet of income and expenses as well as the statement from an auditor, if an audit was made (an audited financial statement is obligatory for foundations, as well as for PBCs receiving state donation and funds with a turnover or total property value greater than 3 000 000 Czech Crowns). The report should also include commentary about the assets of the organisation and a commented overview of income and expenses. Income is to be reported separately according to its source. The expenses must be reported so as to distinguish between those related to public benefit services and activities and other additional activities and administration. The law also provides for sanctions for non-compliance with these rules. These sanctions may be limited to a temporary loss of tax benefits for a Public benefit companies, or may result in liquidation in the case of a foundation or a fund.

Foundations and funds must include in their annual reports an evaluation of how effectively their grants were used by the grantees, as well as how they complied with the obligatory rule that limits their administrative expenses. The rule limiting expenses is a part of the registered information and must not be changed for 5 years.

### 3.2.3. Estonia

The general regulations for governance of NPOs are provided for in the General Principles of the Civil Code Act (GPCCA). The regulations require the following: a compulsory management organ or management board; personal liabilities for intentional harm caused to the organisation or third parties; and general norms for the winding up and liquidation of legal entities.

The activities of non profit associations, as well as foundations, are generally monitored by the registrar, i.e. the registry departments of the courts of first instance which are responsible for maintaining the register of non profit associations and foundations. The Minister of Internal Affairs is authorized to monitor the activities of non profit associations and foundations in order to detect severe deviances of the actual activities of the organisations from the objectives specified in the articles of associations, as well as violations of law and public order.

All NPOs must keep their books and records in accordance with the requirements of the Accounting Act. In the case of foundations the annual accounts and activities report must be audited by a professional auditor<sup>104</sup>. Annual accounts and activities reports must be approved by the general assembly of the non-profit association or by the supervisory board of a foundation. A copy of the approved report must be submitted to the Register of Non-Profit Associations and Foundations.

#### *(a) Foundations*

Foundations are governed by two compulsory bodies - the management board and the supervisory board. The supervisory board must have at least 3 members who are natural persons with legal capacity. The procedure for the appointment and removal of the supervisory board must be provided for in the Articles of Association<sup>105</sup>. Usually the founders of a foundation reserve for themselves the right to appoint members of the supervisory board. The term of office for the members of the supervisory board is not prescribed by law and may be clarified in the Articles of Association. The supervisory board plans the activities of the foundation, organises the management of the foundation, and supervises its activities. Generally the consent of the supervisory board is required for the management board to enter into transactions, which are beyond the scope of everyday economic activities<sup>106</sup>.

The management board may consist of one or more members. The residence of at least 1/2 of the board members must be in Estonia. If the Articles of Association determine a set of beneficiaries, they or persons with an equivalent economic interest shall not be members of the management board. A member of the supervisory board or person in bankruptcy may not be a member of the management board. The members

<sup>104</sup> Foundations Act, Articles 34-36.

<sup>105</sup> Foundations Act, Article 27.

<sup>106</sup> Foundations Act, Article 25.

of the management board shall be appointed by a resolution of the foundation and any changes to its membership are decided by the supervisory board. The term of the office for members of the management board shall be set up in the Articles of Association. The management board manages and represents the foundation as well as runs its everyday businesses<sup>107</sup>.

*(b) Associations*

Chapter 4 of the Non profit Association Act establishes two compulsory management structures and also outlines their responsibilities. Every non-profit association must have a general assembly as the highest governing body and a management board (one or more members), which manages and represents the association. Also, because of a very large variety and size of non-profit associations, the law provides for the possibility of forming other governing bodies, with their own management, and committees for solving disputes between members. All members of the non-profit association may participate in the general assembly, which is empowered to amend the Articles of Association, change objectives and appoint members to the management board. Additionally, unless the Articles of Association provide otherwise, the general assembly has the power to elect members to the other bodies, decide on entry into transactions with members of the management board or other body, decide on the assertion of claims against members or appointing a representative of the non-profit association in such transactions and claims, and decide on other matters which are not placed in the competence of other bodies by law or the Articles of Associations<sup>108</sup>.

A resolution of the general assembly is adopted if over 1/2 of the members or their representatives present at a meeting vote in favour of the resolution, unless the law or the Articles of Association prescribe a greater majority. The consent of all members is required in order to change an objective of the non-profit association, amend the Articles of Association, or dissolve the non-profit association. Unless the Articles of Association provide for a greater majority requirement, for mergers or dissolutions, over 2/3 of the votes from members participating in the general assembly are required.

Annual accounts and activities report must be audited by a professional auditor annually.

The management board shall organise the accounting of the foundation pursuant to the Accounting Act. After the end of a financial year, the management board shall prepare the annual accounts and activity report pursuant to procedure provided by law. The management board shall submit the reports for approval to the supervisory board not later than four months after the end of the financial year. Before submission of the reports for approval to the supervisory board, the management board shall forward the reports to the auditor for audit. Approved annual reports shall be signed by all members of the management board. The management board shall submit approved annual reports to the register within six months after the end of a financial year.

A foundation shall have an auditor. The number of auditors shall be specified and auditors shall be appointed by the supervisory board, which shall also specify the procedure for remuneration of auditors. Persons to whom the right to be an auditor is granted pursuant to law may be auditors. An auditor may be appointed to conduct a single audit or for a specified term. The written consent of a person shall be required for appointment of the person as auditor and it shall be appended to a list of auditors submitted to the registrar.

The management board or supervisory board of a foundation, or a member of the management board or supervisory board or other interested person may request that conduct of a special audit on matters regarding the management or financial status of the foundation be decided and that an auditor for the special audit be appointed by a court. The court shall decide on conduct of a special audit only with good reason.

The general meeting supervises the activities of other bodies. In order to perform this duty, the general meeting may call for a review or audit. A member of the management board or an accountant of the non-profit association shall not be a controllers or auditor. The members of the management board and of other bodies shall enable controllers or auditors to examine all documents necessary for conduct of a review or audit and shall provide necessary information. Controllers and auditors shall prepare a report concerning the results of a review or audit, which they shall present to the general meeting.

The management board shall organise the accounting of the non-profit association pursuant to the Accounting Act.

After the end of a financial year, the management board shall prepare the annual accounts and activity report pursuant to the procedure provided by law. The management board shall submit the reports to the general meeting within six months

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<sup>107</sup> Foundations Act, Articles 17 and 19.

<sup>108</sup> Non profit Association Act, Article 19.

after the end of the financial year. If a non-profit association has an auditor or audit committee, the auditor's report or the opinion of the audit committee shall be appended to the reports. Approval of the annual report shall be decided by the general meeting. Approved annual reports shall be signed by all members of the management board.

#### 3.2.4. Hungary

In general, no restriction exists on the control of not-for-profit organisations by other organisations or persons. For public foundations, which are formed by a government entity, control is exercised by the founding entity.

Hungarian law provides few specific requirements regarding governance of non-governmental organisations<sup>109</sup>.

Generally, larger organisations have both a governing body and a supervisory body. This is required for Public Benefit Organisations (PBOs) with annual income that exceeds five million Hungarian Forint<sup>110</sup>. Public benefit companies must establish supervisory boards and choose auditors<sup>111</sup>. While the intent is to separate operations from oversight, recent research indicates that this does not always occur.

Article 11 of the Law on PBOs sets out the authority of the supervising body: it may request reports and information from officers and employees as well as inspect books and documents. It is empowered to convene the governing body if its concerns are not addressed. Similarly, the supervisory board of a non-profit company is required to call a meeting of members upon finding violations of conditions for pursuing public service activities<sup>112</sup>.

A recent law provides an additional transparency mechanism for PBOs by mandating that meetings of the PBOs "leading body" be open to the public<sup>113</sup>.

The public prosecutor is responsible for supervision of associations, foundations and PBOs, and can take action in court where necessary<sup>114</sup>.

<sup>109</sup> Law on Right of Association Article 6; Civil Code Articles 62, 74A, 74B; Law on Public Benefit Organizations Articles 4, 7.

<sup>110</sup> Law on Public Benefit Organizations, Article 10.

<sup>111</sup> Act IV/1959, as amended by Act XCII of 1993, Article 59.

<sup>112</sup> Act IV/1959, as amended by Act XCII of 1993, Article 59 (2).

<sup>113</sup> Act CVI of 2001 on the Amendment of Regulations concerning Registration of Social Organizations and Foundations.

<sup>114</sup> Constitution, Article 51; Law on Right of Association, Article 14; Civil Code Article 74F; Law on PBOs Article 21.

To the extent that an organisation undertakes activities requiring special regulation, e.g., the operation of a health care facility or school, other competent authorities will also have a supervisory role as well<sup>115</sup>. Courts have authority to nullify decisions, adopt new decisions, convene the governing body of the organisation, appoint new supervisors, suspend operations or dissolve the organisation.

With regard to PBOs, Article 21 of the Law on PBOs states that tax audits will be carried out by the competent tax authority based on the location of the registered office of the PBO; that issues related to the use of public funds will be overseen by the National Audit Office.

PBOs must make their records and reports, as well as a "public benefit report" on their operations, open to the public<sup>116</sup>. The public benefit report must include a financial report; information on the utilization of budgetary support, use of assets and targeted grants; the extent of support received from governmental bodies; the value and amount of benefits granted to operating officers; and a brief summary of public benefit activities.

#### 3.2.5. Latvia

Audit by supervisory organs:

The Law on Public Organisations provides broad oversight responsibilities and rights to the government: "State institutions shall monitor and control the activities of public organisations and their associations" and that officials "within the limits of their official duties, shall control whether the public organisations and their associations comply with the laws and other regulations, and whether their activities are in compliance with the by-laws. They shall have the right to participate in the meetings of public organisations, as well as acquaint themselves with the relevant documentation of the public organisations. Other interference with the activities of public organisations and their associations shall be prohibited."<sup>117</sup>

Section 25 states that oversight responsibility for economic activities falls to the State Financial Inspection. For NPOs, oversight responsibility falls to State Control, the State Finance Inspection,

<sup>115</sup> Law on Right of Association Article 17.

<sup>116</sup> Law on Public Benefit Organizations, Article 19.

<sup>117</sup> Law on Public Benefit Organizations, Article 24.

Enterprise Registry and audits are to occur at least once every two years<sup>118</sup>.

Sanctions:

Courts may also be involved in the oversight of non-governmental organisations. The Law on POs provides that court action can address an organisation's misconduct or illegal action based upon the application of members of the organisation or the Ministry of Justice. The court has the ability to:

- cancel the decisions adopted by the institution or official of the public organisation which are illegal or do not comply with the by-laws;
- remove the officials or institutions the election of whom does not comply with the by-laws;
- demand that the public organisation obviate other kind of illegal activity or breach of the by-laws.

*(a) Foundations*

At the end of the reporting year, the board shall prepare and submit an annual report in accordance with the provisions of Article 52 of the Law on Foundations and Associations.

Persons who donate to the foundation may at any time find out about the activities of the foundation, and familiarise themselves with all documents, except accounting documents and information on other persons who have made donations to the foundation.<sup>119</sup>

*(b) Associations*

The board shall ensure that the members of the association have all necessary information and documents in regard to the operations of the association and shall also prepare a relevant report at their request.

The general meeting shall control the activities of all administrative bodies. For this purpose, the general meeting has the right to determine an internal audit. Board members have the responsibility to provide all information and documents necessary for the audit to the auditing body. The auditor shall prepare an opinion on the results of the audit which shall be presented to the general meeting.<sup>120</sup>

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<sup>118</sup> Law on Non-Profit Organisations, Article 12.

<sup>119</sup> Law on Association and Foundation, Article 103.

<sup>120</sup> Law on Association and Foundation, Article 51.

At the end of a reporting year, the board shall prepare an annual report of the association in accordance with the Law on Accounting and other regulatory enactments.

The annual report of the association shall be reviewed by the auditing body of the business and financial operations or a sworn auditor. Members of the association have the right to familiarise themselves with the annual report.

Every year, not later than by 31 March, the annual report shall be submitted by the association to the State Revenue Service and the register institution.<sup>121</sup>

Internal mechanism for control:

The Law on Public Organisations requires that Public Organisation have a "permanently functioning governing body or administration, as well as a body of audit of the administrative and financial activities."<sup>122</sup> Article 23 of the Law on Public Organisations states that "not less than twice a year the entrepreneurial and other economic and financial activities of a public organisation or an association of public organisations shall be checked and its bookkeeping audited by an audit institution of the public organisation or association of public organisations."

The Law on Non-Profit Organisations states that participants have the right to take part in the management of the NPO<sup>123</sup>.

The Law on Association and Foundation provides greater detail on the necessary structure of associations and foundations, respectively in Articles 32-51 and 92-98. Associations are to be governed by the meeting of members and the Board and such other administrative bodies as may be created by the articles of association<sup>124</sup>. Among the powers of the meeting of members are the election and dismissal of members of the Board, audit institutions and other institutions specified by the articles of association (Article 34). Similarly, foundations are to chiefly govern by a Board of at least three persons and such other bodies as are created by the articles of association (Articles 92-93).

The Law on Association and Foundation requires a report to members regarding the "the management of the association"; groups must

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<sup>121</sup> Law on Association and Foundation, Article 52.

<sup>122</sup> Law on Public Organisations, Article 4.

<sup>123</sup> Law on Non-Profit Organizations, Article 10.

<sup>124</sup> Law on Association and Foundation, Article 32.

also respond to member requests for other reports and information<sup>125</sup>.

The failure to meet these requirements may lead to involuntary termination of an organisation (Articles 55 and 104). In addition, this law provides a foundation's donors with the right to "examine all documents, except the accounting records and information regarding other persons who have given donations to the foundation" (Article 102).

### 3.2.6. Lithuania

State Tax Inspection monitors the activities of charitable/non-profit organisations as far as tax exemption is concerned. Stated Tax Inspection supervises how a tax-payer carries out its duties as prescribed by relevant legislation. If an infringement is found which does not fall into the remits of the Stated Tax Inspection, it is forwarded to the Financial Crime Investigation Service.

All NGOs must undertake annual financial reviews, and reports of charity and sponsorship funds must be made available to anyone who is interested.

#### *(a) Foundations*

The fund shall inspect its financial activities at the intervals prescribed by its articles of association. The inspections shall be conducted by an examiner or auditor elected by the general meeting of stakeholders for a term set down in the articles of association. Legal or natural persons, except for the founders or stakeholders and except for members of a managing body or employees of the fund, may be examiners (auditors).

An examiner (auditor) shall:

Inspect the annual accounts of the fund and other accounting records;

Conduct inspections of the financial activities of the fund if instructed by the meeting of stakeholders or the managing body;

Report about the violations identified during inspections at the next scheduled general meeting of stakeholders or the next scheduled meeting of the managing body.

The managing body of the fund shall supply the examiner (auditor) with the accounts and records requested by him.

<sup>125</sup> Law on Association and Foundation, Articles 50, 51; see also Article 102 regarding foundations.

The examiner (auditor) may be remunerated by the fund for the work performed. The amount of remuneration or the terms and conditions of payment shall be set forth by the general meeting of stakeholders.<sup>126</sup>

The managing body specified in the articles of association shall prepare an annual report on the fund's activities for the previous financial year and present it to the general meeting of stakeholders within the term set down in the articles of association. The report shall be public. At the request of any legal or natural person, the fund shall make the report available at its registered office or in any other manner.

The report on the fund's activities shall include:

Information about the fund's activities aimed at attaining the objectives specified in the articles of association;

The number of stakeholders at the end of the financial year;

The annual financial accounts of the fund;

The number of the fund's employees at the end of the financial year.

The report on the fund's activities may also include other information as prescribed by the general meeting of stakeholders.<sup>127</sup>

#### *(b) Associations*

The association must from time to time perform inspections of financial activities. The inspections must be performed by the examiner (examination commission, auditor) who is elected by the general meeting (conference, congress) of the members for the term established by the statutes. A natural person who has a qualification certificate or a legal person who has the right to provide audit services may be an examiner or auditor. A member of the collective managing body of the association and an employee of the administration cannot be an examiner.

The examiner shall control the financial activities of the association. He must:

Inspect annual accounts of the association and other financial accounting documents;

<sup>126</sup> Law on charity and sponsorship funds, Article 10.

<sup>127</sup> Law on charity and sponsorship funds, Article 11.

At the instructions of the general meeting of the members or the Board perform the financial accounting inspections of the association;

Notify the next scheduled general meeting of the members or the sitting of the collective Managing body of the violations disclosed during the inspection;

Present to the general meeting of the members an annual report on the inspection of financial activities of the association.

The administration and the collective managing body of the association must furnish to the examiner the financial accounting documents requested by him.

The examiner shall be liable under the laws for concealing deficiencies of the activities of the association.

The State Control shall have the right to inspect how the funds allocated by the State and local authorities are being used.<sup>128</sup>

*(c) Other Forms*

The procedure of internal control of the financial activity of a public institution shall be established in the bylaws.

The State and municipal control institutions shall have the right to investigate the activities of a public institution in accordance with the procedure established by laws.

The Administration of a public institution must furnish the state (municipal) control institutions and entities of financial activity control, provided for in the bylaws of an institution, with the documents of the public institution, requested by them.<sup>129</sup>

State Tax Inspectorate monitors the activities of charitable/non-profit organisations as far as tax exemption is concerned.

Charitable/non-profit organisations must provide State Tax Inspection (STI) with annual financial statements and the STI may forward such information to the Financial Crime Investigation Unit if it suspects money-laundering activities.

### 3.2.7. Malta

According to the Malta White papers there shall be a Commissioner for Voluntary Organisations who shall be appointed by the Minister for that purpose. The Commissioner shall, be deemed a public officer and shall perform the duties and exercise the powers imposed and conferred on him.

The functions of the Commissioner shall be to implement the provisions of the Voluntary Organisations Act and without prejudice to the generality of the foregoing shall include the following functions:

(a) to provide voluntary organisations with information about the benefits and the responsibilities deriving from registration as legal persons under the Civil Code and of enrolment under Voluntary Organisations Act;

(b) to provide enrolment facilities for organisations which are eligible for enrolment in terms of Voluntary Organisations Act;

(c) to provide information and guidelines to persons performing voluntary work and members of voluntary organisations, for the better performance of their role and for the better achievement of the objectives of the voluntary organisations in which they serve;

(d) to make recommendations to the Minister on policies in support of voluntary organisations and voluntary work;

(e) to monitor the activities of voluntary organisations in Malta in order to ensure that they observe the provisions of the Voluntary Organisations Act;

(f) to investigate complaints by the public regarding activities of voluntary organisations or by persons receiving funds or services provided by voluntary organisations, or persons or organisations purporting to be voluntary organisations, and to take such action as is in his power to redress any justified grievance that may come to his notice;

(g) to monitor the promotion of voluntary organisations and to monitor the behaviour of administrators of such organisations to ensure the observance of high standards of accountability and transparency and general compliance with law;

(h) to co-ordinate and communicate with the Registrar of Legal Persons in relation to voluntary organisations and to facilitate registration and enrolment processes;

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<sup>128</sup> Law on Associations, Article 16.

<sup>129</sup> Law on Public Institutions, Article 12.

(i) to co-operate with and support the National Council for the Voluntary Sector to develop policies which will be of benefit to the sector in general and in its particular categories;

(j) to perform any other function or duty that is assigned to him under the Voluntary Organisations Act as well as such other functions as may be assigned to him under any other law.

The Commissioner shall assist all Ministries, Government Departments and all public corporations, statutory bodies and companies the shareholding of which is fully or in its majority owned or otherwise controlled by the Government in preparing and reviewing policies relating directly or indirectly to voluntary organisations which are registered in terms of the Civil Code and enrolled in terms of the Voluntary Organisations Act.

Subject to the provisions of the Data Protection Act, the Commissioner shall compile and maintain information relating to voluntary organisations which have not enrolled under the Voluntary Organisations Act and shall monitor their activities so as to ensure that the purposes of the Voluntary Organisations Act are attained.

The Commissioner shall seek to encourage an environment where the credibility and good reputation of voluntary organisations is continually enhanced through high standards of operation of such organisations and their administrators, of transparency and public awareness and generally of proper accountability.

The Commissioner may publish, by advertisement or otherwise, any information about an organisation, whether enrolled in terms of the Voluntary Organisations Act or not, or about any person purporting to act on behalf of a voluntary organisation, when it appears to him to be in the interest of the public or of the organisation itself: Provided that, except in cases which in the opinion of the Commissioner are urgent or may involve fraud, before publishing such information he shall notify in writing the administrators of the organisation with the proposed text. The administrators shall have five days from receipt of such notice to discuss the same with the Commissioner and unless there is agreement between the Commissioner and the administrators on such remedial action as may be required to be taken in the circumstances, either party may apply to the Board of Appeal to confirm, amend or refuse the advertisement, as the case may be, and the decision of the Board shall be final.

### 3.2.8. Poland

For associations under its jurisdiction, local supervisory authorities have the right to inspect

documents as well as require the submission of decisions and other information. If there is reason to believe that an association is not complying with the law or its statute, authorities may order a correction, issue a reprimand, or apply to a court for stronger action. Courts may impose various sanctions from annulling actions to dissolution in the most serious cases.<sup>130</sup>

If a foundation is seen to act in violation of the law or its statutes, the supervisory ministry or the Voivod (county) may order the correction of improper action or where challenged actions constitute a serious violation, may demand replacement of a board. Supervisory authorities may also apply to the court for a range of actions, including the appointment of a government administrator.<sup>131</sup>

Under the Law on Public Benefit Organisations, supervision of groups with PBO status is centralized, generally with the ministry that is responsible for social welfare, currently the Ministry of Economic, Labour and Social Policy. The ministry is to inspect PBOs, and prepare reports to which PBOs must respond in writing. If problems identified are not corrected, the ministry may apply to the registration court to revoke its PBO status or remove the organisation from the State Court Register.<sup>132</sup>

#### *(a) Foundations*

Foundations must produce annual reports of activities to the supervising agency which are also to be made public<sup>133</sup>.

The Law on Foundations puts authority for the organisational statute and structure with the founder<sup>134</sup> but only states that governing board shall direct foundations activities and represent it to the world<sup>135</sup>.

The act requires foundations to prepare annual reports for the supervisory body; the reports are also made available to the public. Such a report should include, among others, the following:

1. information on the amount of obtained profits, listing their sources (e.g. heritage, legacy, donation, means from public funds (among others from the state budget and the local

<sup>130</sup> Law on Associations, Articles 25-32.

<sup>131</sup> Law on Foundations, Articles 12-14.

<sup>132</sup> Law on Public Benefit Organisations, Articles 28-34.

<sup>133</sup> Law on Foundations, Article 12.

<sup>134</sup> Law on Foundations, Article 5.

<sup>135</sup> Law on Foundations, Article 10.

administration budget), payable services performed by the foundation in the framework of the foundation's statutory purposes while taking into consideration the cost of those services; it the foundation runs an economic activity, the financial result of that activity together with the percentage ratio of the income obtained from the economic activity to the income obtained from other sources;

2. information on the costs incurred in course of realising the foundation's statutory goals, administration costs, costs of economic activity and other costs;
3. information of amounts located on bank accounts, with an identification of the name of the bank;
4. information on the value of acquired bonds and the value of the shares (when the foundation comes into the possession of shares or buys the shares) in commercial companies, the companies being identified;

Foundations are obliged to keep accounting books.

If a foundation is seen to act in violation of the law or its statutes, the supervisory ministry or the Voivod (county) may order the correction of improper action or where challenged actions constitute a serious violation, may demand replacement of a board. Supervisory authorities may also apply to the court for a range of actions, including the appointment of a government administrator<sup>136</sup>.

#### *(b) Associations*

The Law on Associations does not require associations to prepare or publish an annual report.

The Law on Associations provides basic autonomy to associations in regard to their organisational structure -- an association independently sets its () structures<sup>137</sup>, the highest authority shall be the general assembly of members (in some situations, an assembly of delegates) but in addition to a board, there must be an internal auditing organ<sup>138</sup>.

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For associations under its jurisdiction, local supervisory authorities have the right to inspect documents as well as require the submission of decisions and other information. If there is reason to believe that an association is not complying with the law or its statute, authorities may order a correction, issue a reprimand, or apply to a court for stronger action. Courts may impose various sanctions from annulling actions to dissolution in the most serious cases<sup>140</sup>.

#### *(c) Other Types*

The Law on PBOs includes additional requirements for associations and foundations that receive public benefit status. They must have a statutory collegiate institution of monitoring or supervision that is separate from the management board and not supervised by the management board as far as internal monitoring or supervision are concerned<sup>141</sup>.

The Law on PBOs includes additional requirements for associations and foundations that receive public benefit status. They must have a statutory collegiate institution of monitoring or supervision that is separate from the management board and not supervised by the management board as far as internal monitoring or supervision are concerned.

#### Frequency of monitoring:

Under the Law on PBOs, supervision of groups with PBO status is centralized, generally with the ministry that is responsible for social welfare, currently the Ministry of Economic, Labour and Social Policy. The ministry is to inspect PBOs, and prepare reports to which PBOs must respond in writing. If problems identified are not corrected, the ministry may apply to the registration court to revoke it PBO status or remove the organisation from the State Court Register<sup>142</sup>.

<sup>136</sup> Law on Foundations, Articles 12-14.

<sup>137</sup> Law on Associations, Article 2(2).

<sup>138</sup> Law on Associations, Article 11.

<sup>139</sup> Law on Associations, Articles 2(2) and 11.

<sup>140</sup> Law on Associations, Articles 25-32.

<sup>141</sup> Law on Public Benefit Organisations, Article 20, section 6.

<sup>142</sup> Law on Public Benefit Organisations, Articles 28-34.



### 3.2.9. Slovakia

The Ministry shall supervise the performance of the Foundation's activities in accordance with public benefit purpose of its establishment. For this reason the Ministry shall evaluate the content of the Annual Report. If the Ministry finds any deficiencies, it shall invite the Foundation to correct those deficiencies within a given time limit and simultaneously to inform the Ministry about undertaken measures. If the Foundation has not redressed the deficiencies the Ministry will file a petition.

The Registration Office oversees, whether the non-profit organisation fulfils its purpose and provides the generally beneficial services for which it has been established. In order to do so, the Registration Office evaluates the content of the Annual Reports and in the case of detecting deficiencies the Registration Office notifies the bodies of the non-profit organisation, demands correction, as well as fulfilment of the obligations set by the Law. If such a correction is not made, the Registration Office is entitled to file a motion to terminate the non-profit organisation.

The Ministry controls the registration and supervision of non-profit organisations as preceded by registration offices.<sup>143</sup>

Everybody has the right of access to information on the use of property of a non-profit organisation.

### 3.2.10. Slovenia

#### *(a) Foundations*

The law authorizes the state to exercise much more direct supervision over foundations. The ministry with competence over the activities of the foundation is envisaged as the supervisory body (hereinafter the competent body). This is the same ministry responsible for issuing founding permits. In some cases, a foundation may appeal the decisions of the competent body. Such appeals are deemed to be administrative disputes and, therefore, there is a judicial review of decisions.

#### *(b) Associations*

Under the Law on Associations, the state does not exercise supervisory power over associations beyond the point of initial registration. Other laws covering specific fields of activity could stipulate additional obligations for associations functioning in these areas.

Any decision by the state against an association or its administration is subject to administrative review or appeal in court.

## 4. Tax Status

### 4.1. Tax System

Tax system is appealing on the idea that organisations that meet certain requirements get registered in order to achieve a special status. As was mentioned previously (see chapter 7.2 Accreditation/Seal of Approval) tax status can be considered as a form of accreditation or monitoring, however the tax system should be treated as a separate system because it is compounds segments of both systems.

#### 4.1.1. Income/Profits Tax

All of the countries in the EU 10 provide some relief from the profits/income tax for charitable organisations.

The most common exemption is for membership fees and other donations. Mostly all countries in the region exempt such funds from the income of charitable organisations. A few countries consider not only whether the recipient organisation is charitable in nature, but also whether the donated funds will be used for charitable purposes. For instance, the Czech Republic and Poland exempts all donations to foundations, funds, and public benefit companies. It also exempts donations to other legal persons if they are used for certain designated charitable purposes.

The qualification requirements for exemption depend in large part on the scope of the exemption. In many countries, the registering authority's decision is the source of both legal entity status and tax benefits. This may also be the case for some tax benefits extended only to charitable organisations.

Estonia, Hungary, Latvia, Poland have developed a more elaborate system, under which a charitable organisation seeking certain tax benefits must specifically apply for exempt status. Only once its application is approved, and its name added to a list of exempt organisations, does the organisation become eligible for those tax benefits. This approach allows a legal system to differentiate between the standards for organisation as a non-profit and the higher standards for various tax preferences. Estonia, Hungary and Poland allow only charitable, public benefit organisations on the list of organisations eligible for the highest tax benefits.

<sup>143</sup> Law on Non-Profit Organisations, Chapter 6, Section 35.

In jurisdictions requiring separate application for tax benefits, there is some variation in who has responsibility for the master list of exempt organisations. In Latvia, the list is kept by the Minister of Finance, in Hungary - by the courts. In Malta separate law prescribes list of exempt organisations.

#### 4.1.2. Value Added Tax

All countries in EU 10 impose a value added tax upon the sale or transfer of goods and services. Firstly is simply to exempt them from the VAT system. This ensures that they do not have to collect and pay over VAT on goods and services that they provide, but does not allow them to recover VAT paid on purchased goods and services. Another option is - "zero-rate" their goods and services, allowing charitable organisations to avoid collecting VAT and also seek rebates for amounts paid.

In addition to any exemptions granted to charitable organisations in general, many countries either exempt certain goods or services entirely or tax them at preferential rates. Many of these goods and services are of a sort typically provided by charitable organisations.

#### 4.1.3. Percentage Laws

Several countries such as Hungary, Slovakia, Lithuania, and Poland have enacted laws that allow taxpayers to designate 1-2% of their taxes paid to be distributed to NGOs of their choice. The advantage of these laws is that taxpayers provide a source of funding for NPOs not controlled directly by the government. This allows charitable organisations to compete for these funds, and choose activities that meet needs of the public.

## 4.2. Country Information

### 4.2.1. Cyprus

Information not available yet.

### 4.2.2. Czech Republic

(a) *Income Tax/Others*<sup>144</sup>

<sup>144</sup> The main laws, which regulate tax issues in the Czech Republic, are the following:

- Act No. 586/1992 on Income Tax, as amended by later laws and also by the Act. No. 227/1997 on Foundations and Funds and by the Act No. 248/1995, on Public Benefit Corporations;

- Act No. 588/1992 on Value Added Tax, as amended by later laws;

In general, regulation of taxes depends either on the type of activity or on the legal form taken by the legal entity.

The Income Tax Law generally excludes from income taxation "interest associations explicitly not established for income generating activities, associations of citizens, public benefit corporations, foundations and funds, public universities ..." <sup>145</sup> The income tax law also specifically states that NGOs are generally not required to pay income tax on interest on current accounts, state subsidies, and other income from their statutory activities, provided that the expenditures exceed the income from the activity <sup>146</sup>. Foundations, Funds, PBCs, and other public benefit NGOs are also generally exempt from the tax on donations <sup>147</sup>.

Income from economic activities related to the statutory purposes of an NGO is subject to a reduced tax. All related income is exempt from income tax up to 300 000 Czech Koruna (approximately € 9 500). Revenues (i.e., incomes minus related expenditures) at the end of fiscal year over this amount are reduced before taxation by 30% or 1 million Czech Koruna (approximately € 32 000), whichever is less, if the proceeds are used for public benefit purposes. However, since NGOs are required to allocate earnings and expenses for each individual activity separately, they may face a greater income tax liability (despite the 30% tax base reduction) than for-profit entities.

First of all, the law distinguishes a corporate tax payer "which has not been founded or established for business purposes" from other tax payers. This category explicitly includes "interest associations of legal entities explicitly not established for

- Act No. 593/1992 on Depreciation Reserves for Income Tax Base Establishment, as amended by later laws;

- Act No. 587/1992 on Consumption and Excise Tax, as amended by later laws;

- Act No. 16/1993 on Highway Tax, as amended most recently by later laws;

- Act No. 338/1992 on Real Estate Tax, as amended by later laws and also the Act. No. 227/1997 on Foundations and Fund and by the Act No. 248/1995, on Public Benefit Corporations;

- Act No. 357/1992 on Inheritance Tax, Donated Assets Tax and Property Transfer Tax, as amended by later laws and also by the Act. No. 227/1997 on Foundations and Funds and by the Act No. 248/1995, on Public Benefit Corporations;

- Act No. 337/1992 on Tax and Fees Administration, as amended by later laws and also by the Act. No. 227/1997 on Foundations and Funds and by the Act No. 248/1995, on Public Benefit Corporations.

<sup>145</sup> Income tax law, Article 18(8).

<sup>146</sup> Income tax law, Article 18(4).

<sup>147</sup> Tax on Donations law, Article 20(4).

income generating activities, associations of citizens including trade unions, political parties and political movements, registered churches and religious communities, public benefit corporations, foundations and funds, public higher educational institutions, municipalities, organisational components of the state administration, regional self-governments, contributory organisations, state funds and other subjects defined so by a special law<sup>148</sup>. Taxpayers in this category must always report incomes derived from advertisements, membership fees, and property rentals. However, the incomes from "...membership fees paid in accordance with by-laws of an association, trade union, political party, and political movement" and incomes "...from church collections for liturgical acts and members' contributions in the case of registered churches and religious communities" must be reported but are exempt from the Corporate Income Tax. Tax-exempt status is also given to certain ecologically beneficial activities and incomes from lotteries organised according to special regulations, if more than 90% of the profit is used for public benefit purposes.

For tax payers in this category, incomes originating from "...activities corresponding to their mission, if the expenses are higher than the incomes and the relevant activities are well defined in statute, by-laws, establishment proposal or founding agreements of such a legal entity", they are not taxable. Similarly treated are incomes from "...donations and other forms of state or municipal subsidy, if these are provided in compliance with a special regulation"<sup>149</sup> as well as incomes from "interest from savings on a current bank account". Exempt from income tax are also incomes of foundations generated from its registered endowment, including rentals from real estates registered as a part of the endowment.

If an organisation conducts both exempt activities and activities on which it must pay tax (e.g. advertising or property rental activities), it is required to pay tax on the income of the non-exempt activities only to the extent that income exceeds the expenses incurred to produce it. In general, this corresponds to the notion of a taxable income, as defined for the purpose of the corporate income tax for any legal entity. However, the civil organisations in the above mentioned category must account separately for incomes and related expenditures in the case of any activity, which generates net income. This, of course, creates a source of dispute about the

accounting mechanisms that are required to regulate these arrangements. In other words, only for this category of legal entities the law stipulates that the account books must separate the tax-exempt incomes and related expenses from other taxable incomes and related expenses. By properly doing their accounting, civil organisations may avoid unnecessary problems during the randomly organised supervisory audits conducted by the taxation officers, on the expense of significantly higher cost of accounting in the case of greater organisations with many types of activities.

*(b) VAT*

Under the VAT law that went into effect May 1, 2004, the standard VAT rate is 19%, with a 5% rate applied to a few goods and services. NGOs are no longer exempt from VAT on supplies relating to their statutory purposes, as was formerly the case. Instead, VAT exemptions are limited to the following:

1. income from rent,
2. educational services provided by accredited universities and accredited vocational training facilities,
3. health services provided by accredited hospitals, medical care professionals, and institutions, and goods related to these services, and
4. social services provided according to special regulation by state or charitable private organisations.

VAT must be paid by anyone whose turnover exceeds 1 million Czech Koruna (about € 32 000) within a fiscal year (or in the current fiscal year after May 1, 2004). Also, any legal entity, including an NGO or attorney, who accepts any service from any VAT payer within the EU must report it within 15 days and pay VAT. The penalty for disobeying this requirement is severe: up to 10% of the turnover since the beginning of fiscal period.

The VAT generally applies to all transactions of those taxable persons whose total turnover during the three preceding calendar months was greater than 750 000 Czech Koruna (approx. € 24 000).

Transactions resulting from the main activities of legal entities not established for entrepreneurial purposes are exempt for VAT. Also any educational activities at educational organisations and provision of goods for educational purposes of these organisations are VAT exempt. Other transactions are liable to VAT.

<sup>148</sup> E.g. Czech Red Cross.

<sup>149</sup> Special regulations are other laws or government regulations issued for certain purposes, such as regulations under which associations may be given subsidies from the state budget.

Thus, if an association runs a hostel on its property and if that is its main activity according to its by-laws, the services provided in the hostel are not subject to the VAT. On the other hand, because civic organisations are not, in general, taxable persons under the VAT, they may not apply for reimbursement of the VAT paid to the providers of goods and services.

#### 4.2.3. Estonia

The exact requirements for applying for tax-exempt status and deadlines are indicated in the Government Order (of 11 June 1996). In order to qualify, an organisation's activities must be connected with support to charity, science, culture, education, sports, health care, social welfare, environment protection, or religious congregations in the public interest. The respective list of organisations is determined by local divisions of the Tax Department on a case-by-case basis each year. The final decision is made by the Government.

##### *(a) Income Tax/Others*

The Estonian Income Tax Act grants all non-profit associations and foundations tax exemption on entrance and membership fees as well as on interest paid by Estonian financial institutions. In the case of donations, only NPOs listed by the government have the right to tax exemption. This list is approved by the local tax authorities and Ministry of Finance. Only NPOs acting for public benefit in the fields of education, culture, science, environment, health, sports, social welfare, and religion are permitted to be placed on the list. The list is reviewed annually and consists of approximately 1000-1500 NPOs.

Excerpt from Income Tax Act, Passed 15 December 1999:

#### 11§

The Government of the Republic shall, by an order, approve a list of non-profit associations and foundations benefiting from income tax incentives (hereinafter the list). A legal person entered in the register of religious associations pursuant to the Churches and Congregations Act is deemed to be a non-profit association benefiting from income tax incentives.

A non-profit association or a foundation shall be entered in the list if the objective of the activities of the association or foundation is the charitable support of science, culture, education, sport, law enforcement, health care, social welfare, nature protection, or cultural autonomy of a national minority, or the support of religious associations or religious societies in the public interest, and if it meets the following requirements:

1. the association or foundation does not distribute its assets or income, grant material assistance or monetarily appraisable benefits to its founders, members, members of the management or controlling body, nor to a spouse, direct blood relative, sister, brother, descendant relative of a sister or brother, direct relative of a spouse, or sister or brother of a spouse of any of the above mentioned persons;
2. upon the dissolution of the association or foundation, the assets remaining after satisfying the claims of creditors are transferred to a non-profit association or foundation pursuing similar goals or to a legal person in public law, the state or a local government;
3. the administrative expenses of the association or foundation do not exceed the rate justified by the nature of its activities and the objectives specified in its articles of association;
4. the association or foundation does not pay higher remuneration to its employees or members of the management or controlling body than is paid for similar work in business.

A non-profit association or foundation is not included in the list if:

1. it is engaged in business as its principal activity or uses business income for purposes other than those specified in its articles of association;
2. it has tax arrears for which no payment schedule has been arranged;
3. it is undergoing dissolution or bankruptcy proceedings;
4. the documents submitted by the non-profit association or foundation for inclusion in the list do not meet the requirements established by legislation;
5. it has repeatedly failed to file reports or tax returns with the tax administrator during the terms and pursuant to the procedure prescribed by legislation.

The Government has the right to delete a non-profit association or foundation from the list if it becomes evident that the non-profit association or foundation does not meet the requirements or

- 1) if the non-profit association or foundation has failed to report changes made in its articles of association to the regional tax centre of the Tax and Customs Board within thirty days after an

entry concerning the change is made in the non-profit associations and foundations register, or

2) if the non-profit association or foundation derives income from activities not specified in its articles of association.

The Government of the Republic shall establish the procedure for compiling the list, the documents to be submitted for the inclusion of a non-profit association or foundation in the list, and the procedure for inclusion of persons in and exclusion of persons from the list.<sup>150</sup>

§ 51.

Income tax on expenses not related to business

A resident company shall pay income tax on expenses not related to business unless income tax has been paid on such expenses.

Expenses not related to business are:

1. entrance and membership fees paid to non-profit associations, unless participation in such associations is directly related to the business of the taxpayer;
2. payments concerning which the taxpayer does not have a source document in compliance with the requirements prescribed in legislation regulating accounting;
3. expenses incurred or payments made in order to purchase services not related to the business of the taxpayer;
4. expenses incurred or payments made in order to fulfil obligations not related to the business of the taxpayer.

A resident non-profit association, foundation or religious association which is a legal person shall pay income tax on expenses and payments and on expenses incurred in purchasing services or property not related to the activities specified in the person's articles of association (including business permitted by the articles of association).

A resident legal person shall pay income tax on the total amount of the loans and advance payments made in a calendar month to natural persons associated with the legal person, which exceeds 50 per cent of the total amount of the payments subject to social tax pursuant to the Social Tax Act and made by the taxpayer during the preceding calendar month. Loans and advance

payments refunded during the same calendar month by natural persons associated with the resident legal person, the cost of goods and services purchased out of the aforementioned advance payments during the same calendar month, and the size of salaries or service fees paid out of such advance payments shall be deducted from the total amount of the loans and advance payments specified in the previous sentence.<sup>151</sup>

(b) VAT

NPOs are granted tax exemption on import VAT if the goods are irrecoverable foreign aid<sup>152</sup>, and if they are purchased for the money received as irrecoverable foreign aid. In these cases, the prepaid VAT will be refunded. Additionally, churches and religious organisations have VAT exemption on the electricity they consume.

According to the Value Added Tax Act "enterprise" means the independent economic activity of a person in the course of which goods or services are transferred for a charge or without charge. A notary's and a bailiff's professional activities are also deemed to be enterprise. Employment under an employment contract, public service and activities aimed at achieving the objectives specified in the articles of association of a non-profit association or foundation are deemed not to be enterprise<sup>153</sup>.

Under the conditions and pursuant to the procedure established by the Minister of Finance, value added tax is not imposed on the import by state, rural municipality or city agencies, or non-profit associations or foundations benefiting from income tax incentives entered in the corresponding list approved by the Government of the Republic on the basis of the Income Tax Act, or legal persons entered in the Estonian Register of Churches, Congregations and Associations of Congregations of the Republic of goods exempt from excise duties received as state foreign aid or purchased with money received as state foreign aid or allocated from foreign loans taken by the state. For the purposes of this Act, state foreign aid is deemed to be the irrecoverable aid which is provided by an international organisation, foreign government, foreign local government or foreign non-governmental organisation and applied for, received or intermediated by a state, rural municipality or city agency, or non-profit association or foundation registered in Estonia

<sup>150</sup> Income Tax Act, § 11.

<sup>151</sup> Income Tax Act, § 51.

<sup>152</sup> Value Added Tax Act, [http://216.239.59.104/search?q=cache:vdTbMRjG\\_Z4J:www.legaltext.ee/text/en/X70060K1.htm](http://216.239.59.104/search?q=cache:vdTbMRjG_Z4J:www.legaltext.ee/text/en/X70060K1.htm)

<sup>153</sup> Value Added Tax Act, § 2.

which is entered in the list approved by the Government of the Republic.<sup>154</sup>

#### 4.2.4. Hungary

Tax exemptions.

All registered non-governmental organisations are entitled to claim benefits available under the corporate income tax law<sup>155</sup>. Groups that have been designated as Public Benefit Organisations (PBOs) by virtue of activities identified in Article 26 of the Law on PBOs are entitled to greater tax benefits than groups not so designated. And organisations that meet additional requirements may be designated "prominently public benefit organisations" eligible for additional benefits<sup>156</sup>. Article 6 of the Law on PBOs identifies a number of tax benefits:

1. exemption from company tax after its activity in keeping with the goal spelt out in its founding document;
2. preferential treatment concerning company tax after its business activities;
3. preferential treatment concerning local tax;
4. preferential treatment duties;
5. preferential treatment customs duties; and
6. other preferential treatment spelt out by legal norms

There is no tax on grants or membership dues. The law also makes the value of services provided by a PBO exempt from the recipient's personal income tax. In order to receive tax preferences however, PBOs must not have public debts.

Hungarian NGOs are exempt from paying corporate tax on all income except income derived from unrelated economic activities.

Hungary generally taxes an organisation's "entrepreneurial activities," defined as "economic activities aimed at or resulting in the acquisition of income or property"<sup>157</sup>. For a foundation or an association "the tax base ... is the pre-tax result of its entrepreneurial activities"<sup>158</sup>.

<sup>154</sup> Value Added Tax Act, § 5.

<sup>155</sup> Act LXXXI of 1996 on Corporate Tax and Dividend Tax, Article 20.

<sup>156</sup> Law on Public Benefit Organisations, Article 5.

<sup>157</sup> Act LXXXI of 1996 on Corporate Tax and Dividend Tax, §1.1.

<sup>158</sup> Act LXXXI of 1996 on Corporate Tax and Dividend Tax, § 9.

All income related to an NGO's statutory activities is deemed non-entrepreneurial and therefore exempt from corporate tax. This exemption includes an NGO's income from grants, donations, membership fees, and related economic activities. Income from unrelated economic activities, however, is subject to taxation as entrepreneurial.

#### (a) Income Tax/Others

Other taxes. Associations, foundations and public benefit companies are conditionally exempt from local building and land taxes, provided that they did not pay corporate income tax in the previous calendar year. Gifts and inheritances for public benefit purposes are exempt. However, if a PBO has either public debts or income from business activities that exceed the tax-exempt threshold, a portion of a donation may be taxable. Civil society organisations are exempt from paying local communal tourism and business taxes under the same conditions as real estate taxes. They are also exempt from certain fees for court and administrative proceedings, including registration, gift, and inheritances fees.

#### (b) VAT

The VAT rate is 25% although there is a preferential rate of 12% for certain a product. Non-governmental organisations are not automatically eligible for exemptions or reductions of the VAT. However, Act LXXIV of 1992 on Value-Added Tax (VAT Act) gives tax authorities the discretion to permit the refund of VAT to PBOs meeting certain conditions. Among these conditions is the requirement that the PBO not pay any personnel related expenses at all (including e.g., reimbursement of expenses related to volunteer work). (Section 71) Therefore in practice hardly any NGO may take advantage of this opportunity.

Generally, all organisations engaged in economic activities are subject to the VAT. The standard rate of VAT is 25%, with some goods and services taxed at 15% and very few at 5%.

Sales of certain products and services are exempt, including health care, social care, public radio and television broadcasting, accredited adult education, hostels and dormitories, and non-professional sports<sup>159</sup>.

Upon approval of the Tax Authority, an NGO can be exempt from paying any VAT, and can therefore reclaim VAT paid, if it operates on a fully voluntary basis, with no compensation paid to any members or officers, except that prominent public

<sup>159</sup> Act LXXIV/1992 §30 (1) and Schedule 2.

benefit social and health care NGOs may ask to reclaim VAT even if they have paid staffs<sup>160</sup>. Very few NGOs have been able to take advantage of this regulation.

#### 4.2.5. Latvia

The Law on Public Organisations (PO) and the Law on Non-Profit Organisations (NPO) do not identify specific tax benefits for NGOs, stating only that organisations must pay taxes in accordance with other laws. The Law on POs does provide certain exemptions for Open Public Foundations, which are organisations created to ensure that donated funds are used to address particular public needs. And generally, income from non-business activities is exempt from income tax for both POs and NPOs.

##### *(a) Income Tax/Others*

Incomes from economic activities that are directly related to the purposes of an organisation are not taxed, but all other income is subject to regular taxes under the Law on Enterprise Income Tax.

Other taxes. No exemption or reduction is available to POs and NPOs on the social tax of 35% of payroll (26% paid by the employer and 9% by the employee). Property tax relief is available to some POs under regulations of the Cabinet of Ministers as well as from local governments.

Tax benefits for contributors. Tax relief is available to individual and corporate donors of NGOs if the recipient organisation is on a list established by the Ministry of Finance. Entry onto this list requires an annual application and the submission of financial and other documents in accordance with regulations issued by the Cabinet of Ministers. The process can take several months, meaning that groups are often without the ability to receive tax-exempt donations for a period of time each year. For eligible groups, donors can deduct 85% of value of donations up to 20% of the donor's taxable income. Donations to three NGOs – the Latvian Culture Foundation, the Latvian Olympic Committee and the Latvian Children's Fund -- are eligible for a 90% deduction<sup>161</sup>. There are no exemptions related to gift or inheritance taxes and if the activities of an eligible organisation do not correspond to the purposes in its basic documents, tax benefits can be rescinded.

##### *(b) VAT*

<sup>160</sup> Act LXXIV/1992 §71 (9) and (10).

<sup>161</sup> Law on Enterprise Income Tax, Article 20.

VAT exemption or beneficial rating. The VAT rate is 18%. POs are liable for VAT when turnover goods and services exceed 10 000 Latvian Lat<sup>162</sup>. Projects financed by foreign donors are eligible for VAT exemption – each project must be approved by a committee that co-ordinates foreign aid<sup>163</sup>. In addition certain goods and services listed in Section 6 of the Law on VAT are exempt

#### 4.2.6. Lithuania

Generally, all types of organisations with sponsorship status under the Law on Charities and Sponsorship<sup>164</sup> do not pay taxes on charity and sponsorship grants or donations either given or received and are not subject to profit taxes for lawfully undertaken commercial activities.

The following income shall be exempt from tax:

- benefits by non-profit entities to their members paid out from the funds accumulated from membership fees, with the exception of benefits that are paid to individuals connected with those entities through employment relations or corresponding relations and that are not indicated in the other subparagraphs of this paragraph;
- income received as charity in accordance with the procedure prescribed by the Law of the Republic of Lithuania on Charity and Sponsorship (hereinafter referred to as the Law on Charity and Sponsorship);
- income received by inheritance, which is subject to tax under legal acts of the Republic of Lithuania on estate tax;
- scholarships to students and pupils of educational establishments financed from the funds of non-profit entities established in accordance with the procedure prescribed by laws of the Republic of Lithuania and foreign countries, provided the payment of scholarships is provided in legal acts regulating activities of those entities and a recipient of a scholarship is not a member, employee of the entity paying the scholarship or a member of the family of a member or employee of that entity, as well as provided that scholarship is not related to the work carried out or intended to be carried out, or the services provided or intended to be provided for those entities by a recipient of that scholarship;
- funds for the maintenance of the clergy, attendants at religious ceremonies and support

<sup>162</sup> Law on Value added tax, Article 3.

<sup>163</sup> Law on Value added tax, Article 7.

<sup>164</sup> Law on Charities and Sponsorship, Articles 7, 15.

staff (except for persons carrying out construction, repair and restoration works) of religious communities, denominations and centres (higher church authorities).<sup>165</sup>

When computing taxable profit, the following income shall be eliminated from non-operating revenue:

- sums received for charity and sponsorship regulated by the Republic of Lithuania Law on Charity and Sponsorship;

- income of all religious communities and centres (administrative institutions of higher level): donations, income from the sale of property received as charity, provided said income is assigned for building, renovation and reconstruction of the house of worship, also for charity, culture and education.<sup>166</sup>

The amount of the total taxable profit shall be reduced by the tax-exempt amounts assigned for charity and sponsorship and payments from profit on which the natural person's income tax is levied. Taxable profit which is profit subject to taxation shall be established upon deducting the above amounts.

If the enterprise shows a loss (negative results) during the taxable year, it shall be permitted to carry the losses over to the following taxable year. The carry-over of the taxable year losses shall be permitted for the maximum period of five taxable years measured from the year following the formation of losses. No carry-over of losses shall be permitted upon the expiry of the five-year period.

Taxable profit of legal persons engaged in non-commercial activity shall be computed as difference between the income from paid services and works and their performance costs.

In order to benefit from tax exemptions, NGOs are supposed to have special status at the Centre of Registers. This, however, will be granted largely automatically at the request of the NGO concerned. The status can be cancelled for certain types of misbehaviour (such as money laundering or tax fraud) or at the request of NGO. Such status for newly established NGOs will be granted on registration if the NGO requires it, and in the case of existing NGOs the status will be granted virtually on request.

<sup>165</sup> The Law on Income Tax of Individuals, <http://www3.lrs.lt/cgi-bin/preps2?Condition1=227120&Condition2=>

<sup>166</sup> Law on Taxes on Profits of Legal Persons, <http://www3.lrs.lt/cgi-bin/preps2?Condition1=145266&Condition2=>

Associations and charity/support funds are exempted from the real estate tax, provided that the property in question is used for their activities in the public interest and not for business.

If NGOs manage, use or dispose of state or municipal property, their activities will be audited in accordance with the Act on Internal Control and Internal Audit (10-12-2002 No IX-1253)<sup>167</sup>.

*(a) Income Tax/Others*

All non-profits are allowed to engage in mission-related economic activities, and will not be liable to profit tax. Non-profits paying income tax from economic activities above 1 million Lithuanian Litas per annum (approx. € 290.000).

*(b) VAT*

The Law on Value Added Tax (LVAT) states that services provided by non-profit organisations in the areas of social services rendered to children or the elderly, educational and training services, certain non-commercial cultural and sports services shall be exempt from VAT<sup>168</sup>. (Articles 20-23)

Services supplied to their members by political parties, trade unions and other non-profit making legal persons set up and operating on the membership basis shall be exempt from VAT provided that the services conform to the aims of the legal person determined in the by-laws/regulations thereof and no consideration is obtained for the above services in addition to membership fees. The provisions of this paragraph shall be applied to the activities of non-profit making legal persons only where the payment of members' fee may be linked to the specific service supplied for the benefit of a specific member<sup>169</sup>.

In addition, an organisation need not register as a taxable person if the annual turnover of its commercial activities is less than 100.000 Lithuanian Litas (€ 29.000). Non-commercial or charitable activities are not included.

#### 4.2.7. Malta

Taxation of limited liability companies. General information.

<sup>167</sup> Act on Internal Control and Internal Audit (Lithuanian text) - <http://www3.lrs.lt/cgi-bin/preps2?Condition1=220311&Condition2=>

<sup>168</sup> Law on Value added tax, Articles 20-23.

<sup>169</sup> Law on Value added tax, Article 24.



The company rate of tax is a flat-rate 35% on gross income less allowable deductions.

Malta operates the 'full imputation' system of taxation so that any tax paid by the company is imputed to the shareholder in the event of a dividend distribution. The tax withheld by the company from the dividend it distributes is, therefore, no more than a payment on account of the shareholder's own liability.

A company is required to file a tax return of its income for the accounting period which is a printed form issued by the tax authorities. This return contains a breakdown of the sources of income; a computation of the company's income liable to tax; a list of shareholders; details relative to dividends distributed and of the movement of reserves; a breakdown of the taxed profits available for distribution; a list of directors and the remuneration, fees etc. paid to them; and a reconciliation of the amount of wages and salaries shown on the accounts with the amounts declared to the tax authorities.

The time limit for the filing of tax returns supported by audited accounts is June 30 of the year of assessment. When the accounting date proceeds December 31, the return should be filed within 6 months after the accounting date.

Heavy fiscal penalties are imposed in case of non-compliance. These penalties are enforceable through administrative action by the tax authorities without the need of court intervention.

Taxpayers:

The 3 principal classes of taxpayers recognized by Law are:

1. Individuals (i.e. natural persons);
2. Limited liability companies;
3. any company incorporated under the Laws of Malta, including a partnership en commandite the capital of which is divided into shares;
4. any body of persons, incorporated or registered outside Malta, and similar in nature to (a).
5. any cooperative society duly registered under the appropriate laws in force in Malta.);
6. Ecclesiastical entities.

Partnerships are treated as conduits for tax purposes which mean that partnership profits are taxed in the hands of the individual partners unless they are registered as partnerships en commandite with capital divided into shares. Joint

Ventures are treated as partnerships for all purposes of tax law.

(a) VAT

VAT was reintroduced as from 1<sup>st</sup> January, 1999, at a rate of 15% with a rate of 5% applicable to tourist accommodation. Certain goods are VAT exempt.

Allowable deductions are numerous and include the following

Business expenses. They must be incurred during the year proceeding the year of assessment and must be wholly and exclusively incurred in the production of income. Any amounts in excess of normal commercial rates are disallowed in an assessment. Business expenses incurred outside Malta that are allowed as a deduction include reasonable head office and management expenses.

Rental costs. Rental costs are normally fully tax deductible.

Devaluation: The amounts charged by a company in its accounts are not immediately allowable as a deduction. They must be replaced, in most cases, by the statutory allowances at the prescribed rates. 3 kinds of allowances are available:

1. The initial allowance is fixed at 20% for plant and machinery and 10% for industrial buildings and structures;
2. wear-and-tear allowance which is calculated by the reducing-balance method except in the case of certain categories of ships where the straight-line method may be used. When assets are transferred from one owner to another the reduced-balance value in the former owner's hands is carried forward;
3. balancing allowance which comes into operation when an asset that has been given an initial allowance and a wear-and-tear allowance over its working life is finally sold, transferred, destroyed or, otherwise, put out of use. In this case a computation is necessary to determine whether the value upon disposal (if any) is equivalent to the book written-down value. If the disposal value is less, the deficiency is made good by the grant of a further allowance in the same year. If the disposal value is higher, the balance is brought back to charge also in the same year.

Employees' wages. The employer must furnish the tax authorities annually with the prescribed details regarding the amounts of emoluments paid (whether to foreign or to Maltese employees) for the deduction to be granted.

Social security contributions. The social security payments that a company makes on behalf of its employees are fully deductible.

Interest. Any sum payable by way of interest on any borrowed money is an allowable deduction if the authorities are satisfied that the interest is payable on capital employed in acquiring income. Court interpretation has widened the meaning to include cases where the interest is due on the unpaid purchase price of commodities (e.g. in hire-purchase cases).

Royalties and service fees. Although these are an allowable deduction, payments to foreign affiliates that are higher than open-market payments may not be allowed. When the royalty payments are of a capital nature, the expenditure is not wholly allowable in the year in which incurred but is spread over a reasonable number of years according to its expected life-span. Whenever a royalty has been allowed as a deduction (irrespective of whether the deduction was of a capital or revenue nature), any sums receivable from the sale of any of the related patents or patents rights are taxable in the year in which received.

Service fees payable to non-residents must result from genuine business contracts and be of benefit to the local enterprise. Payment may be subject to deduction at source but, in such cases, the recipient usually asks for a proper assessment of tax due, claiming a deduction for expenses and the benefit of the lower rates of tax. Excessive claims for service fees are disallowed.

Charitable contributions. The deductibility of charitable and philanthropic contributions is very restricted and a donation will qualify as a deduction only if the authorities are satisfied that the expenditure has a promotional value.

Research and development. A deduction is available for any expenditure on scientific research. If the expenditure relates to items that qualify for depreciation in the normal way, the rules relating to wear and tear apply. Other expenses that do not so qualify are written off over 6 years.

Legal and accountancy fees. These fees paid in the normal course of the trade or businesses are fully deductible. Fees may not be deductible if they are connected with the setting up of or structural changes in the company, the purchase of capital items (in this case, however, it may be possible to capitalise the expense) or the preparation and defence of tax cases and appeals.

Losses. Any loss incurred may be set off against all other gains or profits made in the same year. Any unabsorbed balance is carried forward

indefinitely until absorbed or until the company is dissolved in which case it is lost. No deduction is allowed for any loss incurred outside Malta that, had it been a profit and had it been retained outside Malta, it would not have been subject to Malta tax.

No depletion allowances are permissible. In fact, the Companies Act, 1995, specifically prohibits loss, diminution, exhaustion or withdrawal of capital. Furthermore, no allowance is made for any sort of reserve or provision for future expenses.

Group Taxation. A company is deemed to be a subsidiary of another company (and, therefore, in the same group of companies) if the parent company owns more than 50% of the ordinary share capital and voting rights of the subsidiary and is entitled to more than 50% of the profits available for distribution.

Malta's tax legislation allows a company to surrender tax losses that may be set off against the tax profits of another company in the same group for the corresponding year of assessment. A company that has claimed losses from a group company may carry the losses forward and utilize them for set-off against future profits.

#### Tax accounting for companies

The 1994 amendments to Malta's tax legislation introduced the requirement that a Maltese company's taxed income is divided into the 'Foreign Income Account' and the 'Maltese Taxed Account'. The Foreign Income Account comprises profits that originate from foreign source income such as profits arising from royalties, dividends, capital gains, interest, rent and other income derived from investments situated outside Malta. The Maltese Taxed Account contains the balance of the taxed income that has not been allocated to the Foreign Income Account.

#### 4.2.8. Poland

##### *(a) Income Tax/Others*

Tax on economic activities. Income from business activity is tax exempt if used for public benefit purposes. The Law on PBOs also creates the possibility for NGOs to conduct payable statutory activity of public benefit as long as the fee does not exceed actual costs and the organisations meet salary limitations set out in the law. Earlier law restricted NGOs from charging fees for their

services unless conducted as taxable economic activity<sup>170</sup>.

Apart from various tax exemptions, public benefit organisations have been given the possibility to collect 1% of individual income tax. Every citizen is given the right to donate 1% of his or her income tax to a selected NGO. That provides NGOs with additional source of financing.

*(b) VAT*

VAT Exemptions relate to goods and services, not organisations and include services in the field of scientific, technical, and economic information, research and development, education, health services and social welfare. A preferential rate of 7% (rather than the regular 22%) is available for certain products.

Article 33 of the Law on Associations identifies the sources of income for associations: member contributions, donations, legacies, inheritances, the proceeds of its activities, income from its property, and public support. The resources of simple associations are limited to member contributions.

The Law on Foundations states that foundations assets may include money, securities, and the movable property and real estate donated to the foundation (Article 3), but does not limit the resources on which it may draw.

Tax benefits from contributors

Contributors to associations and foundations may deduct donations up to 10% of taxes due for charitable, religious, environmental, fire protection and housing investment activities and up to 15% for science, education, culture, sports, rehabilitation, health and social welfare activities<sup>171</sup>.

The Law on PBOs provides additional support for groups with PBO status. Under Article 27, taxpayers may designate 1% of personal income tax due to groups that have PBO status.

Polish law does not limit the ability of foreign organisations to support Polish non-governmental organisations.

4.2.9. Slovakia

On January 1, 2004, a new Law on Income Tax came into force. Under the new law, the income of

NGOs from donations and inheritance is generally not taxable<sup>172</sup>.

Further, associations, foundations, NI funds, and NPOs, as well as other NGOs, are generally exempt from taxation on income from statutory activities<sup>173</sup>. Associations are expressly exempt from the income tax on income from regular membership fees<sup>174</sup>.

The non-statutory economic activities of NGOs are taxed at the general income tax rate of 19%<sup>175</sup>, except that incomes from selling NGO property are tax exempt below 300 000 Slovak Koruna.

Associations, foundations, NI funds, and NPOs are also exempt from the tax on inheritance<sup>176</sup>.

The same NGOs are exempt from tax on donations, with regard to grants and donations, but only if their statutory activities consist of work in health care, humanitarian assistance, provision of social care, operation of schools and educational activities, science, physical fitness and sports for children and youth, or protection of the environment<sup>177</sup>.

*(a) Income Tax/Others*

Income Tax Law enables every natural or legal person resident in Slovakia to declare to the financial office their wish to allocate up to 2% of their income tax directly to one (in the case of a natural person) or more (in the case of a legal person) NGOs of their choice. Both donee and donor must have no outstanding debts relating to tax and dues payments, and the NGO must appear on a public list of those eligible to accept the donations. In addition, the recipient must use these assets to develop and protect intellectual values and human rights; protect and develop the environment; support and protect health and education; support sporting activities of children, youth, and handicapped citizens; provide social services; or preserve natural and cultural values<sup>178</sup>.

The Act No. 366/1999, on Income Taxes in the text of later amendments (the latest by the Act No. 568/2001), regulates all income tax issues of natural and legal persons, including NPOs.

<sup>172</sup> Law on Income Tax, Article 12 (1a).

<sup>173</sup> Law on Income Tax, Article 13(1a).

<sup>174</sup> Law on Income Tax, Article 13(2b).

<sup>175</sup> Law on Income Tax, Articles 15 and 13(2e).

<sup>176</sup> Law on Donations, Article 2(3).

<sup>177</sup> Law on Donations, Article 5(3).

<sup>178</sup> Income Tax Law, Article 50(5).

<sup>170</sup> Law on Public Benefit Organizations, Article 6-10.

<sup>171</sup> Law on Personal Income Tax, Article 26(1) (9).

According to § 4 item m) all scholarships and grants provided by foundations and associations, including non-monetary support and any support or service provided by a Non-Profit Organisation with public benefit status are exempt from income tax of natural persons.

According to article 18(4), the incomes from profit-making activities of organisations not established for entrepreneurial purposes (i.e. all NPOs) are subject to corporate income tax. This explicitly includes incomes from selling or renting the property, as well as from advertisements, and from membership fees, which are taxed by a special tax rate. In the case of Associations, the membership fees are exempt from corporate income tax according to article 19(2) item a). Exempt are also incomes of universities and other schools generated from their statutory or related activities.

The subjects explicitly dealt with on the above basis with respect to the corporate income tax are interest associations of persons, professional chambers, Associations, trade unions, political parties and political movements, registered churches and religious congregations, Non-Profit Organisation with public benefit status, and organisations, whose not-for-profit feature can be derived from a special law or regulation, according to which they were established: foundations, unions of apartment owners, territorial corporations, governmental organisations, state funds, Not-Investment Funds, and several special state organisations.

According the article 48, the taxpayers may in a given term submit to its revenue officer or to the employer, who pays the income tax on behalf of the taxpayer a proclamation, in which the taxpayer declares, that a sum not less then 20 Slovak Koruna and not exceeding 1% of the paid tax should be assigned directly to an correctly identified NPO (One Percent tax Assignment Provision). The list of NPO, to which this tax assignment is possible includes Associations, Foundations, No-Investment Funds, Non-Profit Organisations with public benefit status, establishments of churches and religious congregations, organisations with foreign element (international organisations or organisations of NPO type with a seat abroad), as well as the Slovak Red Cross. The assignment is possible to the NPO, if its statutory activities include one of the following: protection and development of spiritual values, protection of human rights, protection and creation of environment, protection and promotion of health and education, support of sport with children, youth and handicapped people, provision of social assistance, preservation of natural and cultural values.

According to article 20(4) both natural persons and legal entities, but not the above enumerated

NPOs, may deduct from the tax base the value of monetary gifts and donations, as well as in-kind services provided to municipalities and other legal entities with a seat on the territory of the Slovak Republic, if the donation or contribution has been given during the taxation period and if the value of the donation is at least 2 000 Slovak Koruna. In total, this deduction may not exceed 2 percent of the tax base. Deductible are only donations for financing of science and learning, culture, including reconstruction of cultural monuments, schools, fire squads, support of youth, security of population, protection of animals, and for social, health, ecological, humanitarian, charitable purposes, to support religious activities of registered churches and religious congregations, support of sport and physical fitness. Deductible are also contributions to the State Fund for Development of Dwellings supporting construction of rented apartments.

*(b) VAT*

The standard VAT rate is 20%, with a reduced rate of 14% applicable to certain services. (Article 10, VAT Law). Transactions involving educational and scientific services and goods, health care services and goods, and social care services are exempt from VAT<sup>179</sup>.

An NGO, like any other legal entity, is required to register as a VAT taxpayer if its gross turnover for the past three calendar months exceeded 750 000 Slovak Koruna (approx.). Legal entities not meeting this threshold may apply to the Finance Administration to enter the VAT system and thereby be able to recover input VAT, but this decision is at the discretion of the Finance Administration<sup>180</sup>.

4.2.10. Slovenia

Associations, foundations, and institutes that are established for ecological, humanitarian, benevolent or other not-for-profit purposes are exempted from profit tax on earnings generated from their not-for-profit activities<sup>181</sup>. This includes donations, grants, membership dues, and income from statutory activities provided they are not conducted with the intent of generating a profit. An NGO must pay profit tax on all earnings from economic activities, even if they are related to the organisation's statutory purposes. Certain goods and services supplied by NGOs are VAT exempt.

<sup>179</sup> Value added tax Law, Articles 31-33.

<sup>180</sup> Value added tax Law, Article 4(4).

<sup>181</sup> Corporate Profit Tax Law, Article 6.

Existing tax legislation does not encourage the development of the not-for-profit sector. Tax exemptions and tax deductible contributions are permitted only in limited instances.

The existing provisions regarding exemptions and deductions are provided primarily by: the Law on Income Tax (Official Gazette of RS, no. 71/93); the Law on Sales Tax (Official Gazette of RS, nos. 4/92 and 71/93), which, for the most part, corresponds to other countries' laws on value added tax; and the Law on Citizens' Taxes (Official Gazette of RS, nos. 36/88, 48/90 and 7/93).

Foundations must conduct their financial management in accordance with the regulations which pertain to public establishments (as opposed to the regulations pertaining to commercial companies). Pursuant to Article 30 of the Law on Foundations, the administration must submit a report on its work and financial management during the past year to the competent body by the end of March each year. The competent body may request an audit of a foundation.

*(a) Income Tax*

Article 9 of the Law on Income Tax provides for tax deductions. The income tax base is reduced by the amount of voluntary contributions, or the value of gifts, for humanitarian, cultural, educational, scientific, recreational, ecological and religious purposes. In order to be deductible, these donations must flow to entities, that, pursuant to special regulations, are organised to perform such activities or are organisations serving physically disabled persons. However, pursuant to paragraph three of Article 9, the total amount of allowable deductions (including charitable donations and donations for the purchase of a home or securities) can be no more than 3% of income.

*(b) VAT*

**Exemptions**

Foreign donations are exempt from VAT. In addition, five categories of goods and services are exempt from VAT:

A) Activities of public interest, including the following:

1. hospital and medical care and directly related activities carried out by the public health service or its concessionaires;
2. social services and directly related goods provided by public social institutions, their concessionaires, or not-for-profit

organisations such as charities and organisations for self-help for handicapped people;

3. goods and services closely related to child and youth care provided by public institutions, their concessionaires, or charitable organisations;
4. vocational training and nursery, school, and university education, including closely related goods and services, provided by public institutions or others;
5. goods and services provided by not-for-profit organisations with political, trade union, religious, patriotic, philosophical, humanitarian, or civil aims, in return for a membership fee, unless such exemption would distort competition;
6. sport or physical education activities provided by not-for-profit organisations;
7. cultural activities and related goods provided by public institutions and other cultural establishments recognized by public authorities;
8. the supply goods and services in connection with occasional fundraising events on behalf of organisations that perform exempt (above-mentioned) activities, unless such exemption would distort competition.

The supply of all above-mentioned goods and services by other organisations is exempt from VAT under the following conditions:

1. the purpose is not to obtain profit, and any profit that results will be allocated to providing the goods and services, or improving their provision, and not distributed;
2. the organisation is managed mostly on a voluntary basis by persons with no direct or indirect interest in the results of these activities;
3. the organisation charges prices accredited by the public authorities, or, if approval is not needed, charges prices no higher than this and no lower than prices charged by taxable persons; and
4. it is not likely that the exemption would distort competition, such as by giving taxable persons a less favourable position in the market.
5. The supply of goods or services is not exempt if:

6. it is not essential to the transaction exempted, or if the exempted activities can be provided without the goods or services; or
7. the basic purpose is to obtain additional income in direct competition with taxable entities liable for VAT.

B) Other activities: insurance and reinsurance, immovable properties except newly constructed immovable property, letting of residential houses and apartments, financial services, tax stamps and similar stamps, betting, gambling, and lotteries.

C) Import of certain type of goods, including the following:

1. certain goods, donated free of charge and without any commercial intention to public authorities or to charitable or philanthropic organisations, for free distribution to the needy;
2. certain goods, imported by public authorities or by charitable or philanthropic organisations, for free distribution to victims of disasters or wars or to be made available to such victims while remaining the property of the importing organisations; and
3. certain goods for educating, training, or employing the handicapped, if they were donated free of charge and with no commercial intention and if they were imported directly by organisation that will use them.

D) Export of goods and international transport.

E) Special exemptions linked to the traffic of international goods.

Taxpayers' donations for humanitarian, cultural, scientific, health, educational, sport, and religious purposes, paid to organisations established for performing these activities, are not subject to VAT except when the amounts represent payment for goods or services.

## 5. Gambling sector

### 5.1. Gambling Sector System

Bearing in mind that gambling sector provides some kind of fairly detailed regulation concerning the fund distributing rules, criteria for beneficiaries, the amount of distributed funds and the existence of monitoring and special taxation rules, some overview of the sector was made.

## 5.2. Country Information

### 5.2.1. Cyprus

The Cyprus government Lottery was established in 1958.

Of total sales, 41% is returned to the Government for economic and cultural development purposes<sup>182</sup>.

Sales FY 1997	Cyprus Pound 56.6 million
Sales FY 1998	Cyprus Pound 64.2 million
Sales FY 2001	Cyprus Pound 57.2 million
Sales FY 2002	Cyprus Pound 62.7 million
Beneficiaries	Arts and culture - Education - Other Sports

Cyprus Government Lottery, Ministry of Finance, Nicosia

Phone: +357 2 803 522

Fax: +357 2 677 510

E-mail: [gpanteli@mof.gov.cy](mailto:gpanteli@mof.gov.cy)

### 5.2.2. Czech Republic

The joint-stock company SAZKA<sup>183</sup> is the largest operator of betting games, number and instant lotteries in the territory of the Czech Republic. SAZKA, a.s. supports public goods, primarily in the area of Czech sports and physical education. Nine sport-oriented civic associations comprise the company's shareholders: Czech Sports Association, Czech Sokol Organisation, Czech Association Sport for All, Autoclub of The Czech Republic, Association of Technical Sports and Activities of the Czech Republic, Czech Olympic Committee, Czech Shooting Federation, Association of Sport Unions and Clubs of the Czech Republic, Orel.

Key financial figures (CZK '000)<sup>184</sup>:

2000 – 1999

<sup>182</sup> <http://www.lotteryinsider.com/lottery/cyprus.htm>

<sup>183</sup> Law on lottery: [http://www.sazka.cz/o\\_nas/zakony/zakon.php3](http://www.sazka.cz/o_nas/zakony/zakon.php3)

<sup>184</sup> [https://www.european-lotteries.org/data/member\\_12/Czech\\_rep\\_Sazka.pdf](https://www.european-lotteries.org/data/member_12/Czech_rep_Sazka.pdf)

Total Revenues	15 630 056	12 265 109
Revenues from betting games, number and instant lotteries	6 947 969	5 991 103
Total use of proceeds in the public benefit	901 000	860 000

Beneficiaries:

Clubs and Organisations of Czech sports and physical educations, Health – Care Aid Projects,

Social Projects, Cultural Projects

5.2.3. Estonia

There is a national regional lottery whose profits are dedicated totally or partly to culture. The Estonian National Lottery was founded with aim to ensure a professional administration of the lottery and with charitable mission to earn supplementary financial resources in order to support some activity sectors in Estonia.

All winnings of Eesti Loto, are tax free.

Main indicators<sup>185</sup>

Economic indicators	2001	2002	2003	2004
Share capital	3.5	3.5	3.5	3.5
Turnover of selling	138.3	158.6	174.1	212.8
Paid winnings	69.7	79.6	87.5	107.2
Gambling tax	16.5	18.2	19.9	24.2
Net profit	10.2	13.9	14.2	18.9

Figures in millions of Kroons

Organisations promoting folk culture, arts, physical fitness, and sport receive their funding from the Cultural Endowment of Estonia. Proceeds

<sup>185</sup> <http://www.eestiloto.ee/company.php>

supporting these organisations come from the excise tax on alcoholic beverages and tobacco products, as well as from gambling taxes obtained pursuant to the Alcohol Excise Act, the Tobacco Excise Act, and the Gambling Tax Act.

Gambling Act

The right to organise gambling games is given to Estonian Republic but state can delegate this right by issuing operating permits.

The organiser of gambling games must register winnings exceeding 5000 Estonian Kroons; issue winnings as set in regulations and by winner's request, issue a certificate confirming the amount of the winning; solve the gamblers' complaints and preserve the secrecy of gamblers' winnings and losses.

Organising gambling games is permitted only to the owners of a license and an operating permit giving the right to organise gambling games in a specific location. Operating permit can be applied only by a public limited company or by a private limited company which share capital is at least 2 millions Estonian Kroons. The company cannot have other fields of activities besides organising gambling games; among the shareholders, partners, members of the board and employees cannot be persons serving punishment for intentionally committed criminal offence. Licenses are issued by a committee appointed by the Government, operating permits are issued by a government agency appointed by the Government.

Organising gambling games is supervised by police officials and special supervisory officials who have the right to issue precepts for organisers of gambling games. The officials have the right to control gambling locations and the documentation concerning the economic activities of the organisers of gambling games. A gambling location can be closed if prescribed by a precept.

Gambling Tax Act<sup>186</sup>

Gambling Tax is imposed on income received from organising games of skill, totalisator or betting; income received from gambling tables, gambling machines and lotteries. Tax is paid by the organisers of gambling games and lotteries.

<sup>186</sup> <http://www.legaltext.ee/tekstid/x/en/x30077.htm>

The taxable period for organising a game of chance is one calendar month and the tax is paid by acquiring a revenue stamp. Revenue stamp is a sticker proving the payment of the tax and is placed on a gambling table or a gambling machine. The monthly sum of Gambling Tax is 5000 Estonian Kroons for one gambling machine and 15 000 Estonian Kroons for one gambling table. Gambling Tax is contributed to the state budget.

From the Gambling Tax:

46% is received by Cultural Endowment;

3.9% is received by Estonian Red Cross;

12.7% is given to support programs and events meant for children elderly people, families and disabled people;

37.4% is used for supporting regional programs meant for children, families, elderly people and disabled people. 32% of the within-named sum is given to support scientific and educational projects and projects for children and youth, 22% to support the preparation for Olympic Games, 10% to support other sports projects, 32% to support projects for families, medicine, social work, elderly people and disabled people, and 4% to support cultural projects.

Sponsorship distributor – Gambling Tax Board

Licenses and permits

Application for the gambling activity license

Gambling activity license is a document which grants the owner of the license the right to organise gambling. The activity license is issued for a 10 year period to separately organise games of chance, games of skill, betting or totalisator.

Activity license applicant

Business associations or sole proprietors can apply for activity licenses for games of skill.

Activity licenses for games of chance, betting and totalisator can be applied for by public limited companies and limited liability companies with share capital of divided nominal shares, whose:

1) share capital or holding is at least 2 million Kroons;

2) only area of activity is organising gambling;

3) shareholders, associates, members of the management board, also persons employed at gambling spots who are directly involved in conducting or controlling gambling, are not undergoing punishment for premeditated crime or whose punishment has not been retired or who have belonged to bodies of the business association that have organised gambling without activity licenses or operating permits or if the activity license has been declared invalid based on one of the following reasons:

a) false information has been consciously submitted in the application for the activity license;

b) person whom the activity license was issued to has opened spots for games of chance, betting or totalisator without the operating permit;

c) gambling operator has infringed the liabilities stated in §§ 8 and 9 of the Gambling Act for the second time in five years;

d) gambling operator has not in due time acted according to the prescriptions of police officials or gambling supervision officials and the gambling operator has not disputed the prescription in court and the court has not suspended the execution of the prescription.

State fees:

Before applying for the activity license, state fees must be paid as follows:

state fee for organising game of chance, betting or totalisator is 50 000 Estonian Kroons (according to § 84 section 1 of the State Fees Act);

After a decision has been made regarding the issuing of the activity license but prior to the issuing of the activity license, state fees must be paid as follows:

state fee for organising game of chance, betting or totalisator is 700 000 Estonian Kroons (according to § 84 section 1 of the State Fees Act);

Application for the gambling operating permit

Operating permit for gambling organisation is a document with validity period of up to five years, which gives the person with the activity license for games of chance, betting and totalisator, the right to organise the games of chance, betting and totalisator as stated on the operation permit on the address of the gambling spot stated on the permit. With regards to the games of skill, the



permit is replaced by a written consent of a municipal or city government official.

Application for an operating permit for a game of chance, betting or a totalisator

Persons with an activity license for games of chance, betting or totalisator can apply for an operating permit for organising games of chance, betting or totaliser at a specific location.

State fees:

Before applying for the operating permit, the applicant must pay the state fees.

A state fee of 50 000 Estonian Kroons shall be paid upon application for an operating permit for a game of chance, betting or a totalisator (§ 85 of the State Fees Act).

Gambling tax Base

Gambling tax is imposed on:

1) amounts received as stakes in games of skill, totalisator or betting provided for in the Gambling Act;

2) gambling tables and gambling machines used for organising games of chance provided for in the Gambling Act;

3) amounts received as stakes in games of chance which are not organised on gambling tables or gambling machines;

4) amounts received from the sale of lottery tickets when lotteries provided for in the Lotteries Act are organised.

Tax is paid by authorised operators. Tax period is one calendar month for lotteries, and games of chance or skill. The taxable period for organising betting, a totalisator or a game of chance which is not organised using a gambling table or a gambling machine shall be the period during which the betting, totalisator or game of chance is organised, starting on the first day set out in the rules of the game for placing stakes and ending on the last day set out in the rules of the game for awarding prizes. Tax declaration (even if no taxable income) and tax settlement are due by 15th day of calendar month following tax period.

Tax Rate

The rate for organising games of chance is EEK 7 000 per one gambling machine and EEK 20 000 per one gambling table. The rate for betting is 5 percent; for totalisator 5 percent; for a game of skill 18 percent; 18 percent for a game of chance which is not organised on a gambling table or a gambling machine; 18 percent for a passive lottery; 18 percent for an instant lottery and 10 percent for a numbers lottery.

Tax Allocation

Gambling tax is paid into the state budget. Of the amount of gambling tax paid into the state budget: 46 percent shall be transferred to the Cultural Endowment of Estonia by the twenty-fifth day of the month following the receipt of the amount and 63 percent of the specified amount shall be allocated for cultural buildings; 3.9 percent shall be allocated to the Estonian Red Cross; 12.7 percent shall be allocated for supporting investments in regional programmes related to children, young people, families, elderly persons and disabled persons; 37.4 percent shall be allocated for supporting projects related to sports, science, education, children, young people, families, medicine, welfare, elderly persons and disabled persons; 32 percent of the latter shall be allocated for supporting projects related to science, education, children and young people, 22 per cent for supporting Olympic preparation projects, 10 percent for supporting other sports projects, 32 percent for supporting projects related to families, medicine, welfare, elderly persons and disabled persons and 4 percent for supporting cultural projects. Revenue from lotteries accrues to the state budget and for targeted use (mainly cultural and communal subsidies). Revenue from lotteries operated to finance specific programs or events shall be used only for those purposes. The tax is administered by the Estonian Tax and Customs Board.

5.2.4. Hungary

Szerencsejáték Rt. is the largest gambling service provider in Hungary. It has an exclusive right to sell number draw games, sports bets and prize draw tickets in the whole territory of the country and, through its investments; it also has interests in four Hungarian casinos.

Szerencsejáték Rt. - national lottery company was formed in 1991. Since its foundation the Hungarian state has been its 100% owner, while the owner's rights are exercised by the Hungarian Privatization and Asset Management Company. Since 1991, professional supervision has been exercised over gambling by the State Gambling

Supervision, and Institution of the Ministry of Finance.

Statistical information<sup>187</sup>:

Year of establishment: 1991

Total sales for 2003: 124 345 000 000 Hungarian forint (€ 474 200 000)

Total sales for 2002: 102 911 000 000 Hungarian forint (€ 436 200 000)

Total sales for 2001: 74 120 000 000 Hungarian forint (€ 305 020 117)

Total sales for 2000: 64 526 113 000 Hungarian forint (€ 234 549 911)

Total Revenues to State/Beneficiaries for 2003: 58 430 000 000 (€ 222 845 000)

Total Revenues to State/Beneficiaries for 2002: 42 944 000 000 (€ 181 966 000)

Total Revenues to State/Beneficiaries for 2001: 21 893 000 000 Hungarian forint (€ 89 479 763)

Total Revenues to State/Beneficiaries for 2000: 18 503 000 000 Hungarian forint (€ 75 627 737)

Contribution to Financing Community Objectives

Together with general taxes and dividend, in total Szerencsejáték Rt. has been one of the largest Hungarian taxpayers for years. Of its contributions, each year HUF billions are allocated specially to raising young sports generations, financing sports and leisure activities and supporting the Hungarian Olympic movement. The majority of the contributions are used for welfare and cultural purposes in the society through the large distribution systems of the budget. Apart from the direct budgetary contributions, the lottery company is also involved in significantly smaller but important sponsoring activities. Such activities included, for example, in 2001 contribution to the reconstruction of small villages in Szatmár suffering from floods, in the form of providing IT equipment for local institutions, or regularly supporting children's health institutions.

Tax status:

<sup>187</sup> <http://www.lotteryinsider.com/lottery/hungary.htm>, [https://www.european-lotteries.org/data/member\\_28/Scerencejatek2004.pdf](https://www.european-lotteries.org/data/member_28/Scerencejatek2004.pdf) and <http://net.szerencsejatek.hu/index.php?action=english#>

Tax based on: in terms of monthly earnings by those organising games of chance, including operators of gambling machines;

Rate: in per cent or fixed monthly amount

Gambling board:

The duties of the Gaming Board, in favour of the gambling monopoly of the state and of ensuring the state revenue coming from it, are - based on the applications for organising gambling subject to a licence, defined in the law - the licensing of these games, the control of keeping the contents of the licence and the provisions of the law and registering gambling and other games, specially determined by the law.

The Gaming Board defines general game conditions in connection with the managing of each game and detailed rules in connection with the control.

The Gaming Board takes action against those who do illegal gambling-organising activity and thus the Gaming Board:

- a) can apply supervision sanction steps
- b) can conduct a procedure of offence, can impose a fine of offence
- c) can initiate the starting of a procedure of offence or a criminal procedure<sup>188</sup>

The duties of the Gaming Board, in favour of the gambling monopoly of the state and of ensuring the state revenue coming from it, are - based on the applications for organising gambling subject to a licence, defined in the law - the licensing of these games, the control of keeping the contents of the licence and the provisions of the law and registering gambling and other games, specially determined by the law.

The Gaming Board defines general game conditions in connection with the managing of each game and detailed rules in connection with the control.

The Gaming Board takes action against those who do illegal gambling-organising activity and thus the Gaming Board:

- a) can apply supervision sanction steps

<sup>188</sup> [http://www.szf.hu/en\\_1.html](http://www.szf.hu/en_1.html) and <http://www.szf.hu/Files/SzF%20jelentes%202004.pdf>

b) can conduct a procedure of offence, can impose a fine of offence

c) can initiate the starting of a procedure of offence or a criminal procedure<sup>189</sup>

#### 5.2.5. Latvia

To organise lotteries and gambling as a form of a business in the Republic of Latvia a special permission (license) is required, what can be conferred only to the companies which are registered in the Register of Enterprises of the Republic of Latvia.

The special permission (license) of organising lotteries or gambling entitles it's receiver to organise in the permission (license) mentioned lotteries or gambling within the territory of the Republic of Latvia, according to the restrictions mentioned in this Law.

The special permission (license) of organising lotteries and gambling are issued by the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance to indeterminate period.

Issued permissions (licenses) of organising lotteries and gambling every year till the date of issuing is reregistered in the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance.

Lotteries and Gambling Supervision Inspection (hereinafter referred to as the Inspection) is an authority of direct administration under supervision of the Ministry of Finance. Purpose of the Inspection activities shall be implementation of the government functions within supervision of arrangement of draws, gambling and lotteries of goods and services (hereinafter referred to as the games), in order to ensure compliance with and performance of the statutory law requirements governing the said area.<sup>190</sup>

#### Supervision and Control

The supervision and control is being provided by the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance in the order established by the Cabinet of the

Ministers, by the Law of State Revenue Service "Low on State Revenue Service" and by the Law of State Police.

The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance is being established and its statutes are being approved by the Cabinet of Ministers. Tasks of the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance are:

1. to realize the state policy according to the organising lotteries and gambling;
2. licensing, supervision and control of the lotteries and gambling organisers;
3. to work out drafts of the laws and regulations connected to the organising lotteries and gambling;
4. to ensure the systematic registration and statistics analysis of the lotteries and gambling market;
5. to register slot machines and equipment and provide relevant information to the governmental organisations and local authorities to they can manage the tax of the lotteries and gambling.

The permission receiver submits the duplicate of the approved annual report, report and resolution provided by the auditor, if such exists, as well as explanation about time when annual report was approved. The permission receiver within 20 days after the end of the quarter in the order fixed by the Cabinet of Ministers submits report about organising lotteries and gambling in the quarter of reference. The receiver of the special permission (license) does accounting according to the law "On Bookkeeping", low "On Companies' Annual Reports" and regulations of the Cabinet of Ministers, who regulates single order of accounting of lotteries and gambling organisation.

#### Law on Lotteries and Gambling

##### Tax status:

According to the provisions of the Law on Lotteries and Gambling Tax and Fee:

Companies, which in accordance with the law have received a license to organise and run lotteries and games of chance, pay a lottery and gambling tax. The taxation object of the gambling tax is the gambling organiser – an enterprise, gambling venue location and gaming equipment.

<sup>189</sup> [http://www.szf.hu/en\\_1.html](http://www.szf.hu/en_1.html)

<sup>190</sup> Regulation of the Lotteries and Gambling Supervisory Inspection. Latvian Cabinet of ministers. Regulation No. 176, Adopted 25 March 2004.

The gambling tax shall be calculated each month for each gambling place of each slot machine and each game table in each place where gambling is carried out, including the month when the slot machine or game table was installed or dismantled.

The lotteries organiser pays a state fee for the issuance of a special license. Revenues from lotteries and gambling fee (payment for the special license) are paid in the state budget.

75% of revenues from the gambling tax are to be paid in the state budget, but 25% - in the budget of the local municipality in whose territory the gambling is organised.

Revenues from the national lotteries tax are to be paid in the state budget, but revenues from local lotteries tax – in the budget of the municipality in whose territory the lottery is organised.

Lotteries and Gambling Supervisory Inspection<sup>191</sup>:

The first games of chance in Latvia were organised and the gambling market began its rapid development in early nineties due to the regaining of independence. In the summer of 1991 the first casino was registered in Latvia. At that time also increased the amount of companies, who organised different kinds of lotteries in our country. But as at that moment there were no legislative acts that would regulate the organisation procedure of lotteries and gambling and also because of the insufficient supervision and control of the lotteries and gambling market by the state, its development was spontaneous and not regulated. At this period of time many small companies were involved in the organisation of lotteries and gambling, who could not always ensure the organisation of these games at the necessary level. Therefore the gaming business was discredited and the player suffered, as well as the revenue in the state budget from lotteries and gambling was very small.

To change the situation and to place the organisation of lotteries and gambling under strict state supervision and control as well as to create a special taxing system, the work on legislative acts regulating organisation of lotteries and gambling, supervision and control was begun in 1993. In June 1994 Saeima (Parliament) of the Republic of Latvia passed two laws "On Lotteries and Gambling" and "On Lotteries and Gambling Tax and Fee". These laws completely changed the

situation in the gambling market and secured civilized and regulated development of the market.

Till those laws were enacted there was no united institution to deal with the supervision of the organisation of lotteries and gambling in Latvia. Ministry of Finance, Ministry of Internal Affairs and local authorities at the same time carried out control and licensing of lotteries and gambling. From the passing of the new law, the state politics in the sphere of lotteries and gambling were affected only by Ministry of Finance and one of its departments.

Since in most of European countries a special state institution supervises the organisation of lotteries and gambling, also in Latvia, considering the experience of those countries, in 1997 work was begun to establish such a special institution, which would deal with the supervision and control of lotteries and gambling.

Legal status and structure

Ministry's of Finance Lotteries and Gambling Supervisory Inspection is an independent institution of state control and supervision that carries out its work under the supervision of the Ministry of Finance. Cabinet of Ministers confirms the director of the Inspection after the proposal of the Minister of Finance.

On December 2, 1997 Cabinet of Ministers confirmed regulation of Ministry of Finance Lotteries and Gambling Supervisory Inspection. In reality the Inspection began its work on January 1, 1998.

Scheme of the structure of the Lotteries and Gambling Supervisory Inspection

Lotteries and Gambling Supervisory Inspection consists of two departments - Supervision and Control Department (carries out direct supervision of gaming business) and Licensing and Analytical Department (carries out licensing, registration and labelling of slot machines and gambling devices, processing and analyses of statistical information, drafts projects of legislative acts in regard with organisation of lotteries and gambling). On December 31, 2001 there were 14 employees working in the Inspection.

Main functions and priorities

The aim of the work of Ministry's of Finance Lotteries and Gambling Supervisory Inspection is to ensure abidance and execution of the provisions of laws and other legislative acts that regulate the sphere of lotteries and gambling. To the Inspection are delegated the following main functions:

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<sup>191</sup> [http://www.iaui.gov.lv/english/par\\_m/default.htm](http://www.iaui.gov.lv/english/par_m/default.htm)

1. to effect state politics in organisation of lotteries and gambling;
2. to carry out the licensing of organisers of lotteries and gambling;
3. to check the gambling equipment, to carry out its registration and issuing of labelling marks;
4. to ensure supervision and control over organisation of lotteries and gambling;
5. to draft projects of legislative acts related to organisation of lotteries and gambling;
6. to ensure systematic analyses of accounting and statistics in the lotteries and gambling market;
7. to cooperate with other state institutions and local authorities in order to ensure optimal control and supervision of lotteries and gambling;
8. to cooperate with institutions from other countries and international organisations that carries out supervision and control over the gaming business.

#### Licensing of lotteries and gambling

Law "On Lotteries and Gambling" provides that gambling and lotteries in Latvia can be organised only after receiving a special permission (license). The Inspection regularly considers applications and all the necessary documents to pass a decision either to issue a license or motivates its refusal to issue a license. The special permissions (licenses) for organisation of lotteries and gambling are renewed and reregistered.

A net of casinos, arcades and cafes should be formed, and high demands for the gaming equipment, its placing and the level of service should be established, as well as the possibility for the persons under the age of 18 to participate in gambling should be excluded..

It is necessary to work out a unified gambling accounting system, thus not allowing avoiding paying taxes and ensuring additional revenues in the state budget.

When making amendments in the legislative acts regulating lotteries and gambling the definition of lotteries and gambling should be made more precise, establishing that games organised in the Internet and those organised through telephone lines for charge should also be licensed, thus securing additional income of gambling taxes in the state budget from those games.

As in Latvia the organisation of advertising campaigns and selling of goods using elements of lotteries has intensified, and then legal basis for the organisation of such lotteries should be established.

To ensure a complete follow-up on organisation of lotteries and gambling, it is necessary in cooperation with State Revenue Service to introduce a unified computerized information system, as well as to improve the order of registration, control and issuing of labelling marks for gambling equipment.

To improve control and supervision of lotteries and gambling, there is a need to make the rights and duties of officials when carrying out check-ups of gambling sites more explicit.

Taking into consideration the fact that the Latvian lotteries and gambling market was formed recently and it is developing continuously a more intensified attention should be paid to the improvement of knowledge of officials and acquiring foreign experience in the sphere of control and supervision over organisation of lotteries and gambling.

#### 5.2.6. Lithuania

Laws covering gambling sector:

Gaming law (GL)<sup>192</sup>

Law on Lotteries (LL)<sup>193</sup>

Law on Lottery and Gaming Tax (LLGT)<sup>194</sup>

Fundraising for Charitable or Sponsorship Purposes.

Lottery operators shall allocate 8 percent of the face value of all tickets distributed in a lottery for charitable or sponsorship purposes to the beneficiaries specified in the Law on Charity and Sponsorship.

The gaming activities and activities of national lottery operators are supervised and controlled by the State Gaming Control Commission<sup>195</sup>. The

<sup>192</sup> Gaming law, <http://www3.lrs.lt/cgi-bin/preps2?Condition1=254043&Condition2=>

<sup>193</sup> Law on Lotteries, <http://www3.lrs.lt/cgi-bin/preps2?Condition1=254080&Condition2=>

<sup>194</sup> Law on Lottery and Gaming Tax, <http://www3.lrs.lt/cgi-bin/preps2?Condition1=254079&Condition2=>

<sup>195</sup> Gambling Law Article 26 part 1 and Law on Lotteries Article 23 part 1.

activities of local lottery operators are supervised and controlled by an executive body of the municipality in the territory of which local lotteries are operated<sup>196</sup>.

Within 4 months after the end of the business year, the gaming company shall submit the opinion of a certified auditor and the annual financial report to the Control Commission and shall publish the financial statements audited by a certified auditor.

Within 4 months after the end of the financial year, the operator of national lotteries shall submit the annual financial report audited by an audit company together with the auditor's opinion to the State Gaming Control Commission and shall publish the balance sheet as well as the profit and loss account<sup>197</sup>.

Lottery operators shall keep internal accounting records that provide information about the number and value of all tickets sold in any lottery. Lottery ticket distributors (legal persons) may be remunerated on the basis of data from remote communication computer lotteries and data from telephone or internet lottery's central host computer as published in documents bearing the requisites specified by the laws and other legal acts<sup>198</sup>.

The operator of a national lottery shall submit lottery reports to the State Gaming Control Commission after the end of each quarter of the calendar year but not later than the 25th day of the first month of the next quarter and within 4 months after the end of each calendar year. The State Gaming Control Commission shall establish the form of such reports and the procedure of filling them out<sup>199</sup>.

Presently number of members<sup>200</sup>:

Gaming operators - 15

Lottery organisers - 3

Tax status:

<sup>196</sup> Law on Lotteries, Article 23, part 1.

<sup>197</sup> Law on Lotteries, Article 26.

<sup>198</sup> Law on Lotteries, Article 18.

<sup>199</sup> Law on Lotteries, Article 20.

<sup>200</sup> <http://www.vlpk.lt/lt/losimu-organizatoriai/losimu-ataskaitos/vlpk-ataskaita-2004-rodikliai>

Law on Lottery and Gaming Tax (LLGT), 17 May 2001 No IX-326

Payers of Lottery and Gaming Tax

Lottery and gaming tax shall be paid by legal persons that operate lotteries in accordance with the Law on Lotteries and gaming in accordance with the Gaming Law.

The taxable period in respect of lottery and gaming tax shall be one quarter of a calendar year.

The lottery and gaming tax base shall be:

- 1) in respect of lotteries, the total face value of the tickets distributed in a lottery;
- 2) in respect of bingo, totalisator and betting, the total amount of proceeds less the amount of prizes actually paid out;
- 3) in respect of machine gaming and table games, a fixed amount for each gaming device (gaming machine, roulette, card or dice table)<sup>201</sup>.

Article 5.

When operating lotteries, a tax rate of 5% shall be imposed on the lottery and gaming tax base. When operating bingo, totalisator and betting, a tax rate of 15% shall be imposed the lottery and gaming tax base. When operating machine gaming and table games, a fixed tax amount shall be imposed on each gaming device:

- 1) Lithuanian Litas 1 800 per gaming machine of category A for each taxable period;
- 2) Lithuanian Litas 600 per gaming machine of category B for each taxable period;
- 3) Lithuanian Litas 12 000 per roulette, card or dice table for each taxable period.

Lottery and Gaming Tax Assessment and Payment

Article 6.

Legal persons operating lotteries, bingo, and totalisator and betting shall assess the lottery and gaming tax and shall pay it to the budget after the end of each taxable period before the 15th day of first month of the next taxable period. Lottery and gaming tax shall be paid to the local tax

<sup>201</sup> Lottery and gaming tax Law, Article 4.

administrator in the territory of which the enterprise is registered.

#### Article 8.

Lottery and gaming tax paid by legal persons operating national lotteries in accordance with the Law on Lotteries and gaming in accordance with the Gaming Law shall be entered in the state budget. Lottery and gaming tax paid by legal persons operating local lotteries in accordance with the Law on Lotteries shall be entered in the budget of the municipality which has issued a lottery operating licence.

#### Related laws<sup>202</sup>

State gaming control commission<sup>203</sup>

#### 5.2.7. Malta

The National Lottery was set up as a Government monopoly in 1934. Prior to February, 2004, all National Lottery games fell under the responsibility of the Public Lotto Department. In February, 2004 Maltco Lotteries Limited<sup>204</sup> was awarded an exclusive licence to operate all the National Lottery games. The licence is valid for seven years. The company is currently operating most of the games which previously fell under the responsibility of the Department of Public Lotto.

MALTCO was set up in 2004 with a 73% shareholding by INTRALOT S.A. and the remaining 27% is owned by private persons.

The Lotteries and Gaming Authority<sup>205</sup> regulates the operations of Maltco and collects gaming tax from the licensee on behalf of the Government.

Non-profit games will eventually be licensed by the Lotteries and Gaming Authority in terms of regulations published under the First Schedule of the Lotteries and Other Games Act, 2001. To date permits are issued by the Public Lotto Department in terms of the Public Lotto Ordinance.

Non-profit games are organised by non-profit organisations, and the net proceeds are meant for a religious, sports, philanthropic, cultural, educational, social or civic purpose.

Related legislation<sup>206</sup>

#### 5.2.8. Poland

The minister responsible for public finance shall exercise the supervision and control over the activity of the entities organising and conducting chance games, mutual wagering or slot machine games within the scope of the conformity of this activity with the provisions of the Law, the granted permit and the regulations of a given chance game, mutual wagering or slot machine; the justified costs of the supervision shall be borne by the entity that organises chance games, mutual wagering or slot machines games.

The minister responsible for public finance can, by means of a regulation, assign the scope of his authority referred to in paragraph 1 to the taxation chambers and revenue offices in relation to the entities referred to in the article 6 (1).

The minister responsible for public finance shall also exercise special tax supervision connected with the control of the results calculation regarding the games on tables and slot machine games and special tax supervision in the scope of slot machine games with low prizes.

#### Article 48a

The taxation chamber that granted the permit exercises the supervision and control over the activity of the entities organising slot machine games with low prizes in the scope of conformity of this activity with the provision of the Law, the granted permit and the regulations of the game.

Related legislation<sup>207</sup>

Game supervision<sup>208</sup>:

#### 5.2.9. Slovakia

Slovakia has a system of national lottery composed by specific parts such as sport lottery, occasional lotteries, fixed fee from gambling machines etc.

There is a regional lottery whose profits are dedicated partially to culture.

<sup>202</sup> <http://www.vlplk.lt/en/lawinfo/teises-aktai>

<sup>203</sup> <http://www.vlplk.lt/en>

<sup>204</sup> <http://www.maltco.com.mt/maltco/index.htm>

<sup>205</sup> <http://www.lga.org.mt/lga/home.asp>

<sup>206</sup> <http://www.lga.org.mt/lga/anchor.asp?updTextID=3&AnchID=13>

<sup>207</sup> [http://bip.totalizator.com.pl/public/popup.php?id\\_menu\\_item=3854](http://bip.totalizator.com.pl/public/popup.php?id_menu_item=3854) and <http://serwis.lotto.pl/183-41dbeb65ec214.htm>

<sup>208</sup> <http://www.mf.gov.pl/index.php?wysw=2&sgl=2&dzial=175>

Net income from the state budget coming from the lotteries are an important additional source for fiscal measures.

A public operator named TIPOS is a state owned share company. All shares are in the hand of the Ministry of Finance of the Slovak Republic.

Lottery revenues that are dedicated to culture are mixed with other budget revenues and then channelled to culture.

Over the state share company TIPOS are the net lottery incomes collected and then transferred for the state budget. This income is distributed to:

1. the different state budget chapters (programmes)
2. a part of it for the "General Government Reserve Fund" for special additional fiscal projects including for cultural projects.

Joint-stock company TIPOS, was established by the foundation deed concluded on December 11th, 1992. The subject of the activities of the company is the operation of number lotteries and betting games in pursuance of the corresponding provisions of the Act of Slovak National Council (SNR) No. 194/1990 col., on lotteries and other similar games, in the wording of changes and amendments, and according to the licenses of the Ministry of Finance of the Slovak Republic issued for these activities.

TIPOS statistical information<sup>209</sup>:

Year of establishment: January 1, 1993

Total sales for: 2004 - 2 929 691 650 SKK

2003 - 2 731 862 518 SKK

2002 - 2 591 143 057 SKK

2001 - 2 729 715 000 SKK

2000 - 2 649 301 000 SKK

Total Revenues to State/Beneficiaries for: 2004 - 533 829 510 SKK

2003 - 470 087 666 SKK

2002 - 436 143 000 SKK

<sup>209</sup> [https://www.European-lotteries.org/data/info\\_641/1.H2005\\_economic\\_results.pdf](https://www.European-lotteries.org/data/info_641/1.H2005_economic_results.pdf) and [https://www.European-lotteries.org/data/member\\_66/TIPOS\\_Visiting\\_card\\_EL\\_2005.pdf](https://www.European-lotteries.org/data/member_66/TIPOS_Visiting_card_EL_2005.pdf)

2001 - 462 842 000 SKK

2000 - 427 879 000 SKK

Beneficiaries:

Ministry of Finance Slovak Republic

#### 5.2.10. Slovenia

##### Laws and Regulations

The system of organising gaming in Slovenia is regulated with the 1995 Gaming Act, which was amended in October 2001 and in October 2003 (consolidating text is published in the Official Gazette of the Republic of Slovenia, no. 134/03).

On the basis of this Act the following regulations were issued:

1. Regulation on technical requirements for gaming devices and conformity assessment procedure
2. Regulation on Institutions for Issuing Gaming Device Test Reports
3. Regulation on the supervisory information system of gaming device
4. Regulation on organising games on slot machines in gaming halls
5. Regulation on licences for employees in casino industry
6. Regulation on detailed criteria that need to be fulfilled by permanent organisers of classical games
7. Regulation on societies and non-profit humanitarian organisations that are allowed to organise classical gaming occasionally

Casino games in the territory of the Republic of Slovenia can only be organised in casinos (all casino games) and in gaming halls (only games on slot machines) by a company seated in the Republic of Slovenia to which a concession has been awarded by the government.

The government decides upon awarding a gaming concession on the basis of a discretionary right considering a wide range of different circumstances (e. g. impact of gaming on social, cultural and natural environment, development of gaming activity, extent of gaming in a certain area, gaming experiences of the applicant...).

According to the Gaming Act the Government of the Republic of Slovenia can award 15 concessions



for casinos and 45 concessions for gaming halls at the most.

Law does not limit the number of concessions awarded to one company and in practice one company has more concessions, either concessions for organising games in casinos or concessions for organising games in gaming halls.

Gaming halls (arcades) in the territory of the Republic of Slovenia were introduced with the 2001 Amendment of the Gaming Act. A gaming hall should have a minimum of 50 and a maximum of 200 slot machines and should be located in an object of tourist infrastructure. (There is no restriction on the number of slots in casino.)

Regarding the casino's ownership the Gaming Act defines possible shareholders of a concessionaire for a casino, which has to be a joint-stock company. That is to say that apart from the Republic of Slovenia, local communities and legal entities, owned or founded by the Republic of Slovenia, shareholders of a concessionaire can also be (up to 49 % of shares) companies, organised as a joint-stock company, which fulfil certain conditions set by the Gaming Act (e.g. these companies should make income predominantly from the activity of banking, insurance business, tourism, financial brokerage or activity of investment or pension funds). There is no prescribed ownership structure for a concessionaire for a gaming hall, which can be a joint-stock company or a company with limited responsibility.

An approval of the Minister of finance is needed for the purchase of the normal shares of a concessionaire. Such an approval is needed also for any change in the ownership of a concessionaire for a gaming hall. There has also been adopted a special regulation specifying the documentation and the procedure for approving such a purchase (Official Gazette of the Republic of Slovenia, no. 127/03).

According to the Gaming Act each gaming device should be certified that conforms to technical and other standards. At the end of June 2002 the Minister of Finance has authorized an institution that issues gaming device test reports.

Specific jobs in casinos and gaming halls require a licence according to the 2001 Amendment of the Gaming Act. These jobs are: managers of casino, croupiers, games leaders, people performing internal control and chief and assistant cashiers. The licences are issued by a special commission, which is composed by three members (2 are appointed by the Minister of Finance, whilst the third one is a member of casino Association).

Currently there are no special restrictions on advertising and opening hours in the Gaming Act, but all the organisers need to respect general legislation on these items that is valid in the territory of the Republic of Slovenia.

#### Classical gaming

According to the Gaming Act classical gaming is:

1. Numerical lotteries
2. Lotteries with momentarily known prizes
3. Quiz lotteries
4. Bingo
5. Lotto
6. Sports bets
7. Sports pools
8. Raffles
9. Other similar games

Classical gaming can be organised permanently by a joint-stock company seated in the Republic of Slovenia to which a concession has been awarded by the government. Permanent classical games (all sorts of classical gaming) can only be organised by two organisers at the most.

Classical gaming (numerical lotteries, bingo and raffles) can also be organised occasionally (once a year) in association with sport competitions by societies and non-profit humanitarian organisations that are based in the Republic of Slovenia and defined by the government (public interest) on the basis of a licence issued by the minister of finance.

Sportna-Loterija statistical information<sup>210</sup>:

Year of establishment: 1995

Total sales for 2003: € 19 099 088.70

Total sales for 2002: € 17 805 390.00

<sup>210</sup> [https://www.European-lotteries.org/data/member\\_64/Slovenia.pdf](https://www.European-lotteries.org/data/member_64/Slovenia.pdf)

Total Revenues to State/Beneficiaries for 2003: € 1 983 595.32

Total Revenues to State/Beneficiaries for 2002: € 2 001 671.00

Beneficiaries: Sports foundation, Invalid-humanitarian foundation

Related legislation<sup>211</sup>:

The Office for Gaming Supervision of the Republic of Slovenia

The Office for Gaming Supervision supervises all processes directly or indirectly related with gaming organisation, supervises and analyses the implementation of applicable regulations, supervises the ownership structures of concessionaires, and checks and analyses data required for the conclusion of concession agreements and the issuing of licences.

The Office for Gaming Supervision of the Republic of Slovenia is a constitutive body of the Ministry of Finance, which was established on the basis of the Gaming Act adopted in 1995.

The tasks of the supervisory body are:

- discussion and analysis of plans and financial plans and reports on the work of the concessionaire or organiser,
- the supervision of accounting statements and reviewed financial reports,
- the supervision of the ownership structure, organisation, internal acts and operations of the concessionaire or organiser,
- the supervision of the implementation of concession contracts or conditions proceeding from the licence of the organiser,
- the implementation of direct supervision of the performance of all processes that are directly or indirectly linked to the organisation of gaming,
- reports to the government on the operation of the concessionaire or organiser,
- the organisation of making gaming standards,

- the keeping of a register of concessionaires, organisers of classical games, managers of casinos, croupiers, games leaders, people performing internal control in casinos and gaming halls and the chief and assistant cashiers,
- cooperation with the office authorised for the prevention of money laundering,
- establishment of the supervisory information system of gaming devices,
- the implementation of supervision through the supervisory information system of gaming devices.

The government appoints an authorised person for supervision on the proposal of the director of the Office for Gaming supervision.

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<sup>211</sup> <http://www.sigov.si/mf/slov/unpis/zakonodaja.htm> and <http://www.loterija.si/pravna-obvestila>

## Chapter 3. Research Recommendations

The recommendations presented in this Chapter are in line with those given in the report "Analysis of the EU15 Non-profit Sector for Monitoring and Control".

As a main outcome of the research work, we recommend a uniform system of registration, monitoring and control of the non-profit sector in Europe (EU 25) which could have positive impact on the capacity to control, as well as, on the transparency of the non-profit sector.

Seeing that most<sup>212</sup> countries recognize both associations and foundations, it is necessary to define and standardise these forms, which will limit the need for additional, different organisational forms.

### 1. Registration

A single and uniform registration system for registration of non-profit organisations needs to be implemented. We would like to stress that registration of the NGOs must be obligatory while laws governing non-profit sector should be written and administered so that it is relatively quick, clear, informative and inexpensive for all persons to register or incorporate a non-profit organisation as a legal person without unnecessary difficulties. At the same time the laws must define more precisely and narrowly the bases upon which registration may be refused.

The unique registration requirements and set of minimum requirements for documents (to be submitted to the registration authority) should be available to the public and contain at least the following information:

- Entity establishment act
- Entity statutes
- In-depth information about the representatives

- In-depth information regarding entity set.

Registration authorities must be transferred to courts or to other less politically suggestible bodies to debar line ministries and the Ministry of Interior of registration authority for NGOs.

Also a single, national registry of non-profit sector that is accessible to the public (in addition to any local public registries that may exist) must be created. Creation of public registries of NGOs will promote transparency. Registration of the NGOs should be obligatory and the register should include information about:

1. the registry code and consecutive numbers of registry entries;
2. date of establishment;
3. type and purpose of the entity
4. the name of the entity;
5. the location and address of the entity;
6. Information on the representatives of the entity including the names, personal identification codes and extent of power in the entity;
7. authorisations (licenses) that have been given to the entity
8. references to earlier and later entries, and notations.

### 2. Accreditation

Accreditation of entities in the non profit sector may be used as a prerequisite for receiving subsidies from governments, institutions and private donors. However, since accreditation is voluntary by definition, it does not provide such a strong safeguard as the legal provision of a registration system.

<sup>212</sup> Malta is preparing some legislation in order to regulate non-profit sector.

### **3. Monitoring**

The laws in the area of governance should set minimum standards for self-governance, which the organisations themselves can impose by self-regulatory mechanisms. Usage of self-regulatory mechanisms, such as codes of conduct, must be widespread in the countries of EU 25.

We would recommend a single monitoring system with uniform monitoring criteria. This will allow creating an overview of the activities of the entities of the non-profit sector during the monitored period and provide proof and transparency on the use of funds. It follows that to the maximum feasible extent, all reports required of NGOs should be simple to complete and as uniform as possible. Organisations receiving tax benefits or public donations are typically required to prepare reports. The laws must design unified reporting requirements to meet legitimate interests.

Also NGOs should be required to publish or make available to the public a report of their general finances and operations; this report may be less detailed than the reports filed with the supervisory organ. Reporting requirements should contain provisions to protect the privacy of donors and recipients.

Transparency in non-profit organisations is important to ensure that whatever legitimate subject outside the organisation can get an insight

into its work and thus guarantee the organisation's reliability.

### **4. Taxation**

In most countries, NGOs receive some degree of exemption from taxation. There must be a link between the tax treatment related to the activities of the NGO and the challenge to ensure proper implementation of NGOs policies.

Tax authorities must be treated as a prime source of information regarding non-profit activities. The tax system already provides powerful motivation for non-profit organisation to seek for certification in order to receive tax incentives. NGOs and their activities should be given preferential treatment under a value added tax (VAT) and other taxes (e.g. income taxes) provided that appropriate limitations are in place to guard against fraud and abuse.

### **5. Gambling**

The gambling sector could be used as a practical example on how to regulate the sector allowing for, on the one hand, to be able to run their business properly and, on the other hand, to be sufficiently regulated.

## Chapter 4. Conclusions

Legislation regarding NGOs in EU 10 has been under continuous development. Recently changes have been taking place in many of the countries, but much needs to be done to prevent fraudulent use of funds in the non-profit sector.

There is general requirement to regulate the non-profit sector. A set of risk indicators may be created to identify NGOs which may be at a higher risk of being misused. The establishment of a centralised body with the purpose of monitoring

and controlling of the non-profit sector could lead to transparency in the sector. In addition, uniform standards of transparency and accountability for NGOs could help minimise the risk of misuse of the non-profit sector.

NGOs must be supported as much as possible but at the same time there is a need for further regulation. NGOs must become fully "visible" and transparent actors in the arena of non-profit activities in EU 25.

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## Annex A. Presentations

Wed, 2005 Sept 28 | Presentation by Anjula Garg: Anjula Garg, Tanja Horvath, Arunas Rakauskas, António Ribeiro and Thomas Barbas (2005) "Support Against Terrorist Financing". In meeting at JLS [Justice, Freedom and Security], Brussels, Belgium.

Mon, 2005 Sept 19 | Presentation by Anjula Garg: Anjula Garg, Tanja Horvath, Arunas Rakauskas, António Ribeiro, Thomas Barbas (2005) "Support Against Terrorist Financing". At Regulation of Not for Profit Organisations workshop: Proposed EU Code of Conduct organised by the UK Presidency of the UK and held at One Great George Street Conference Centre, London SW1P 3AA.

## Annex B. National Legislation and Other Material Concerning National Law

### 3. Cyprus

#### 3.1. Law on Associations

#### 3.2. Law on Foundations

#### 3.3. Law on NPO

#### 3.4. Law on NGO

#### 3.5. Law on Other Legal Forms

#### 3.6. Other Laws

### 4. Czech Republic

#### 4.1. Law on Associations

Citizens Civil Law Associations

Act No. 83/1990, Coll. of March 27, 1990

The Parliament of the Czech and Slovak Socialist Republics adopted the following Act

Introductory

Sec. 1

(1) Citizens shall have the right freely to associate.

(2) No permission by the State authority shall be needed when exercising this right.

(3) The present Act shall not apply to citizens associations

(a) in political parties or political movements,

(b) for purposes of earning money or for securing due exercise of certain occupations,

(c) in churches or religious societies.

Sec. 2

(1) The citizens may establish associations, societies, unions, movements, clubs and other civic

associations as well as trade unions (hereinafter referred to as "associations") and unite in them.

(2) Juridical persons (bodies corporate) may be equally members in associations.

(3) Associations shall be bodies corporate. State administration may interfere with the status and activities of associations only in so far as admitted by law.

(4) Military personnel serving their term shall not be free to establish trade unions and to associate therein. Specific legislation shall regulate the power of trade unions associating members of the police force and wardens when putting forward, and protecting their social needs.

Sec. 3

(1) Nobody may be forced to associate or to adhere to existing associations or to participate in their activities. Everybody shall be at liberty to leave freely an association.

(2) Nobody shall suffer a civic harm for associating when being a member of an association, when participating in its activities or when supporting such association, or else, when resting outside

same.

(3) Rights and duties of members of associations shall be governed by their Bye - laws.

Sec. 4

Following associations shall not be permitted:

(a) the aim of which is to deny or to restrict personal, political or other civil rights because of nationality, sex, race, origin, political or other

opinions, religion and social status, to foster hate and intransigency for these reasons, to assist in violence, or otherwise to commit breach of constitution and laws,

(b) which follow the implementation of their goals by means contrary to the constitution or laws,

(c) which are armed or have armed units, provided that, associations, the members of which have arms or use firing arms for sporting purposes or for exercise of their right of hunting, shall not be considered to be such armed associations.

#### Sec. 5

Unless a specific Act provides otherwise, the associations shall not have the right to perform the functions of State administrative authorities. They shall not control bodies of State administrative authorities or impose duties on citizens, who are not their members.

#### Sec. 6

(1) An association shall start its existence upon its incorporation (registration).

(2) An application for incorporation shall be lodged by not less than three (3) persons of whom at least one (1) must have reached the age of eighteen (18) years (hereinafter referred to as the "preparatory committee"). The application shall be signed by the members of the preparatory committee showing their names and surnames, birth identification numbers and places of residence. In addition, it shall

state who of them, being older than eighteen (18) years, has the authority to act on their behalf. The applicants shall join two (2) copies of the Bye - laws to their application. The Bye - laws shall disclose

(a) the name of the association,

(b) its seat,

(c) its goals,

(d) its bodies, their establishment and determination of said bodies and its members authorized to act in the name and on behalf, of the association,

(e) provisions governing its organizational units, if any, and whether authorized to act,

(f) principles of its economic management.

(3) Unless the Bye - laws provide otherwise, the preparatory committee shall have the power, until the creation of the bodies provided for in paragraph (2) (d) of the present Section, to act on behalf and in the

name of the association.

(4) The name of the association shall be distinguishable from the name of any other body corporate exercising its activities on the territory of the Czech Republic.

#### Sec. 7

(1) The application for incorporation (registration) shall be lodged with the Ministry of Interior of the Czech Republic (hereinafter referred to as "the Ministry")

(2) If the application does not meet the requirements set forth in Sec. 6 paragraphs (2) and (4) hereof or if the data therein contained are incomplete or inaccurate, the Ministry shall draw, forthwith, the attention of the preparatory committee to this fact warning same, that if these defects are not remedied, the proceedings for incorporation shall be discontinued.

(3) The proceedings for incorporation shall be commenced on the day where the application, not suffering from defects provided for in paragraph (2) hereof, is received by the Ministry. The Ministry shall send forthwith a notice of commencement of the proceedings for incorporation to the representative of the preparatory committee.

#### Sec. 8

(1) The Ministry shall dismiss the application if it is satisfied on hand of the Bye-laws of the association presented, that

(a) it involves an organization set forth in Sec 1 paragraph (3) hereof

(b) its Bye-laws are contrary to Sec. 3 paragraphs (1) and (2) hereof

(c) it involves an association prohibited by law (Sec. 4 hereof), or

(d) the goals of the association are contrary to the requirements set forth in Sec. 5 hereof.

(2) The decision of dismissing and application for incorporation shall be taken within ten (10) days following the commencement of proceedings for incorporation. The decision dismissing the application shall be served on the representative of the preparatory committee. (3)

(3)The members of the preparatory committee shall be free to lodge an appeal with the Supreme Court of the Republic against the rejection of incorporation this within sixty (60) days upon service of the decision on the representative of said committee.

(4)If the Supreme Court is satisfied that there are no grounds in support for the dismissal, it shall quash the decision of the Ministry. On the judgement of the Supreme Court acquiring the force of *r e s i u d i c a t a*, the association shall be deemed to be incorporated. Upon request by the representative of the preparatory committee, the Ministry shall send to him (her) a copy of the Bye - laws of the association where it shall mark the day of incorporation.

(5)If no decision dismissing the application for incorporation is served on the representative of the preparatory committee within forty (40) days following the commencement of proceedings for incorporation, the association shall commence its existence on the day following the lapse of the said period. This day shall be the day of the association s incorporations. Upon request by the representative of the preparatory committee, the Ministry shall send a copy of the associations Bye - laws to the latter, where it shall mark the day of its incorporation.

#### Sec. 9

(1)Unless the Ministry finds reasons for dismissing the application (for incorporation) it shall incorporate the association within ten (10) days from the commencement of the proceedings for incorporation. Within this term, they shall return a copy of the associations Bye - laws to the representative of the preparatory Committee on which they shall mark the day of its incorporation. This day shall coincide with the day of sending the notice to the representative. No decision under the Administrative Proceedings Code shall be taken in respect of incorporating the association.

(2)Within seven (7) days the incorporation of an association shall be notified by the Ministry to the Czech

Statistical Bureau. The Czech Statistical Bureau shall keep records of associations. This applies equally to associations, established under Sec. 8 paragraphs (4) and (5) hereof.

#### Sec. 9 (a)

(1)A trade union or an associations of employers shall become a body corporate on the day following the day of lodging their application to the respective Ministry for putting same on records.

(2)Putting trade unions or associations of employers on record shall be governed, *mutatis mutandis* by the provisions of Sec. 6 paragraph (2), Sec. 7 paragraph (1) and Sec. 9 paragraph (2) hereof. PROVIDED THAT, the provisions of Sec. 6 paragraph (1) Sec. 7 paragraphs (2) and (3), Sec. 8 and Sec. 9 paragraph (1) shall not apply to trade unions and associations of employers.

#### Sec. 10

Abolished

#### Sec. 11

(1)The association shall send a written notice of a modification of, or amendment to, their Bye-laws to the Ministry within fifteen (15) days following their adoption. Two copies of such modification and / or amendment shall be joint to the notice.

(2)If the modification and/or the amendment are contrary to the provision of Sec. 6 paragraphs (2) or (4)

or if the data disclosed are uncomplete or inaccurate, or else, if there are grounds for rejecting the incorporation under Sec. 8 paragraph (1) hereof, the Ministry shall forthwith draw the attention of the association to the fact. The association shall then remedy the said defects within sixty (60) days following the service of the notice on it and to inform the Ministry within further ten (10) days. If the association fails so to do, the Ministry shall terminate the association. An appeal shall lie against the decision of the Ministry terminating the association. The appeal, if any, should be lodged with the Supreme Court of the Czech Republic.

(3)If there are no grounds for rejecting the registration under paragraph (2) hereof, the Ministry shall, within ten (10) days upon service of the application, send one copy of the modified and / or amended Bye - laws to the association. Thereon, it shall mark its having taken notice of the modification and / or amendment thereof.

#### Termination of Association

#### Sec. 12

(1)An association shall be terminated

(a)Upon a (voluntary decision to be terminated,

or

(b)upon a decision by the Ministry, having acquired the force of *r e s i u d i c a t a*, to terminate same.

(2)Unless the Bye - laws regulate the voluntary decision of association to be terminated or its amalgamation with another association, the body paramount of the association shall have the power to adopt such resolutions. This body shall inform the Ministry within fifteen (15) days of adopting the resolution of its termination.

(3)If the Ministry is satisfied that the association engages in activities

(a)reserved to political parties or political movements or to organisations uniting citizens for purposes of money earning or to exercise religious or faith activities in churches or religion societies (Sec. 1 paragraph 3 hereof),

(b)committing the breach of principles set forth in Sec. 3 paragraphs (1) and (2) hereof,

(c)contrary to Secs. 4 or 5 hereof,

it shall forthwith draw the attention of the association to that fact, inviting same to put an end to such activities. If the association fails so to do, the Ministry shall be free to terminate the association. Against the decision an appeal, if any, might be lodged with the Supreme Court of the Czech Republic.

(4)When hearing the appeal under Secs. 11 paragraph (2) and 12 paragraph (3) hereof, the Supreme Court shall proceed in conformity with the provisions of the Civil Procedure Code, governing the revision of decisions taken by authorities other than Courts (3). An appeal lodged shall stay the execution of the decision, appealed from. If the Court finds serious reasons in favour, it may stay further activities of the association pending its decision. During such stay, the association may exercise only such activities which are indispensable for the implementation of its duties hereunder. The Court shall quash the decision of the Ministry, if it finds no grounds for termination of the association.

(5)If the Ministry is satisfied (Sec. 7 and 10 hereof) that an organisational unit of the association who has the power to act in its own name and on its behalf acts in a way set forth in Sec. 12 paragraph (3) hereof, it may take a similar decision as provided for therein. The provision of paragraph (4) of said Sec. 12 shall apply accordingly.

#### Sec. 13

(1)Abolished

(2)In case of termination of an association it shall be wound - up.

(3)If an association is terminated in accordance with Sec. 12 paragraph (1) subparagraph (a) hereof, the winding - up (4) of it shall be carried out by a liquidator to be appointed by the Ministry.

(4)The same way as provided for in paragraph (3) of the present section shall be used in case of termination of an association under Sec. 12, paragraph (1) subparagraph (a) hereof, if there is nobody to carry out its winding up.

#### Sec. 14

The Ministry shall notify the termination of an association to the Czech Statistical Bureau within seven (7) days of its having acquired knowledge thereof.

#### Sec. 15

##### Court Protection

(1)If any member of an association thinks a decision of a body of the association, against which no appeal lies, as illegal on contrary to the Bye-laws thereof, he (She, it) shall be free to apply, within 30 days upon having knowledge of same, but not later than 6 months of the date of such decision (resolution) to the respective District Court to review same.

(2)The application for review shall not have a staying effect. If good cause is shown, the Court may stay the execution of the resolution applied from.

#### Sec. 16

##### Cooperation Agreements

(1)Between or among themselves the associations shall be free to enter, into agreements of association for the purposes of achieving certain goals or for fostering another, common interest. Such agreements have to be in writing.

(2)The agreement of cooperation shall define its purpose, the manner of its fulfillment, the rights and duties of the parties thereto and the means which they will contribute to their cooperation. The provisions hereof shall apply to a union accordingly. If trade unions or a union of employers are involved in such a union, the provision of Sec. 9 (a) hereof shall apply accordingly.

(3)Abolished.

(4)The agreement of cooperation may establish a union of the participating associations. Such a union shall be endowed with a (separate) juridical

personality. Provisions hereof shall apply to an union accordingly.

(5)The agreement of cooperation may provide that it shall come to an end, if the participating organisations so agree or if the goals thereof have been achieved or if other circumstances therein set forth, arise.

#### Sec. 17

##### Common Provisions

If meetings or other gatherings of the association are accessible to the public at large, the citizens present shall abide by duties of participants (5). Unless the person in chair decides otherwise, they shall not be free to interfere with the proceedings thereof.

#### Sec. 18

In accordance with the goals of their activities, the association shall have the right to address petition to State administration authorities (6).

##### Temporary and Final Provisions

#### Sec. 19

(1)Voluntary organisations, established after September 30, 1951 or declared to be a voluntary organisation under the Voluntary Organisations and Gatherings Act No. 68 of 1951 Coll., which are still existing, shall be deemed to be associations hereunder. Until June 30, 1990, such voluntary organisations shall give a notice to the Ministry, under Sec. 7 paragraph (1) hereof or Sec. 11, disclosing its name, seat and the Bye - laws.

(2)Associations established prior to October 1st, 1991 shall be deemed to be associations created hereunder, provided they still exist. Until June 30, 1990 they shall inform the Ministry set forth in Sec. 7 paragraph (1) or Sec. 11 hereof disclosing their name and seat. If they fail so to do, the Ministry shall request them to state, whether they intend further to exercise their activities. If such association fails anew to give an answer until December 31, 1990, it shall be deemed to have ceased to exist as of that day.

(3)The Ministry (Sec. 7 paragraph 1 hereof) shall give a notice of data, provided for in Sec. 9 paragraph (2) and in paragraphs (1) and (2) of the present Section to the Federal Statistical Bureau, to keep same on record.

#### Sec. 20

Terms governing the activities of associations with foreign participation shall be governed by specific legislation. (7)

#### Sec. 20 (a)

(1)If an association, having exercised its activities until December 31, 1992 on the territory of both Republics, but incorporated in the Slovak Republic, intends to continue exercising its activities in the Czech Republic, it shall apply hereunder for incorporation not later than on April 30, 1993. If it fails so to do, its right to exercise its activities on the territory of the Czech Republic shall be forfeited.

(2)Associations (organisations) with foreign participation (8) which were given license by the Federal Ministry of Interior and the seat of which is located on the territory of the Czech Republic, shall be deemed to be associations with license by the Ministry. Associations (organisations) having their seat on the territory of the Slovak Republic shall apply, until April 30, 1993 to the Ministry for a license. If they fail so to do, they shall not have the right to continue their activities on the territory of the Czech Republic.

#### Sec. 21

The following Acts, Decrees and Rules shall be abolished:

(1)Voluntary Organisations and Gatherings Act No. 68 of 1951, Coll. As revised on later occasions,

(2)Voluntary Organisations and Gatherings Decree of the Ministry of Interior No. 320 of 1991, Official Bulletin (No. 348 of 1951 Official Garatte,) as revised by the Decree No. 158 of 1957, Official Bulletin of the Ministry of Interior,

(3)Establishment of Specific Associations, not Subject to the Existing Rules Governing Associations and Supervision thereof Governmental Decree No. 30 of 1939, Coll.,

(4)Sec. 2 of Some Temporary Steps to Strengthen Public Order Act, No. 112 of 1968, Coll.,

(5)Section 2 paragraph (8) subparagraph (c) of the Definition of Powers of the Czechoslovak Socialist Republic in matters of Internal Order and Safety Act No. 128 of 1970, Coll.,

(6)Sec. 45 paragraph (1) subparagraph (c) of the Powers of Federal Central Authorities of State Administration Act No. 194 of 1988, Coll.

#### Sec. 22

The present Act shall enter into force on May 1<sup>st</sup>, 1990.

#### **4.2. Law on Foundations**

The Act of September 3, 1997 on Foundations and Endowment Funds and on changes and supplements of certain related acts (the Foundations and Endowment Funds Act)

##### **PART ONE**

##### **FOUNDATIONS AND ENDOWMENT FUNDS**

##### **CHAPTER ONE**

##### **BASIC PROVISIONS**

##### **Section 1**

(1) A foundation or an endowment fund are purposeful associations of assets 1 established and originating in compliance of this act for the achievement of publicly beneficial goals. A publicly beneficial goal is in particular development of spiritual values; protection of human rights or other humanitarian values; protection of the environment, cultural monuments and traditions; developments in science, education, physical education and sports.

(2) The foundation or the endowment fund is a legal entity.

(3) The expression "foundation" has to be part of the foundation's name; the expression "endowment fund" has to be part of the endowment fund; no other entities/persons are allowed to use this expression in their name or business name.

##### **Section 2**

(1) The foundation's property consists of foundation equity and other assets of the foundation.

(2) A foundation uses for achieving the purpose for which it has been set up revenues from the foundation equity and other assets of the foundation. The foundation equity is a financial expression of the sum of financial and non-financial deposits and foundation gifts entered in the foundation register (hereinafter only "the register").

(3) An endowment fund uses for achieving the purpose for which it has been set up its entire property.

(4) For the purposes of this Act, a foundation contribution is understood to be all which the foundation or endowment fund, in line with this act and the foundation or endowment fund statute, provides to a third person for the purpose for which the foundation or endowment fund have been set up.

(5) For the purposes of this Act, a foundation gift is understood to be all which is provided by a third person to the foundation or endowment fund for the achievement of that purpose for which the foundation or endowment fund have been set up.

1 Section 18 (2)(b) of the Civil Code

##### **CHAPTER II**

##### **ESTABLISHMENT AND INCEPTION OF A FOUNDATION AND AN ENDOWMENT FUND**

##### **Section 3**

##### **Establishing a foundation/an endowment funds**

(1) A foundation or an endowment fund are established by an agreement in writing concluded between the founders or by a founding charter, if there is but one founder, or by a testament (hereinafter only "the foundation charter"). If a foundation/an endowment fund is established by an agreement, the authenticity of the founders' signatures in the agreement have to be officially verified; if a foundation/an endowment fund is established by a foundation charter or a testament, the foundation charter has to be executed in the form of a notarial deed.

(2) The foundation charter, if not a testament, has to include

a) name and location of the foundation/endowment fund,

b) name or business name, location and identification number of the founder (founders), or a document on legal subjectivity of the foreign founder, if a legal entity, or first name, last name or business name, personal identification number, or date of birth, and permanent residence of the founder/founders), if an individual (a natural person),

c) delimitation of the purpose for which the foundation/endowment fund is being set up; the specific purpose for which the



foundation/endowment fund is being set up has to conform with a publicly beneficial goal,

d) the amount or value of asset deposit which each founder pledges to deposit in the foundation/endowment fund; if it is a non-financial deposit, the subject of the deposit has to be defined and valued by an expert,

e) the number of members of the board of directors, first and last names, personal identification numbers, or dates of birth, and permanent residence of the members of the first board of directors with a statement of the manner of their acting on behalf of the foundation/endowment fund.

f) the number if members of the supervisory board, first and last names, personal identification numbers, or dates of birth, and permanent residence of the members of the first supervisory board, or first and last names, personal identification number, or date of birth, and permanent residence of the first comptroller, if the competence of the supervisory board is carried out by a comptroller,

g) determination of a rule to limit the foundation/endowment fund's costs pursuant to Section 22 or a statement this rule to be determined by the statute of the foundation/endowment fund,

h) identification of a person who manages asset deposits of the founder (founders) up to the time of the establishment of the foundation/endowment fund.

(3) If the foundation/endowment fund is established by a testament, the testament has to include the name of the foundation/endowment fund and the particulars specified under paragraph 2, letters c), d), g) and i), as well as the appointment of the person who names the first members of the bodies of the foundation/endowment fund, or the comptroller, if they are not mentioned by name in the testament; and it will execute other deeds related to the inception of a foundation/endowment fund (hereinafter only "the executor of the testament"); a testament that does not meet these specific particulars will be void regarding the section dealing with the establishment of the foundation/endowment fund.

(4) The total value of foundation equity is not to be less than CSK 500,000 and it is not to decrease below this value throughout the period of the foundation's existence.

(5) Foundation equity may consist only of financial means, securities, real estate and moveables, as well as of other property rights and other property

values that fulfill the assumption of permanent revenues and are not burdened by rights of lien.

(6) Other assets of the foundation or assets of the endowment fund may consist of the endowment fund may consist only of financial means, securities, real estate and moveables, as well as of other property rights and other property values that are not burdened by rights of lien.

#### Section 4

##### The Statute of Foundation/endowment fund

(1) The statute of foundation/endowment fund treats the procedures of the behavior of the bodies of the foundation/endowment fund; conditions for the provision of foundation contributions or the circle of persons eligible to receive them; the manner of the provision of these foundation contributions, as well as other issues that have to be included in a foundation charter and the statute of foundation/endowment fund as hereunder mandated.

(2) The statute of foundation/endowment fund will be issued within 30 days from the founding date of the foundation/endowment fund, and any amendments thereof will be determined by the board of directors.

(3) Unless stated otherwise by this Act (Section 22 (2)), the statute of foundation/endowment fund has to be in line with the foundation charter.

(4) The foundation/endowment fund is required to make the statute available if so requested; anyone is entitled to examine it and make excerpts or transcripts.

##### Inception of a foundation/endowment fund

#### Section 5

(1) A foundation/endowment fund is considered established on the date of its entry in the foundation register. The register is maintained by a court appointed by a special act<sup>2</sup> to maintain the commercial register (hereinafter only "the register court"). The register is a public list; the statute of foundation/endowment fund and the annual report constitute its parts.

(2) A proposal to register the foundation/endowment fund in the register is submitted by the founder or the executor of the testament or a person authorized by these in writing; the authenticity of the authorizing party has to be officially verified.

(3) The proposal to register the foundation/endowment fund is accompanied by its foundation charter, a voucher confirming the

financial deposit was paid, or a voucher confirming the receipt of a non-monetary deposit issued by the deposit-managing person in compliance with Section 6 (2), and copies of the police record of the board of directors, the supervisory board or the comptroller; these police-record copies may not be older than 6 months. Those members of the board of directors, the supervisory board, or the comptroller, whose permanent residence is not in the Czech Republic, have to submit a relevant voucher from the state of their permanent residence ascertaining they have not been lawfully sentenced for a willful act punishable by law. This voucher may not be older than 6 months.

(4) The following data is entered in the register:

a) name, location and identification number of the foundation/endowment fund,

b) name or business name, location and identification number of the founder (founders) if it is a legal entity, or first and last names, or business name, personal identification number, or date of birth, and permanent residence if the founder (founders), if an individual (natural persons),

c) the purpose of the foundation/endowment fund,

d) the amount of foundation equity, or the amount of property deposit with the endowment fund,

e) first and last names, personal identification numbers, or dates of birth, and permanent residence of the members of the board of directors and the manner of their acting on behalf of the foundation/endowment fund,

f) first and last names, personal identification numbers, or dates of birth, and permanent residence of the members of the supervisory board, or the comptroller if no supervisory board has been set up,

g) the list of assets comprising the non-financial deposit or foundation gift to the foundation equity, stating its description and value.

(5) Unless stated otherwise by this Act, similar provisions of the Commercial Code and the civil court code applicable to the Commercial Register, its maintenance and proceedings in Commercial Register matters will stand for the register, its maintenance and register matters.

#### Section 6

(1) In matters related to the inception of a foundation/endowment fund up to the time of its

establishment, it is the founders who act jointly, or appoint one from among them in writing, on behalf of the foundation/endowment fund; if the foundation/endowment fund is being established by a testament, such a person is the executor of the testament from the time inheritance proceedings were completed.

(2) Property deposits are managed up to the date of the establishment of the foundation/endowment fund by the person so appointed by the foundation charter; if the foundation/endowment fund is set up by a testament, this person will be the executor of the testament from the time inheritance proceedings were completed, unless otherwise stated by the testament.

(3) Obligation that arose pursuant to paragraph 1 and ownership and other rights pursuant to paragraph 1 and 2 will be assumed by the foundation/endowment fund on the date of their establishment; the deposit-managing person is required to relinquish these deposits to the order of the foundation/endowment fund without unnecessary delay upon its establishment. The treatment of the transfer of ownership rights to real estate is not affected. If a foundation/endowment fund is not established, the deposit-managing person is required to relinquish these deposits without unnecessary delay back to the founders, or to the relevant heirs, if the foundation/endowment fund was set up by testament.

### CHAPTER III

#### WINDING UP AND DISSOLVING A FOUNDATION/ENDOWMENT FUND

##### Section 7

(1) A foundation/endowment fund ceases to exist on the date it was expunged from the register. Before a foundation/endowment fund ceases to exist, it is preceded by its winding up with liquidation or without liquidation if the assets are to be merged to another foundation/endowment fund. No liquidation will take place when the motion for bankruptcy is rejected on the grounds of insufficient assets or if the foundation/endowment fund is left with no assets upon the completion of bankruptcy proceedings.

(2) A foundation/endowment fund will be wound up

a) upon the attainment of the purpose for which it was set up on the date listed in the resolution by the board of directors on the achievement of the purpose of the foundation/endowment fund,

b) by the board-of-directors resolution of a merger with another foundation or endowment fund on the date of the merger agreement,

c) by the court judgement on winding up the foundation/endowment fund on the date shown in this judgment, or on the legal effective date of such a judgment,

d) by the declaration of bankruptcy or the rejection of a bankruptcy motion due to insufficient assets.

(3) The court will wind up a foundation whose foundation whose foundation equity yields no revenues on a permanent basis and the foundation has no other assets and thus cannot fulfill the purpose for which it was set up, if so moved by the founder, the executor of the testament, the board of directors or a person who will assert a lawful interest.

(4) The court will wind up an endowment fund whose endowment –fund assets have been irrevocably used up (disbursed) and the endowment fund no longer can fulfill the purpose for which it was set up, if so moved by the founder, the executor of the testament, the board of directors or a person who will assert a lawful interest.

(5) Upon a motion by the founder, the executor of the testament, or a person who will assert a lawful interest, the Court will wind up the foundation/endowment fund if

a) the foundation/endowment fund in its activities gravely or repeatedly violates this Act, its foundation charter or statute,

b) in the last year, not a single session of the board of directors was held or no members of the bodies of the foundation/endowment fund were elected, nor a comptroller, to replace those members whose membership or office ceased to exist more than one year ago, or

c) the foundation endowment fund did not fulfill, in the period of at least two years, its purpose for which it was set,

and the foundation/endowment fund did not make efforts to rectify the matter by the deadline extended by the Court.

## Section 8

### Merging a foundation/endowment fund

(1)Respective board of directors may resolve to merge the foundation with another one, provided

revenues from foundation equity do not suffice to fulfill the purpose for which the foundation was set up, and the purpose of the foundation it is merge with (hereinafter only “the receiving foundation”) is identical, or similar, with the purpose for which the merging foundation was set up. The receiving foundation’s foundation equity has to increase by the merging foundation’s foundation equity.

(2)Respective boards of directors may resolve to merge the endowment fund with a foundation, provided the endowment fund’s assets are insufficient to fulfill the purpose for which the endowment fund was set up, and the purpose of the foundation it is to merge with (the receiving foundation) is identical, or similar, with the purpose for which the merging endowment fund was set up.

(3)Respective boards of directors may resolve to merge the endowment fund with another endowment fund provided endowment fund’s assets are insufficient to fulfill the purpose for which the endowment fund was set up, and the purpose of the endowment fund it is to merge with (hereinafter only “the receiving endowment fund”) is identical, or similar, with the purpose for which the merging endowment fund was set up.

(4)No merger is possible for the foundation/endowment fund whose foundation charter so precludes.

(5)Prior to the merger resolution, the merging foundation will conclude with the receiving foundation, or the merging endowment fund with the receiving foundation, or the merging endowment fund with the receiving endowment fund, a merger agreement in writing. An appendix to the merger agreement has to include an outline of the merging foundation’s foundation equity or the merging endowment’s assets, and of their liabilities, not older than three months on the merger date.

(6)The expunction of the merging foundation/merging endowment fund will be executed in the register as well as the entry of the change for the receiving foundation/receiving endowment fund with the same effective date; the merger agreement will evidence the motion to expunge the merging foundation/merging endowment fund. The register court will reject the motion to expunge if the merger contravenes any conditions stipulated by this Act.

(7)Effective on the expunction date of the merging foundation/endowment fund in the register, the assets of the foundation/endowment fund, as well rights and liabilities of the merging foundation/endowment fund will be assumed by the receiving foundation/endowment fund.

Section 9

Liquidating a foundation/endowment fund

(1) Unless otherwise stated, a special as similarly applies for liquidation of a foundation/endowment fund.<sup>3</sup>

(2) A liquidator will be appointed by the board of directors of the foundation/endowment fund, save for the winding up of the foundation/endowment fund pursuant to Section 7(2)(c) and (d) in which instances the liquidator will be court-appointed. If the board of directors does not appoint a liquidator without unnecessary delay, the liquidator will be court-appointed even without a motion. The liquidator's remuneration is determined by the liquidator-appointing party.

(3) Liquidation procedures will be determined by the liquidator in such a manner as to cash in only those assets necessary to meet the liabilities of the foundation/endowment fund.

(4) If the foundation charter does not state that a liquidation balance is to be transferred to another foundation/endowment fund due to its purpose, the liquidator will offer this liquidation foundation/endowment fund of identical, or similar, purpose; if no such foundation/endowment fund is identified by the liquidator, or this liquidation balance is refused by the liquidator-identified foundation/endowment fund, the liquidator will offer this liquidation balance to the municipality where the foundation/endowment fund is located. If the municipality does not accept the offer within 60 days from the offer date, this liquidation balance will go to the state treasury upon the expiration of the 60-day deadline. The acquire is to use this liquidation balance for publicly beneficial goals.

CHAPTER IV

BODIES OF A FOUNDATION/ENDOWMENT FUND

The Board of Directors

Section 10

(1) The Board of Directors manages the equity (assets) of the foundation/endowment fund, directs its activities and makes decisions in all the matters concerning the foundation/endowment fund, and constitutes the statutory body of the foundation/endowment fund.

(2) The following constitute exclusive competence of the Board of Directors:

a) to issue its statute and decide on its amendments,

b) to approve budget and its changes,

c) to approve the annual financial statements and the annual report on its activities and performance (hereinafter only "the annual report"),

d) to rule on mergers unless mergers are excluded by the foundation charter,

e) to elect new members of the board of directors and of all supervisory board, unless stated otherwise by the foundation charter, and to decide on recalls of members of the board of directors, the supervisory board or of the comptroller if they fail to meet conditions for membership or office,

f) to determine the amount of remuneration for the discharge of duties for members of the board of directors, the supervisory board, or for the comptroller,

g) to rule on the increase of the foundation equity.

Section 11

(1) The board of directors has to have a minimum of 3 members. The total number of the members of the board of directors has to be divisible by 3, unless stated otherwise by the foundation charter.

(2) Only individuals of integrity, capable of legal acts, who are not in employment or similar relationship with the

foundation/endowment fund, may be members of the board of directors.

(3) He who was lawfully sentenced for a willful act punishable by law is not considered an individual of integrity

for the purposes of this Act. Integrity will be attested by a copy of one's police record, or by a relevant voucher from the state of permanent residence of the person concerned.

(4) An individual, who is disbursed means that constitute fulfillment of the purpose of the foundation/endowment fund, may not serve as a member of the board of directors; nor can he be a member of a statutory or controlling body at a legal entity if the means that constitute fulfillment of the purpose of the foundation/endowment fund are disbursed to this legal entity.

(5) A term of office is three years unless stated otherwise by this Act or the foundation charter. Repeated terms of office are allowed, unless stated otherwise by the foundation charter.

(6) If a member's membership on the board of directors ceases to exist prior to the expiration of his term of office, the board of directors will elect a new member to the vacated position whose term of office will be terminated on the day on which the original member's term of office on the board of directors would expire, unless stated otherwise by the foundation charter.

#### Section 13

(1) The first members of the board of directors are appointed by the founder, or the executor of the testament, unless they are mentioned by name in the testament.

(2) Unless stated otherwise by the foundation charter, upon the appointment of the first members of the board of directors, one-third of the member's names for one-year term of office and one-third of the members' names for two-year term of office from the date of their appointment will be drawn by a lottery. New members whose term of office will be a full three years will be elected subsequently to all vacated positions.

(3) The foundation charter may state that a certain number of the members of the board of directors be elected upon the nomination by certain legal entities, or individual, as specified by the founder, or the testator.

#### Section 14

(1) The members of the board of directors elect from their midst a chairman who convenes and chairs the sessions of the board of directors.

(2) Unless stated otherwise by the foundation charter, a plain majority is required to carry any resolutions by the board of directors. Votes by all the members of the board of directors are equal. Voting deadlocks will be decided by the chairman's ballot.

#### Section 15

(1) Membership on the board of directors ceases to exist

a) upon the expiration of the term of office,

b) upon one's death,

c) by recall, if the member fails to meet the conditions for membership or if he violates in a serious manner, or repeatedly, this Act, the

foundation charter or statute of the foundation/endowment fund, or due to other reasons if so stated by the foundation charter,

d) by resignation.

(2) The board of directors will rule on recall of its member due to the reasons stipulated by this Act within one month from the date it learned the reason for the recall and no later than six months from the date the cause for the recall had occurred. Failure of the board of directors to rule on the recall within this prescribed deadline will result in the recall of the member of the board of directors by the court upon the motion of a member of the board of directors, the supervisory board, the founder, the executor of the testament through which the foundation/endowment fund were set up, or by a person who will assert his lawful interest.

#### Section 16

If the foundation/endowment fund lacks a statutory body or just a single member remains on the board of directors due to the cessation of membership on the board of directors, new members of the board of directors will be appointed by the court upon the nomination by the Founder, the executor of the testament, the supervisory board, or even without any such nomination.

#### Section 17

(1) The supervisory board is a body of control of the foundation/endowment fund.

(2) The supervisory board has to be instituted always whenever the foundation equity or the endowment fund's assets exceed CZK 5,000,000. In other instances, it may be instituted when the foundation charter or the statute of the foundation/endowment fund so mandates.

(3) The supervisory board, in particular,

a) oversees the observance of conditions for the provision of foundation disbursements (contributions) and the accuracy of the accounting system maintained by the foundation/endowment fund.

b) reviews the annual financial statements and the report,

c) supervises whether the activities by the foundation/endowment fund comply with the legal regulations, the foundation charter and the statute of the foundation/endowment fund,

d) points out any deficiencies noted to the board of directors and submits proposals how to remove these deficiencies,

e) at least once a year, it submits its control-activity report to the board of directors.

#### Section 18

(1) In relation to the discharge of its control activities, the supervisory board is particularly entitled

a) to examine accounting ledgers and other vouchers relevant to the foundation/endowment fund,

b) to convene extraordinary sessions of the board of directors if so necessitated by the interests of the foundation/endowment fund and unless convened by the chairman of the board.

(2) Members of the supervisory board have the right to participate in board meetings and take the floor if they so demand.

#### Section 19

(1) The discharge of duties as a member of the supervisory board is incompatible with the membership on the board of directors or with the duties of a person/individual who is authorized to act on behalf of the foundation/endowment fund as a representative.

(2) Sections 11 through 15 of this Act apply commensurably to the supervisory board, with save for the right to elect new members of the board of directors (Section 12 (2)).

#### Section 20

The comptroller

(1) If no supervisory board is set up, its competencies, pursuant to Sections 17 and 18, will be exercised by the comptroller.

(2) For the discharge of the comptroller, Section 11(2) through (4), Section 12, Section 13(1) and (3), Section 19(1) of this Act apply commensurably.

### CHAPTER V

#### USING THE ASSETS OF THE FOUNDATION/ENDOWMENT FUND

#### Section 21

(1) Assets of the foundation/endowment fund may be used only in line with the purpose and condition set forth in its foundation charter or the statute of the foundation/endowment fund administration of the foundation/endowment fund.

(2) The costs pertaining to administration of the foundation/endowment fund must be kept separately from its by the foundation/endowment fund from foundation disbursements (contributions). Costs pertaining to administration of the foundation/endowment fund include particularly the costs to achieve and valorize assets of the foundation/endowment fund; costs to promote the purpose of the foundation/endowment fund; and operating costs of the foundation/endowment fund, including emoluments for the board of directors, the supervisory board, or the comptroller.

(3) A foundation disbursement (contribution), provided by the foundation/endowment fund in line with its purpose the foundation/endowment fund was set up for, has to be used by the recipient individual (entity) in compliance with the conditions set forth by the foundation/endowment fund; otherwise this foundation disbursement (contribution) has to be returned or refunded in money by the recipient individual (entity) within the deadline stipulated by the foundation/endowment fund.

(4) The recipient individual (entity) that was provided with a foundation disbursement (contribution) by the foundation/endowment fund is required, if so asked, to demonstrate in what manner and towards what end this foundation disbursement has been used up.

(5) Members of the bodies of the foundation/endowment fund, or the comptroller, are ineligible for foundation disbursements.

(6) The foundation/endowment fund is prohibited from financing political parties or political movements.

#### Section 22

(1) The foundation charter or the statute of the foundation/endowment fund must announce one of the following rules intended to curb administrative costs of the foundation/endowment fund:

a) total annual cost of the foundation/endowment fund pertaining to administration of the foundation/endowment fund may not exceed a certain percentage of total annual revenues from foundation equity or assets of the endowment fund,

b) total annual costs of the foundation/endowment fund pertaining to administration of the foundation/endowment fund may not exceed a certain percentage of the value of the foundation disbursements of that year, or

c) total annual costs of the foundation/endowment fund pertaining to administration of the foundation/endowment fund may not exceed a certain percentage of foundation equity or assets of the endowment fund depending on their disclosure for the year ended December 31.

(2) The rule subscribed to as per paragraph 1 may not be altered for at least five years. Per paragraph 1, the decisive period is a calendar year.

#### Section 23

(1) The foundation/endowment fund is prohibited from doing business under its own name, save for real estate leases, organizing lotteries, raffles, public collections, cultural, social, sport and educational events.

(2) Foundation equity or assets of the endowment fund may not be used as collateral nor subject of any other way of securing liabilities.

(3) Foundation equity may not be stolen during the entire existence of the foundation. Financial means comprising part of the foundation equity have to be deposited by the foundation in a special bank account or used to purchase treasury bonds or securities guaranteed by the state. These financial means are not allowed to be loaned.

(4) The foundation may participate in business of joint-stock companies only. The entire involvement of assets by the foundation may not exceed 20% of the foundation's property after the value of foundation equity has been subtracted. Publicly negotiable securities issued by joint-stock companies may be purchased and sold by the foundation only on public markets. The foundation's stake in a joint-stock company's assets may not exceed 20%.

(5) The foundation/endowment fund may not be involved in the business of other persons, with the exception of the exercise of rights pertaining to the securities purchased in compliance with paragraph 3, and of the business stakes pursuant to paragraph 4.

(6) Regarding the sale of assets of the endowment fund or leasing real estate constituting part of the property of the foundation/endowment fund, the buyer or

leaseholder may not be a member of the board of directors, the supervisory board, or the comptroller, nor any persons close to them<sup>4</sup> or a legal entity as long as a member of the board of directors, the supervisory board, or the comptroller of the foundation/endowment fund happens to be a member of its statutory body.

#### CHAPTER VI

##### THE ACCOUNTING SYSTEM AND THE ANNUAL REPORT

#### Section 24

##### The Accounting

(1) The foundation/endowment fund maintains its accounting system pursuant to special regulations.

(2) A foundation's annual financial statements have to be verified by an auditor. An endowment fund's annual financial statements have to be verified by an auditor for that calendar year in which the sum of total costs or revenues disclosed by the endowment fund exceeded CZK 3,000,000, or if the endowment fund's assets are in excess of CZK 3,000,000.

##### The Annual Report

#### Section 25

(1) A foundation/endowment fund compiles its annual report by the deadline determined by its board of directors, or by the statute of the foundation/endowment fund, at the latest, however, within 6 months from the completion of the period under review. The period under review is the past calendar year, or the time elapsed from the establishment of the foundation/endowment fund through the end of the calendar year during which the foundation/endowment fund was established, if it is its first annual report.

(2) The annual report outlines activities of the foundation/endowment fund in its entirety during the period under review as well as an assessment of these activities, particularly

a) an outline of assets and liabilities of the foundation/endowment fund,

b) as far as individual foundation gifts over CZK 10,000 provided to the foundation/endowment fund, information about the persons who provided

them is to be given; if a donor requests anonymity, his anonymity has to be guaranteed,

c) an outline of the use of the property of the foundation/endowment fund,

d) an outline regarding persons who were the recipients of foundation disbursements for the purpose for which the foundation/endowment fund was set up, if the value exceeds CZK 10,000, and an assessment whether and in what manner were the foundation disbursements used; if a foundation disbursement went to an individual for health or other humanitarian purposes and this individual requests his anonymity be protected, this anonymity has to be observed,

e) an assessment whether the foundation/endowment fund in its economic performance adheres to the administration cost curbing rule (Section 22),

f) an assessment of basic disclosures contained in the annual financial statements and the audit opinion supplemented by significant findings from the audit report; the annual financial statements constitute an appendix to the annual report.

(3) If any facts warrant corrections of the annual report after this has been already published, the foundation/endowment fund is obliged to make such corrections and publish them without unnecessary delay.

## Section 26

(1) The foundation/endowment fund will file, within 30 days after the annual report, or corrections to it pursuant to Section 25 (3) of this Act, were approved by the board directors, with the register court.

(2) Everyone is entitled to peruse the annual reports and make copies and excerpts.

(3) Another method of publishing (making available to the public) of the annual matter may be prescribed by the foundation charter or the statute of the foundation/endowment fund.

## SECTION VII

### FOREIGN FOUNDATIONS AND FOREIGN ENDOWMENT FUNDS

## Section 25

(1) A legal entity with its registered office outside the territory of the Czech Republic which is a foundation or an endowment fund under the law of the country in whose territory it has its registered office (hereinafter only "a foreign foundation"), may evolve its activities in the territory of the Czech Republic under identical conditions and in the identical scope as foundations or endowment funds established in compliance with this Act, unless stated otherwise by this Act or a special act.<sup>6</sup>

(2) The right of the foreign foundation to operate in the territory of the Czech Republic commences on the date of the registration of its branch established in the territory of the Czech Republic in the register, and ceases to exist on the date of the branch's expunction from the register.

(3) The register court will register the branch of a foreign foundation that has been established in the territory of the Czech Republic, provided the purpose of the foreign foundation is in line with Section 1 (1) of this Act.

(4) The motion to register the foreign foundation's branch is filed by the foreign foundation; the motion is to include the statute of the branch, further a proof the foreign foundation had been set up as a legal entity, and that the value of the asset deposit complies with the provisions of this Act.

(5) The entry in the register will include all data specified in Section 5 (4), letters a), c) and d), further the address of the branch in the territory of the Czech Republic and first and last names, personal identification number or date of birth, and permanent residence in the territory of the Czech Republic of the individual empowered to act on behalf of the foreign foundation in matters pertaining to the branch.

(6) Section 1 (3); Section 2; Section 3 (2) (d); Section 4; Section 7 (3); Section 7 (5) letters a) and c); and Sections 21 through 26 of this Act apply commensurably to the foreign foundation, with that proviso that under these provisions a foundation or an endowment fund is understood to be the branch of the foreign foundation.

## PART TWO

### AMENDMENTS AND SUPPLEMENTS TO THE CIVIL CODE

## Section 28

The Act no. 40/1964 Coll., "The Civil Code" in the wording of the Acts no. 58/1969 Coll.; no. 131/1982 Coll.; no. 94/1988 Coll.; no. 188/1988



Coll.; no. 87/1900 Coll.; no. 105/1990 Coll.; no. 116/1990 Coll.; no. 87/1991 Coll.; no. 509/1991 Coll.; no. 264/1992 Coll.; no. 267/1994 Coll.; no. 104/1995 Coll.; no. 118/1995 Coll.; no. 89/1996 Coll., and no. 94/1996 Coll., are hereby amended and supplemented as follows:

1. Section 20b through 20c inclusive will be dropped.

2. In Section 476d (1), the full stop in the end will be dropped and the following words will be added; " and when it has to have the form of a notarial deed".

3. In Section 477(2), the semicolon after the word "foundation" will be superseded by a full stop and the remaining part of the sentence will be dropped.

#### PART THREE

#### SUPPLEMENTS TO THE CIVIL COURT CODE

##### Section 29

The Act no. 99/1963 Coll., "The Civil Court Code" in the wording of the Acts no. 36/1967 Coll.; no. 158/1969 Coll.; no. 49/1973 Coll.; no. 20/1975 Coll.; no. 133/1982 Coll.; no. 180/1990 Coll.; no. 328/1991 Coll.; no. 519/1991 Coll., no. 263/1992 Coll.; the Czech National Council's Act no. 24/1993 Coll.; no. 171/1993 Coll.; no. 117/1994 Coll.; no. 152/1994 Coll.; no. 216/1994 Coll.; no. 84/1995 Coll.; no. 118/1995 Coll. no. 160/1995 Coll.; no. 238/1995 Coll.; no. 247/1995 Coll.; the ruling by the Constitutional Court of the Czech Republic no. 31/1996 Coll.; the Act no. 142/1996 Coll.; the ruling by the Constitutional Court of the Czech Republic no. 269/1996 Coll. And the Act no. 202/1997 Coll. will be supplemented as follows:

In Section 9 (2) (i), the full stop in the end will be superseded by a comma and letter k) will be added which, inclusive of Note no. 1a) will be worded as follows;

"k) in proceedings to wind up and liquidate a foundation or an endowment fund, to appoint a liquidator of the foundation or the endowment fund, and to nominate new members of the board of directors of the foundation or the endowment fund. 1a)

#### PART FOUR

SUPPLEMENTS TO THE CZECH NATIONAL COUNCIL'S ACT NO. 549/1991 COLL.,

"ON COURT FEES." IN THE WORDING OF THE SUBSEQUENT REGULATIONS

##### Section 30

The Czech National Council's Act no. 549/1991 Coll., "On Court Fees," in the wording of the Czech National Council's Act no. 271/1992 Coll.; the Acts no. 273/1994 Coll.; no. 36/1995 Coll.; no. 118/1995 Coll.; no. 160/1995 Coll. And no. 151/1997 Coll. Is hereby supplemented as follows:

In Section 11(2) (i), the full stop in the end will be superseded by a comma and letters k) and l) will be added to read:

"k) a foundation or an endowment fund in matters of the foundation register,

l) publicly beneficial companies in matters of the register of the register of publicly beneficial companies."

#### PART FIVE

SUPPLEMENT TO THE CZECH NATIONAL COUNCIL'S ACT NO. 357/1992 COLL., "ON

INHERITANCE TAX, GIFT TAX, REAL ESTATE TRANSFER TAX" IN THE WORDING OF

THE SUBSEQUENT REGULATIONS

##### Section 31

The Czech National Council's Act no. 357/1992 Coll., "On Inheritance Tax, Gift Tax and Real Estate Transfer Tax" in the wording of the Czech National Council's Act no. 18/1993 Coll.; the Acts no. 322/1993 Coll.; no. 42/1994 Coll.; no. 72/1994 Coll.; no. 85/1994 Coll.; no. 113/1994 Coll.; no. 248/1995 Coll.; no. 96/1996 Coll.; no. 151/1997 Coll. And no. 203/1997 Coll. Will be supplemented as follows:

In Section 20 (4) (c), the full stop in the end will be superseded by a comma and letter d) will be added to read:

"d) foundations or endowment funds, as well as assets provided by the foundations or endowment funds in line with the purpose and condition set forth in the foundation charter or the statute."

PART SIX

SUPPLEMENT TO THE CZECH NATIONAL COUNCIL'S ACT NO. 586/1992 COLL., "ON

INCOME TAXES" IN THE WORDING OF THE SUBSEQUENT REGULATIONS

Section 32

The Czech National Council's Act no. 586/1992 Coll. "On Income Taxes," in the wording of the Czech National Council's Act no. 35/1993 Coll.; the Acts no. 96/1993 Coll.; no. 157/1993 Coll.; no. 196/1993 Coll.; no. 323/1993 Coll.; no. 42/1994 Coll.; no. 85/1994 Coll.; no. 114/1994 Coll.; no. 259/1994 Coll.; no. 32/1995 Coll.; no. 87/1995 Coll.; no. 118/1995 Coll.; no. 149/1995 Coll.; 248/1995 Coll.; no. 316/1996 Coll.; no. 18/1997 Coll.; no. 151/1997 Coll.; no. 209/1997 Coll. And no. 210/1997 Coll. Is supplemented as follows:

1. In Section 18 (7) the word "foundations" will be followed by the following words:

"Endowment funds,".

2. In Section 19 (1) (p), the full stop in the end will be superseded by a comma and letter r) will be supplemented that, inclusive of Note no. 57, will read:

"r) revenues arising from the lease of real estate that constitute part of the foundation equity and are registered in the foundation register, revenues arising from the lease of word of arts that constitute the foundation equity and are registered in the foundation register, interest and dividend revenues arising from securities that constitute part of the foundation equity and are registered in the foundation register, revenues arising from interest on financial means that constitute part of the foundation equity and are registered in the foundation register, provided they are deposited in a special bank account, revenues arising from copyright and patent rights that constitute part of the foundation equity and are registered in the foundation register; the tax holiday does not apply to those revenues that were used by the foundation in contravention of the special act.

PART SEVEN

AMENDMENT TO THE ACT NO. 563/1991 COLL., "ON ACCOUNTING," IN THE

WORDING OF THE ACT NO. 117/1994 COLL.

Section 33

The Act no. 563/1991 Coll., "On Accounting," in the wording of the Act no, 117/1994 Coll., will be amended as follows:

In Section 9 (1) (d), following words "association of legal entities and" the word "foundation" will be superseded by the words " endowment funds".

PART EIGHT

AMENDMENTS TO THE CZECH NATIONAL COUNCIL'S ACT NO. 102/1992 COLL.,

ADJUSTING CERTAIN ISSUES PERTAINING TO THE PASSING OF THE ACT NO.

509/1991 COLL. WHICH AMENDS, SUPPLEMENTS AND ADJUSTS THE CIVIL CODE

Section 34

The Czech National Council's Act no. 102 /1992 Coll. Adjusting certain issues pertaining to the passing of the Act no. 509/1991 Coll. Which amends, supplements and adjusts the Civil Code, will be amended as follows:

Section 12, including Note no. 8) will be dropped.

PART NINE

TEMPORARY AND CLOSING PROVISIONS

Temporary provisions

Section 35

(1) Foundations established in compliance with the regulations in force to date will be considered foundations or endowment funds under this Act provide the statutory body of the foundation will file within the deadline of 12 months from the effective date of this Act a motion to be registered pursuant to this Act including a proof of the prescribed minimum amount of foundation equity at the date of the filing of the motion, and will submit an adjusted statute of the foundation/endowment fund and copies of police records of the members of the board of directors, the supervisory board, or the comptroller; the

police record copies may not be older than 6 months. An identical copy of the motion to be registered has to be sent by the statutory body of the foundation/endowment fund to the county authority, in the capital of Prague to the district authority (hereinafter only "the county authority"), that had previously registered the foundation.

(2) The statutory body of an foundation established in compliance with the regulations in force to date may decide to merge with another foundation in compliance with the regulations in force to date, provided the purpose of the receiving foundation is identical with, or similar to, the purpose for which the merging foundation had been set up. In mergers, Section 7 (1); Section 7 (2) (b) and Section 8 (4) through (7) will apply commensurably with the proviso that regarding these provisions, the foundation's statute will be considered the foundation charter; the list of foundations maintained by county authorities will be considered the register, and the county authority that had registered the merging foundation will be considered the register court. Upon the merger, the receiving foundation is obliged to proceed pursuant to paragraph 1 including the observance of the deadline specified in paragraph 1 for filing the motion to be registered in the register in compliance with this Act.

(3) The statutory body of an foundation established in compliance with the regulations in force to date may decide to transform into a publicly beneficial company. The transformation of the foundation, established in compliance with the regulations in force to date, into a publicly beneficial company will be effective at the inception date of the publicly beneficial company. At the inception date of the publicly beneficial company, all assets, rights and liabilities of the foundation that had ceased to exist due to the transformation will be assumed without liquidation by this publicly beneficial company. The publicly beneficial company thus formed will notify of its establishment, without delay, the county authority that had originally registered the foundation.

(4) The statutory body of the foundation may, within the deadline of 12 months from the effective date of this Act, decide- instead of filling the motion in compliance with paragraph 1 or the procedures in compliance with paragraphs 2 and 3 - to wind up the foundation and liquidate it. The county authority will be notified of such liquidation. Upon the completion of liquidation, the liquidator will notify the county authority of the foundation's demise. Provisions of this Act will apply commensurably for the settlement of liquidation balance.

(5) Upon the expiration of the deadline specified in paragraph 1 or 4 when no action was taken, or the motion to be registered was denied, the county authority will wind up the foundation and order its liquidation. The county authority will appoint a liquidator. Provisions of this Act will apply commensurably for the settlement of liquidation balance.

(6) Until the date of the registration pursuant to paragraph 1 or the foundation's demise pursuant to paragraphs 2 through 5, the legal circumstances of a foundation established prior to this Act's being in force will be governed by the current regulations unless otherwise stated by this Act.

(7) The foundation or endowment fund will compile extraordinary financial statements at the registration date.

#### Section 36

(1) Organizations with an international element evolving activities in the Czech Republic on the basis of a permit granted in compliance with a special act 7, that under this Act have a nature of a foreign foundation, may file within the 12-month deadline from the effective date of this Act, a motion to be registered pursuant Section 27 of this Act that will be supported by vouchers as specified by Section 27. An identical copy of the motion to be registered has to sent to the Interior Ministry by the organization with an international element.

(2) Upon the expiration of the deadline specified in paragraph 1 when no action was taken, or the motion to be registered was denied by the register court, the permit to evolve activities in the Czech Republic, that was granted in compliance with a special act 7 to the organization with an international element, will cease to exist.

#### 4.3. Law on NPO

#### 4.4. Law on NGO

#### 4.5. Law on Other Legal Forms

ACT No. 248/1995 Coll. of 28th September 1995

On Public Benefit Corporations.

PART ONE

## CHAPTER ONE

### Basic Provisions

#### Article 1

This Act regulates the status and legal relations of the Public Benefit Corporation.

#### Article 2

1) The Public Benefit Corporation shall be a legal entity,

a) which has been established under this Act,

b) which renders generally beneficial services to the general public and to all clients under identical terms and conditions and

c) the profit of which may not be used for the benefit of its Founders, members of its bodies or employees and must serve to render the generally beneficial services for which the Public Benefit Corporation was established.

2) The name of the Public Benefit Corporation shall have to include the text: 'obecné prospěšná společnost [Public Benefit Corporation]' or its abbreviation 'o.p.s.'. No other persons shall be entitled to use this identification in their name or business name.

## CHAPTER II

### ESTABLISHMENT AND INCORPORATION OF A PUBLIC BENEFIT CORPORATION

#### Establishment of a Public Benefit Corporation

#### Article 3

The Founders of the Public Benefit Corporation may include natural persons, the Czech Republic or legal bodies.

#### Article 4

1) The Public Benefit Corporation is established by the Agreement on Establishment signed by all Founders. All signatures shall have to be made under office. In the case of a single Founder, the Agreement on Establishment shall be replaced by the Deed of Establishment drawn up in the form of the notarial record.

2) The Deed of Establishment or the Agreement on Establishment (hereafter only "the Deed of Establishment") shall include the following specifications:

a) the business name and identification number of the Founder if being a legal entity or the name, birth number and permanent address of the Founder if being a natural person,

b) the business name and registered address of the Public Benefit Corporation,

c) the type of publicly beneficial services the Public Benefit Corporation is envisaged to render,

d) the terms and conditions applicable for the rendering of the particular types of publicly beneficial services,

e) the time period for which the Public Benefit Corporation is being established, unless it is being established for an indefinite period of time,

f) the names, birth numbers and permanent addresses of the members of the Board of Directors,

g) the procedural arrangements of the Board of Directors,

h) the names, birth numbers and permanent addresses of the members of the Supervisory Board, if such is established,

i) the value and description of the assets endowed by individual Founders; in the case of a non-monetary endowment, the specification of the property object and the its evaluation rendered by an authorized expert,

j) the manner of publishing the annual report on the activities and business management of the Public Benefit Corporation will be published.

3) The Deed of Establishment may determine that a specific number of members of the Board of Directors or the Supervisory Board shall be elected or appointed upon the motion of a specific circle of citizens or a specific legal entity, local self-government body or a body of the national government. Optionally, the Deed of Establishment may specify that specific property endowed upon establishment may not be alienated or mortgaged or that a specific type of the publicly beneficial services rendered may be modified under specific terms and conditions.

4) The Deed of Establishment may also specify the Public Benefit Corporation entitled to take over the liquidation balance, which remains after winding-up with liquidation of the Public Benefit Corporation established. The Deed of Establishment may also specify that such a receiving Public Benefit Corporation shall be determined by the Board of Directors in its resolution on winding up the Public Benefit Corporation.

## Origin of the Public Benefit Corporation

### Article 5

1) The Public Benefit Corporation comes into existence by the date of incorporation in the Public Benefit Corporations Register (hereafter only "the Register"). The court charged with maintaining the Commercial Register (hereafter only "the Registering Court") under the special law shall maintain the Register.

2) The Founder or a person therefor empowered by the Founder shall submit in writing the Proposal of Incorporating the Public Benefit Corporation in the Register (hereafter only "the Incorporation Proposal"). The Deed of Establishment shall have to be enclosed with the Incorporation Proposal. The Incorporation Proposal has to be submitted not later than 90 days after the establishment of the Public Benefit Corporation.

3) The data entered into the Register upon incorporation shall include the following items:

a) the business name, the registered address and the identification number of the Public Benefit Corporation,

b) the business name and the identification number of the Founder if being a legal entity or the name, the birth number and the permanent address of the Founder if being a natural person,

c) the names, the birth numbers and the permanent addresses of the members of the Board of Directors,

d) the procedural arrangement of the Board of Directors,

e) the type of publicly beneficial services the Public Benefit Corporation is envisaged to render plus the scope of complementary business if to be pursued (Article 17),

f) the names, the birth numbers and the permanent addresses of members of the Supervisory Board, if such is established.

4) If the Public Benefit Corporation is envisaged to pursue operations for the pursuance of which special preconditions are required to be met, or the manner in which such operations shall be pursued are required to be specified, the Founder shall be obliged to prove that such preconditions have been met.

5) Unless stipulated otherwise by this Law, the relevant Articles of the Commercial Code and the Civil Court Statutes Act regulating the Commercial Register shall apply as appropriate for the

maintenance of the Register and administration procedures related thereto.

### Article 6

1) The Founder of the Public Benefit Corporation shall act in all matters related to the establishment of the Public Benefit Corporation and on its behalf until its establishment. If there are more than one Founder, they shall act jointly or through the one of them who was empowered in writing therefor.

2) The obligations resulting from the acts of the Founder according to above Paragraph 1 shall be taken over by the Public Benefit Corporation from the moment of its incorporation. In less than three months the Public Benefit Corporation may reject such obligations, which would prevent it from fulfilling the purpose for which it was founded. In such a case, the Founder or the Founders shall be made liable for the rejected obligations jointly and severally.

## CHAPTER III

### WINDING UP, LIQUIDATION AND CANCELLATION OF THE PUBLIC BENEFIT CORPORATION

#### Article 7

1) The Public Benefit Corporation shall be considered cancelled beginning from the date it has been erased from the register.

2) The cancellation of the Public Benefit Corporation shall precede its winding up with or without liquidation. No liquidation is required if the Public Benefit Corporation is being dissolved by amalgamation, merger or split-up; for the dissolution of the wound-up Public Benefit Corporation and the cession of rights and duties the Article 69 of the Commercial Code shall apply accordingly.

3) The Public Benefit Corporation may amalgamate or merge with another public benefit corporation, only. The Public Benefit Corporation may split up to form other public benefit corporations, only.

#### Article 8

1) The Public Benefit Corporation is wound up

a) upon the expiration of the time for which it was established,

b) upon accomplishment of the purpose for which it was established,

c) by the date specified in the Board of Directors resolution on winding up the Public Benefit Corporation,

d) by amalgamation or merger with another public benefit corporation or by splitting-up into two or more public benefit corporations,

e) by the date specified in the Court Ruling on the wind up of the Public Benefit Corporation, otherwise by the date such Ruling becomes legally effective,

f) by the date of proclamation of bankruptcy or rejection thereof on grounds of insufficient assets.

2) The Board of Directors must inform in writing the Founder on the resolution referred to under above Paragraph 1 Letter c) in less than two (2) months before the date on which the Public Benefit Corporation is to be wound up. In the case, when this condition is not met, the aforesaid resolution is considered ineffective. Before the Public Benefit Corporation is wound up according to the resolution of the Board of Directors, the Founder may modify or cancel that resolution. However, when doing so, the Founder has to make arrangements allowing for the continuation of the operations of the Public Benefit Corporation at least to the extent and the scope, which corresponds to the reasons for which the resolution of the Board of Directors was modified or cancelled.

3) If the resolution of the Board of Directors was modified or cancelled by the Founder, after such was reported to the Registering Court, the Court shall have to be notified also of the Founder's decision. Under such circumstances, the previous motions of the Board of Directors of the Public Benefit Corporation for liquidation or appointments of the Liquidating Officer are considered ineffective.

4) Acting upon the motion of a governmental agency, the Founder or the person demonstrating legal interest, the Court shall decide on winding up of the Public Benefit Corporation and on its liquidations if:

a) no meeting of the Board of Directors of the Public Benefit Corporation took place in the last year;

b) no bodies of the Public Benefit Corporation were appointed and the term of office of the lastly appointed bodies of the Public Benefit Corporation had expired by over a year ago;

c) the Public Benefit Corporation has failed to render the publicly beneficial services specified in its Deed of Establishment for over six (6) months;

d) the quality, scope and availability of the publicly beneficial services for the rendering of which the Public Benefit Corporation was founded has been repeatedly endangered over the last six (6) months by pursuing the complementary operations;

e) the Public Benefit Corporation uses the income from its operations and the assets it manages in conflict with this Act;

f) the Public Benefit Corporation has violated the provisions of this Act.

5) The court may set a date by which the cause for which the motion for winding up the Public Benefit Corporation was made is to be remedied.

6) If the Founder ceases to exist, the Founder's legal successor shall assume the Founder's rights and duties.

#### Article 9

1) For the execution of the liquidation the Board of Directors shall appoint the Liquidating Officer.

2) When the Board of Directors fails to appoint the Liquidating Officer, such an officer shall be appointed without unreasonable delay by the Court competent to do it according to the registered address of the Public Benefit Corporation.

3) The Liquidating Officer shall start the liquidation by:

a) verifying that the Founders of the Public Benefit Corporation had been advised of the liquidation in due time;

b) by calling upon the creditors and other persons concerned by the liquidation to claim their respective title rights and receivables by the time which shall not be shorter than three (3) months;

c) by advertising the commencement of liquidation of the Public Benefit Corporation in the Bulletin "Obchodni vestnik" [the Official Commercial Journal of the Czech Republic];

d) by notifying the municipality in which the Public Benefit Corporation has its registered address and the competent Revenue Office about the beginning of liquidation.

4) The procedure of the liquidation shall be designed so that only the assets necessary for meeting the liabilities of the Public Benefit Corporation are turned into cash.

5) The property held by the Public Benefit Corporation constitutes the separate estate in the

liquidation and it shall be used for satisfying the creditors' claims in the sequence corresponding to that of liabilities payable after the declaration of bankruptcy. The Liquidating Officer's remuneration shall be settled at the order as defined for the Estate Trustee according to the Bankruptcy and Settlement Act<sup>5</sup>.

6) If the situation is other than that referred to under Article 4 Paragraph 4) above, the liquidation balance shall be offered for transfer onto the municipality in which the Public Benefit Corporation in liquidation has its registered address. The property may be transferred onto the municipality free of charge only if the municipality enters into a contract obliging it to use such property in full extent for rendering the publicly beneficial services for provision of which the Public Benefit Corporation had been established.

7) If within thirty (30) days from reception of the offer made by the Liquidating Officer the municipality fails to acknowledge in writing its intention to take over the property offered, the said property shall be transferred by the Liquidating Officer onto the District Administration Office competent as of the registered address of the Public Benefit Corporation. The District Administration Office shall use the property for rendering publicly beneficial services.

8) Within thirty (30) days after completing the liquidation procedure, the Liquidating Officer shall file the proposal for erasing the Public Benefit Corporation from the Register with the Register Court.

## CHAPTER IV

### BODIES OF THE PUBLIC BENEFIT CORPORATION

#### Board of Directors

1) The Board of Directors is the statutory body of the Public Benefit Corporation.

2) The Board of Directors shall have at least three (3) and at most fifteen (15) members. The number of members of the Board of Directors shall be always divisible by three. At least two thirds of the members of the Board of Directors shall be citizens of the Czech Republic.

3) A member of the Board of Directors may be only a natural person of civic integrity capable of legal acts providing neither the person or persons related to the person are employed by or in other like relation with the Public Benefit Corporation.

4) For the purpose of this Act, a person of civic integrity shall be any person, which has not been legally effectively sentenced for a willful criminal act.

5) The membership in the Board of Directors of the Public Benefit Corporation shall be incompatible with the membership in the Supervisory Board of the same Public Benefit Corporation. The members of these bodies shall not be entitled to receive any royalty for the performance in the capacity. The Public Benefit Corporation shall be entitled to compensate the expenditures of the members of its Board of Directors and Supervisory Board up to the limit set under the applicable regulations.

#### Article 11

1) The term of office of the members of the Board of Directors shall be three (3) years.

2) No member of the Board of Directors shall serve in the office for over two subsequent terms of office. After having served as a member of the Board of Directors for six (6) years, the same person may become a member of the board again after no less than one (1) year.

3) The members of the Board of Directors shall elect from amongst themselves the Chairman of the Board of Directors who shall call and chair the meetings of the Board of Directors.

4) In decision-making, the voting rights of all members of the Board of Directors shall be equal. With a drawn vote, the vote of the Chairman of the Board of Directors shall prevail. Unless the Deed of Establishment or the Statutes stipulate otherwise, the Board of Directors shall have reached its quorum if over one half of its members are present and the majority of all present votes shall be necessary for a decision to be passed.

#### Article 12

1) The Founder shall appoint the members of the Board of Directors, unless stipulated otherwise in the Deed of Establishment.

2) Following the appointment of the first members of the Board of Directors, the names shall be drawn in lots of one third of the members whose term of office shall be ended after one year and one third of the members whose term of office shall end after two years.

3) The membership in the Board of Directors shall expire

a) by expiration of the term of office,

- b) by death,
- c) by resignation,
- d) by dismissal.

4) The Founder shall dismiss a member of the Board of Directors due to the cessation of the preconditions required by this Act concerning the membership in the Board of Directors.

5) If there exists no Founder and if the Founder's rights have not been transferred to another person, the member of the Board of Directors shall be dismissed by the District Administration Office competent to do it, according to the registered address of the Public Benefit Corporation.

6) To fill the vacancies in the Board of Directors new members of the Board of Directors shall be co-opted at the nearest next session of the Board of Directors.

#### Article 13

1) The competencies of the Board of Directors shall include:

a) to issues in less than six (6) months from the date of incorporation of the Public Benefit Corporation the Statutes of the Public Benefit Corporation whereby the internal organization of the Public Benefit Corporation shall be specified in detail. The data in the Statutes shall have to be identical with those in the Deed of Establishment;

b) to approve any change, modification or amendment of the Deed of Establishment in pursuance of Article 4 Paragraphs 3 and 4;

c) to decide on the wind up of the Public Benefit Corporation and to appoint the public benefit corporation to which the liquidation balance shall be offered;

d) to take any steps necessary so that the purpose for which the Public Benefit Corporation has been established is observed;

e) to approve the budget of the Public Benefit Corporation including any changes to it and to approve specifically the administration costs of the Public Benefit Corporation;

f) to approve the annual balance sheet of incomes and expenditures and the annual report of the Public Benefit Corporation;

g) to decide on the object and scope of the complementary operations of the Public Benefit Corporation beyond the scope set in the Deed of Establishment (Article 4 Paragraph 2 Letter c);

h) to grant consent for the alienation or mortgaging of real property of the Public Benefit Corporation or for leasing such property for over one year unless a shorter time limit is stipulated by the Statutes;

i) to appoint and dismiss the Manager of the Public Benefit Corporation, to supervise his/her activities and to determine his/her remuneration if the office of Manager is established according to the Deed of Establishment of the Public Benefit Corporation;

j) to decide on any matters vested with the Board of Directors under the Deed of Establishment.

2) The Board of Directors shall meet at least twice a year.

#### Article 14

##### Manager

1) Only a person of civic integrity may be appointed the Manager.

2) While the Manager may not be a member of either the Board of Directors or the Supervisory Board, he/she shall be entitled to attend the meetings of the Board of Directors holding the advisory vote.

3) The Manager shall manage the operations of the Public Benefit Corporation unless the management of such operations is vested with the Board of Directors or another body of the Public Benefit Corporation under law, the Deed of Establishment or the Statutes.

##### Supervisory Board

#### Article 15

1) The Supervisory Board shall be the inspecting body of the Public Benefit Corporation.

2) The Supervisory Board shall be obligatorily established by the Public Benefit Corporation into the assets of which government or municipal property has been invested; the same holds for the Public Benefit Corporation, which is obliged under law to maintain its bookkeeping records according to the double-entry accounting system. The establishment of the Supervisory Board may be prescribed under the Deed of Establishment, as well.

3) The Supervisory Board shall have at least three (3) and at the most seven (7) members. The members of the Supervisory Board shall elect the Chairman, who shall call and chair the meetings of the Supervisory Board.



4) The Founder shall appoint the members of the first Supervisory Board.

5) Unless otherwise stipulated by this Act, the manner of establishment and performance of the membership in the Supervisory Board shall be regulated accordingly by the provisions stipulated for the Board of Directors in this Act, as appropriate.

#### Article 16

##### 1) The Supervisory Board

a) reviews the annual balance sheet of incomes and expenditures and the Annual Report of the Public Benefit Corporation;

b) reports at least once every year to the Board of Directors on the findings obtained by its inspection activities;

c) examines, whether the Public Benefit Corporation operates in accordance with the law and the Deed of Establishment of the Public Benefit Corporation.

##### 2) The Supervisory Board shall be entitled:

a) to make motions to the Board of Directors for the dismissal of the Manager;

b) to inspect the accounting books and other documents and to inspect the data therein recorded;

c) to call a special meeting of the Board of Directors if required in the interest of the Public Benefit Corporation.

The members of the Supervisory Board shall be entitled to take part on the meeting of the Board of Directors; they must be given floor for a word, when they ask for it.

3) The Supervisory Board shall be obliged to notify the Board of Directors of any violation of laws, stipulations of the Deed of Establishment or the Statutes and of any instances of bad business management and/or any other defects or deficiencies in the operations of the Public Benefit Corporation.

#### CHAPTER V

#### BUSINESS MANAGEMENT OF THE PUBLIC BENEFIT CORPORATION

#### Article 17

1) Besides the publicly beneficial services for the rendering of which the Public Benefit Corporation has been established, the Public Benefit Corporation may pursue also other operations ("complementary operations"). However, the complementary operations have to improve the utilization of assets without jeopardizing the quality, scope and availability of the publicly beneficial services rendered by the Public Benefit Corporation.

2) The Public Benefit Corporation may not take part in the entrepreneurial activities of other persons and/or to establish its branches outside the territory of the Czech Republic.

3) The net profit as reported at the end of the fiscal year shall be transferred by the Public Benefit Corporation to the Reserve Fund in its full amount. The Reserve Fund shall be first used to cover any losses reported in future fiscal years.

4) The equity of the Public Benefit Corporation shall be the source for financing the operations of the Public Benefit Corporation. The equity shall comprise:

a) the value of assets endowed by the Founders,

b) the value of gifts and inheritance received

c) the funds created by the Public Benefit Corporation

d) the subsidies.

#### Article 18

1) In making the necessary arrangements to pursue its operations, the Public Benefit Corporation may apply for subsidies granted from the governmental budget, from the budget of the District Administrative Office, from the communal budget or from the budget of another territorial body of the public administration, as well as to apply for grants from a fund established by the law.

2) The subsidies from the budget of the Government or from the communal budget or from the District Administration Office budget or from the budget of another territorial body of the public administration may be granted to the Public Benefit Corporation for one and the same project or one and the same activity from a single source, only.

3) For a subsidy from the governmental budget, the Public Benefit Corporation shall apply to the governmental body competent to it according to the prevailing activity rendered by the Public Benefit Corporation.

4) The body through which the subsidy is being granted shall decree the terms and conditions for granting the subsidy and it shall inspect and evaluate the utilization of the subsidy made.

#### Accounting and the Annual Report

##### Article 19

1) The double-entry accounting system shall have to be used by the Public Benefit Corporation

a) which pursues complementary operations;

b) the total receipts (net incomes) of which in the last year were in excess of CZK three million (3,000,000).

2) The Public Benefit Corporation shall be obliged to distinguish clearly in its accounting books the incomes and expenditures related to the complementary operations from those related to the publicly beneficial services, as well as from any incomes and expenditures not rated under the aforesaid groups and/or related to the management of the Public Benefit Corporation.

3) The end-of the year balance sheet of incomes and expenditures shall have to be audited by an authorized auditor for those Public Benefit Corporation which

a) are the beneficiaries of subsidies or other incomes from the governmental budget, from the communal budget or from the budget of another territorial body of the public administration or from any governmental fund, the total of which exceeds CZK one million (1,000,000) in the year for which the balance sheet is made;

b) have not established the Supervisory Board, or

c) have their net turnover exceeding CZK ten million (10,000,000).

4) In all other aspects shall be the Public Benefit Corporations regulated by the laws and regulations effecting the accounting procedures.

##### Article 20

1) By the date set by the Board of Directors which shall not be later than six (6) months after the end of the reviewed period, the Public Benefit Corporation shall compile and publish its Annual Report on its activities and business management. The reviewed period shall be the calendar year. In the Statutes, the reviewed period may be modified to be the academic year for the Public Benefit Corporation whose publicly beneficial services are those in education and training.

2) The Public Benefit Corporation shall be obliged to publish its first annual report not later than 18 months from its incorporation.

3) The Annual Reports shall have to be made accessible to the general public.

##### Article 21

The Annual Report of the Public Benefit Corporation shall include:

a) the review of operations pursued in the calendar year with specification of the relation to the purpose of establishment of the Public Benefit Corporation;

b) the annual balance sheet of incomes and expenditures and the critical review of the basic data therein included;

c) the statement of the auditor to the annual balance sheet of incomes and expenditures, if auditing was made;

d) the review of money received and spent;

e) the review of income (revenue) structured by source;

f) the movements in and the final balances of funds of the Public Benefit Corporation;

g) the movements and balances of assets and liabilities of the Public Benefit Corporation;

h) the total amount of costs structured by those spent for rendering the publicly beneficial services, for pursuing complementary operations and administration costs of the Public Benefit Corporation;

i) any changes, modifications and amendments of the Deed of Establishment and changes in the membership of the managerial bodies of the Public Benefit Corporation as occurred throughout the year;

j) other data specified by the Board of Directors.

##### Article 22

If the Public Benefit Corporation defaults in its duties under Articles 2, 17 and 20 hereof, it shall be stripped

a) of the tax benefits set forth by this Act, by the Income Tax Act, and by the Inheritance, Gift and Property Transfer Taxes Act for the year in which such violation occurred,

b) of the tax benefits set forth under the Property Tax Act for the next tax period following that in which the violation occurred.

#### PART TWO

[Extending the corporate income tax exemptions to public benefit corporations]

The Act of the Czech National Council No. 586/1992, on Income Tax, as amended under the Act of the Czech National Council No. 35/1993, the Act No. 96/1993, the Act No. 157/1993, the Act No. 196/1993, the Act No. 323/1993, the Act No. 42/1994, the Act No. 85/1994, the Act No. 114/1994, the Act No. 259/1994, the Act No. 32/1995, the Act No. 87/1995, the Act No. 118/1995 and the Act No. 149/1995, is herewith amended and complemented to read:

1. In Article 18 Paragraph 7 the words "the public benefit corporations" are added to follow the words "the foundations,

2. The Article 34 is complemented by Paragraph 12, which reads as follows:

"(12) Paragraphs 1 and 2 shall not apply for public benefit corporations"

3. [Not related to Public Benefit Corporations]In the Appendix to the Act, under Item (1-27), the words "instruments for field lengths measurement" are replaced by words "length measuring tools" and the words "instruments for field lengths measurement" are replaced by the words "length measuring tools" also under Item (2-53).

#### PART THREE

[Not related to Public Benefit Corporations]

The Act No. 149/1995, whereby the Act of the Czech National Council No. 586/1992, on the Income Tax, as amended under the later legislation, is amended and whereby the Act of the Czech National Council No. 589/1992, on Social Security and Government Employment Policies Contribution Payments, as amended under the later legislation, is amended and the Act of the Czech National Council No. 185/1991, on the Insurance Sector as amended under the later legislation are herewith amended and complemented as follows:

1. In part V Item 1 the text "in the Items 1 and 2" is replaced by the text "in the Items 1,2 and 3".

2. In Part V Item 1 the clause "An analogous procedure may be pursued for a whole set of such

receivables" is inserted to follow the second clause.

#### PART FOUR

[Extending the real property tax exemption to public benefit corporations]

The Act of the Czech National Council No. 338/1992, on the Real Property Tax as amended under Act No. 315/1993, and Act No. 242/1994 is herewith amended to read:

1. In Article 4 Paragraph 1 Letter f) the comma following the text "civic associations" is deleted and the text "and public benefit corporations" is added.

2. In Article 9 Paragraph 1 Letter f) the comma following the text "civic associations" is deleted and the text "and public benefit corporations" is added.

#### FIVE

[Extending the inheritance tax, gift tax and property transfer tax exemptions to public benefit corporations and amending the reporting obligations in case of an exempt]

Act of the Czech National Council No. 357/1992, on the Inheritance, Gift and Property Transfer Tax as amended under Acts of the Czech National Council Nos. 18/1993, 42/1994, 72/1994, 85/1994 and 113/1994 is herewith amended to read:

1. In Article 20 Paragraph 4 at the end of Letter b) the period is replaced by the comma and Letter c) is added reading: '(c) designated by the public benefit corporations for their operations.'

2. In Article 21 Paragraph 1 at the end of Letter c) the period is replaced by the comma and Letter d) is added reading:

"d) after the end of every six months of the current calendar year, if the transaction is a free of charge property acquisition by legal entities according to the Article 20 Paragraph 4 hereof. The tax return shall include all property so acquired throughout this period."

#### 4.6. Other Laws

4.6.1. Act on Lotteries and Other Similar Games

<http://www.sazka.cz/en/>

Act No. 202/1990 of Collect., On Lotteries and other Like Games, in terms of Act: No. 70/1994 of Collect. which amends the Act No. 202/1990 of Collect., On Lotteries and other Like Games, No. 149/1998 of Collect., which amends the Act No. 202/1990 of Collect., On Lotteries and other Like Games in terms of Act No. 70/1994 of Collect., and on amendments of the others Acts, No. 63/1999 of Collect., which amends the Act No. 202/1990 of Collect., On Lotteries and other Like Games, in terms of a later legal provisions and on amendments of the others Acts.

This Act is effective from January 1st, 2000.

The Parliament has decreed the following Act of the Czech Republic:

#### Introductory Provisions

##### Section 1

A Lottery or other like Game is considered to be such game, in which any physical person who paid a deposit (wager), the return of which is not guaranteed to the participant, may take part in on voluntary basis. The win or loss is by the virtue of a random chance or any circumstance or event unknown beforehand, which, however, is specified by the operator in advance in the game terms and conditions (referred to as the "Gambling Scheme" henceforth). It does not matter whether the game is played with the use of mechanical, electromechanical, electronic or other devices.

The circumstances determining the winnings (the outcome of the drawing of lots, sport matches, horse races or other events to be run) may not be known to anyone in advance and they must be of such nature that they cannot be influenced by either the operator or the bettor.

The probability of winnings, with lotteries according to Section 2 Letters a) and d) and with tombolas according to Section 2 Letter b), may not be less than 1 : 200.

A lottery or a similar game of chance shall be deemed a contest, survey and any other activity for prizes, where the operator undertakes to pay the participants, determined by a draw or some other random selection method, prices in cash, deposit books, securities, insurance etc., and real estate, and in which participation is conditional upon purchase of specific goods, services, or buying some other product and documenting the purchase to the operator, or entering into a contract relationships with a provider of goods, services or some other product, or participation in a promotion or advertisement events organised by the provider or operator, also indirectly through a third party (hereinafter "consumer lotteries"). Consumer lotteries shall also include contests,

surveys and other activities for prizes in which the operator, under the aforementioned conditions, undertakes to provide to the participants performance in kind, services or prizes comprising goods and products, etc., provided the sum total of all in-kind prizes in all games organised by the operator exceeds 200,000.- CZK in any calendar year and the value of a single prize exceeds the amount of 20,000.- CZK. Organisation of consumer lotteries is forbidden. Contests, surveys and other activities for prizes pursuant to either of the sentences one or two above, organised by a single operator, in which the sum total of in-kind prizes in a given calendar year does not exceed the amount of 200,000.- CZK and the value of a single prize does not exceed the amount of 20,000.- CZK shall be reported to the financial office of jurisdiction. The applicable procedure shall be specified by the Ministry of Finance (hereinafter "Ministry") by a Decree."

Lotteries and other like games of chance that do not provide to all participants equal conditions including the possibility to win are banned.

Only a legal entity, which has its registered address in the territory of the Czech Republic, and which was granted the license to operate a lottery or other like game by the competent authority, may run a lottery or other like game.

Only a physical person that is over eighteen years of age and paid the deposit (wager) to the operator in advance, either in cash or non-cash, in accordance with the Gambling Scheme, may become a participant (the "bettor" henceforth) in a lottery or other like game. Persons under eighteen years of age are prohibited to participate in lotteries or other like games. The operator of a lottery or other like game must adopt such measures so that such persons could not participate in game. For this purpose, the operator is entitled to ask such a person for proving its identity through its identity card.

##### Section 2

Lotteries and other like games include mainly:

Money lotteries or lotteries for prizes in kind, with which a given number of tickets bearing serial numbers are issued by the operator according to the Gambling Scheme. If the tickets are divided into a number of series, then each series must include the same number of lottery tickets and each ticket must bear the indication of both the serial number and the series. The sale price of the ticket of each series must be the same in every series. All tickets, which have been issued are included in drawing.

Tombolas, in which only the tickets that were sold are included in drawing. The tickets are sold and the prizes are given on the day and at the spot of drawing.

Numerical lotteries, with which neither the number of participants nor the amount of game surety is specified beforehand, while the amount of game surety is taken as the multiplication of the issued tickets and the sale price per one ticket. The prize is calculated from the number of winners and the aggregate deposits (wagers) by means of a ratio determined in advance, or alternately, it can be calculated by means of a multiple of the deposit (wager), according to what number of digits were guessed by a participant from the limited number of digits that was drawn according to the Gambling Scheme.

Instant lotteries with which a participant learns whether it won or not after it removes the indicated cover of a particular box of the lottery ticket or lot (which is covered by the time of purchase) forthwith after it is purchased.

Betting games that are operated by means of electronic or electromechanically controlled gaming machines or other like devices (referred to as the "gaming machines" henceforth).

Betting games, with which the prize winning is conditioned by the successful guess of the outcome or scores of sport competitions, races, and the amount of the prize depends on the ratio between the number of winners and the total amount of the deposit (wager) and the prize ratio that is set in advance.

Betting games operated with the use of a special type of tokens bearing the combination of fifteen digits in the numerical series from one up to ninety, while neither the number of participants nor the game surety amount is known in advance. The drawing of lots takes place in the public with the use of a mechanical device and it consists in the gradual drawing of lots with digits from one up to ninety. The prize is calculated from the aggregate amount of deposits - accordingly to the type of the winning, and in each round in dependence on the outcome of the drawing of lots. The terms and conditions of game are set forth in detail in the Gambling Scheme.

Betting games, with which the prize winning is conditioned by the successful guess of the outcome or scores of sport competitions, races, or the successful guess of the outcome of other events of public concern providing the bets on such event is not in defiance to any ethical principles. The prize is directly proportional to the prize ratio at which the bet was taken and the wager amount (referred to as the "rate bets" henceforth).

Betting games operated in gambling parlours specifically established for this purpose (casinos) including those operated with the use of mechanical devices (such as a roulette) with which neither the number of participants nor the wagered amounts during any one run of the game is not known beforehand. The prize is calculated from the deposited amounts or according to the terms and conditions that are set forth in the Gambling Scheme.

Lotteries and other like games that are run by means of the technical devices operated directly by the bettors or operated via the telephone, while neither the number of participants is determined in advance nor the amount that was wagered is known beforehand. The prize is calculated from the deposits according to the terms and conditions that are set forth in the Gambling Scheme.

Betting games in which a win depends on guessing the order in which racehorses arrive at the goal post (hereinafter "horse betting") and the win depends on the proportion of the winners to the sum total of collected bets and the proportion of wins determined in advance, or the win is proportional to the odds at which the bet was made and the amount of the bet.

### Section 3

The subject of the prize may be:

with monetary and instant lotteries, lotteries with digits and betting games solely and exclusively the money in cash unless the prizes in other movable assets are licensed by the Ministry;

with lotteries in kind and tombolas, the movable assets with the exception of the money in cash, deposit books and securities.

Unless the prize is paid by the operator directly upon the termination of the game, the game operator is obliged pay the prize by the date set in the Gambling Scheme and no later than within sixty (60) days from the date on which the claim was made.

### Section 4

Lotteries and other like games may be operated only on the grounds of the license issued by the competent authority. If a lottery or other like game is operated by the government, the Ministry or a state agency thereby appointed shall act on its behalf.

The license is granted if the operation of lotteries or other like games is in compliance with other laws and provided that it does not disturb the peace and order, and provided that a proper operation of lottery or game is secured including the necessary equipment and if for social, medical, sport, environmental, cultural or other projects beneficial to the public it is used a portion of the profit, at the percentage rate set in the Table, ranging from 6 % (minimum) up to 20 % (maximum) of the difference, by which the operator's income, which is created by all betted amounts of all operated games (according to Section 2 and Section 50, paragraph 3), and which are subject to accounting in the given fiscal period, exceeds the prizes disbursed to bettors, the administration fees, the local fees and the costs incurred by the state supervision (hereinafter a part of the yield).

Difference in mill. CZK	Fixed percentage of return
up to 50	6%
50-100	8%
100-500	10%
500-1000	15%
over 1000	20%

The payment of a portion of the profit at the set rate for the purposes beneficial to the public satisfies the condition specified by a special regulation.<sup>3)</sup>

The profit is meant as the income of one operator that is created by all wagered amounts from all games thereby operated according to this Act which are subject to entering in the books in the fiscal period minus prizes, the administration fee, the local fee, the costs incurred by state supervision and the operator's costs directly related to the operation of games.

The operation of lotteries and other like games is deemed as the activities aimed at the putting such lotteries and other like games into operation, including the brokerage, organisational, financial, technical and other services related to the management of operation of such games plus their regular termination and accounting. Moreover, the operation of lotteries is also taken as the performance of any and all other activities that are prescribed to the operator by other legal regulations.

The licence to operate lotteries and other like games may only be issued to a legal entity that

has its registered address in the territory of the Czech Republic. The license may be issued to neither a Czech legal entity in which a foreign party holds ownership interest nor a legal entity in which such company has ownership interest. The provisions of the second sentence shall not apply to betting games under Section 2 clause i). The Ministry may grant exemptions concerning betting games under the provisions of Section 2 clause i) to local legal entities with foreign capital participation or legal entities in which such companies have a stake.

A lottery or other like game according to Section 2 Letters a), c), d), f), j) and according to Section 50 Paragraph 3 may be operated by the state (the Ministry or other governmental entity charged by the former),

a joint stock company with registered address in the territory of the Czech Republic, all shares of which are registered shares (on name) and has been established for the operation of lotteries and other like games. The registered capital of such company is at least CZK 100,000,000.- and it may not be reduced below the minimum amount in the course of the time of the validity of the license.

Betting games according to Section 2 Letter g) may be operated by a joint stock company with registered address in the territory of the Czech Republic, all shares of which are registered shares (on name), and which has been established for the operation of lotteries and other like games. The registered capital of such company is at least CZK 30,000,000.- and it may not be reduced below the minimum amount in the course of the time of the validity of the license.

Betting games according to Section 2 Letters h) and i) may be operated by a joint stock company, all shares of which are registered shares (on name), and which has been established for the operation of such games, and the registered capital of which is at least CZK 10,000,000.- and CZK 30,000,000.- for betting games according to Section 2 Letter h) and Section 2 Letter i) respectively. The registered capital may not be reduced below the respective minimum amount in the course of the time of the validity of the license.

Betting games under Section 2 clause k) may be organised by the state or an organisation authorised by the state.

For the issue of the license to operate a lottery or other like game, an administration fee is paid according to special regulations.

Fee Act of the Czech National Council No. 368/1992 of Collect. as currently amended.

The operation of foreign lotteries including the sale of foreign lottery tickets, participation in betting abroad, with which the wagers are paid abroad, and the collection of wagers for betting games operated abroad or the mediation of wagers for betting games operated abroad, are prohibited. The operation of the Czech lotteries and other like games, with which the wagers are paid abroad, is prohibited. The Ministry may grant an exemption from this ban in order to ensure mutuality.

#### Section 4a

The applicant for the license to operate a lottery and/or other like game (the "Applicant" henceforth) has to provide the licensing authority with the documents showing the criminal integrity of the physical persons who are at the position or the members of the statutory body of the Applicant, and these physical persons that are the founders of legal person; if the founder is any other physical person, then the documents stating the legal integrity of these persons who are at the position or the members of the statutory body with such legal entity.

For the purpose of this Act, criminally integral person shall not be considered one who was effectively sentenced for a criminal act, the nature of which is related with the scope of business, for another criminal act deliberately committed if, considering the nature of enterprising and the person of entrepreneur there still exists the apprehension that it would commit the same or similar act during the operation of lotteries and/or other like games.

The criminal integrity is demonstrated with the Excerpt from the Criminal Register. Foreign nationals, who are not holders of the permanent residence permit in the territory of the Czech Republic, demonstrate their criminal integrity with any corresponding documents issued by the state, of which they are nationals, as well as in which they stayed for at least three uninterrupted months over the last three years (referred to as foreign documents henceforth). Foreign nationals, who are the holders of the permit for permanent residence in the territory of the Czech Republic and whose stay has lasted for at least six calendar months as of the date their criminal integrity is being demonstrated, shall present also the Excerpt of the Criminal Register. The Excerpt of the Criminal Register or any like foreign document may not be older than three calendar months at the time of its presentation.

Within one month (at latest) from the date when a change in person was made - as referred to Paragraph 1 - the operator is obliged to report in

writing such circumstance to the body who issued the license for the operation of the lottery and/or other like game and to enclose with such notice the Excerpt of the Criminal Register or other like foreign document concerning the person who assumed the position specified according to Paragraph 1.

#### Section 4b

To secure the receivables claimed by the government, municipalities and the prizes payable to the bettors, the applicant is obliged to deposit with a special bank account the amount (the "surety" henceforth) of

CZK 50,000,000.- with lotteries and games according to Section 2 Letters a), c) and according to Section 50 Paragraph 3, - for all lotteries and games thereby operated, ten per cent (10 %) from the game surety as created by the multiple of the number of the issued lottery tickets and the price of one ticket - for lotteries according to Section 2 Letter d), but not exceeding CZK 10,000,000.-,

CZK 2,000,000.- for games according to Section 2 Letter e),

CZK 10,000,000.- for games according to Section 2 Letter h),

CZK 5,000,000.- for games according to Section 2 Letter f), g) and j),

CZK 20,000,000.- for games according to Section 2 Letter i).

The applicant is obliged to enclose to its application the confirmation of the bank about the opened account and the deposition of the surety according to Paragraph 1; if the applicant is one applying for a license for the operation of gaming machines, then the applicant is obliged to present the confirmation of the bank about the opening of the account and the depositing of the surety also to the competent Financial Office. For gaming machines, the confirmation about the depositing of the surety is valid 24 months. After the expiration of this time period, the applicant shall present to the licensing authority and the competent financial office a new confirmation about the deposition of the surety.

During the time, for which the license to operate lotteries and/or other like games was issued, the operator is free to handle the surety only after having obtained the consent of the Ministry in advance. In case of gaming machines, the operation of which is licensed by the competent

municipal body or the locally competent Financial Office.

The surety may only be released for the applicant's purposes upon the prior consent of the authority specified according to Paragraph 3 if the time, for which the license had been issued, expired, if the license was withdrawn, or if the operation was terminated and the operation of the lottery and/or other like game was accounted for. From the surety, the claims payable to the government and municipalities (administration fees, government supervision charges, payments for publicly beneficial purposes, fines) shall be paid with priority. If the surety is too low, then these claims shall be paid on a pro rata basis according to respective amounts. After the settlement of the claims by the government and municipalities, the balance of the surety shall be used to pay the prizes to the bettors, if applicable, while such payments shall be made on the proportionate basis depending on their respective amounts.

#### Section 4c

The operation of betting games according to Section 2 Letters f) to i) is prohibited

on a day which is declared as a national mourning day,

off the business hours set in the Order for guests as approved by the licensing body.

#### Section 5 Cancelled

### PART ONE

#### Lotteries and tombolas

#### Section 6

##### Licensing lotteries and tombolas

Lotteries and tombolas are licensed

by the County Authority - for its territorial district, by the Municipal Authority, City of Prague - for the city section - in territorially structured statutory cities (referred to summarily as the "municipality" henceforth), within the framework of delegated powers, if it is a tombola with the game surety

under CZK 20,000.- and lottery in kind with game surety under CZK 50,000.-;

the District Authority for its territorial district, namely it concerns a tombola with the game surety over CZK 20,000.- and under CZK 50,000.- and lottery in kind with the game surety over CZK 50,000.- and under CZK 200,000.- and a tombola or lottery in kind with the game surety as specified according to above stated Letter a) if the county is going to be the operator;

the Ministry in any other case including that one, when the government, represented by the District Authority, is the operator of a tombola or lottery in kind with the game surety as specified in Letter b).

No lottery or tombola is licensed, the purpose of which is to cover

the expenses of the operator of lottery or tombola, which (according to their nature) should be covered from the operator's income,

the expenses for the organisation of dance balls, ceremonies and other like events, at which no admittance fee is collected,

the costs of any project if the poor financial economy is apparent from any previous calculations of both the organisation of lottery or tombola and the planned use of proceeds.

The aggregate value of the prizes of lotteries and tombolas may not be less than 20 % and more than 50 % of the game surety. In justified cases, particularly for the purpose of higher attractiveness of specific lottery types, the Ministry may increase the aggregate value of prizes to 70 % of the game surety.

With tombolas operated at festivals and dance balls, in which the prizes are partially subsidised from the donations in kind of the members of the organisation holding the tombola, the municipality may exceptionally decide about the terms and conditions of the operation of the tombola according to its own discretion taking into account the local situation.

Besides the requirements stipulated by the Administration Statutes<sup>5</sup>, the license to run a lottery shall especially include the following specifications:

the purpose, for which the lottery was licensed,

the number of lottery tickets that were issued, their price plus the aggregate game surety,

the number and the overall value of prizes,



the place and date of the drawing of lots,

the dates, until which the accounting statement and the profit of the licensed lottery are to be submitted,

the specification of the authority responsible for the government supervision according to Section 46 (the government supervision authority henceforth),

the approval of the Gambling Scheme with any modifications and amendments made,

the date and place when and where the prizes can be collected.

## Section 7

### Lottery operation

The remuneration paid to physical persons for the services of the sale of lottery tickets may not exceed 10 % of the price of the tickets thereby sold.

## Section 8

With lotteries and tombolas, the game surety of which is not over CZK 50,000.-, only the tickets printed by the State printing house "Státní tiskárna cenin" in Prague may be used when the lots are drawn. Any exception may be granted only by the Ministry provided that the lottery operator makes the necessary steps so that the printing of the lottery tickets would be secured against any fraud.

With tombolas and lotteries with prizes in kind, the game surety of which is under CZK 50,000.-, the lottery tickets or any securities described as the instruments for drawing may be drawn provided that they are enumerated and provided with the seal of the entity operating the lottery or tombola, and provided that their use was approved by the authority competent to license such lottery or tombola.

## Section 9

The text of the lottery tickets is subject to the approval by the government supervision body. The use of state symbols and signs in lottery tickets is not permitted.

The text of the lottery tickets with the game surety over CZK 50,000.- must include:

the name and the registered address of the operator,

the number of the lottery tickets that were issued plus their price, or the indication of the wax, by which the overall game surety is determined,

the number and the amount of prizes, or the way by which the number of prizes is determined,

the way, place and date of the drawing of lots, or the specification of the circumstance which determines the prize winning,

the number and the date of the licensing decision,

the information on how and where the prizes shall be announced,

the specification of the place where the prizes shall be distributed,

the time period, within which the prizes must be collected.

Before the issue of the tickets for the sale their number and the correctness of their numbering shall be checked at random test (at least) and under the presence of the government supervision body, and the protocol shall be produced on this inspection.

## Section 10

The drawing of lots must be open to the public. The drawing of lots of a lottery or tombola:

with the game surety over CZK 50,000.- it must be made in the presence of the public notary who shall verify the drawing of lots and in the presence of a government supervision body,

with the game surety under CZK 50,000.- it must be made in the presence of the government supervision body who shall verify the drawing of lots in the protocol according to Section 11 Paragraph 6. The presence of the government supervision body is not necessary with tombolas, the game surety of which is under CZK 20,000.-.

## Section 11

The operator who was licensed to a lottery is obliged to appoint the lottery committee of three members (at least) and the operator who was

licensed to a tombola is obliged to appoint the lottery representative. The operator is obliged to report to the government supervision body the first and last name, domicile addresses of the chairman and other members of the lottery committee and those of the lottery representative, as applicable, within seven days from the reception of the resolution about granting the license to run lottery. The members of the lottery committee and the lottery representative must be the persons who are blameless. The lottery committee is established by the state (the Ministry or an entity thereby charged) or the joint stock company which has been established for the operation of lotteries or other like games.

The lottery committee and the lottery representative are responsible for the proper procedure of the lottery or tombola. Without the consent of the lottery committee or the lottery representative, the operator who was licensed to run the lottery or tombola may not interfere in the lottery operation.

The lottery committee and the lottery representative are obliged to observe the instructions of the government supervision body and to keep the body informed about any and all relevant circumstances which were effected and the measures which were taken.

The lottery committee or the lottery representative together with the government supervision body shall check whether the numbers of all lottery tickets issued in lotteries and all tickets sold in tombolas were put in the polling basket.

Before the drawing of lots is performed, the lottery tickets, which were not sold, must be secured and kept in sealed wrappings at a suitable and safe place. At the same time, the measures must be taken so that the lottery tickets which were returned by post or otherwise, and which are delivered directly before and during the drawing of lots, could not be misused.

About the drawing of lots, the protocol shall be produced by the lottery committee or the lottery representative, and it shall contain, in particular, the data about the technical procedure of the drawing of lots, and the list of the numbers of lottery tickets that won the prizes.

After the drawing of lots is finished, the lottery committee shall secure the amounts due to the unsold lottery tickets and the lottery representative shall secure the prizes of tombola which were not collected.

The lottery committee is obliged to make the necessary steps so that the winners list would be issued in print and the public would be notified

accordingly. After the drawing of lots, the lottery representative shall notify the public about the winning prizes and with the tombola, the game surety of which is over CZK 20,000.-, the lottery representative shall make the necessary steps to publish the printed list of the numbers that won prizes.

#### Section 12

The time period, during which the right to the prize may be claimed with the lottery operator, may not be shorter than thirty (30) and longer than ninety (90) days from the date that follows the day on which the drawing of lots took place. Should the title fail to be claimed within this time period with the operator, then it shall expire.

#### Section 13

##### Accounting statement of lottery and tombolas

Within sixty (60) days after the deadline for claiming the prizes, the lottery committee or the lottery representative shall secure accounting the event, to which lottery or tombola was licensed. If all expenses related to the lottery or tombola, which was licensed, was not yet covered from a part of the yield, then another accounting statement shall be prepared, at latest by the date set by the body by which the lottery was licensed. The operator shall submit an accounting report to the state supervising authority and the copy to the authority that licensed the lottery.

#### Section 14

The income of the lottery shall also include the prizes related to the lottery tickets which were not sold and the prizes which were not collected within the specified deadline. The income of the tombola shall also include the prizes which were not collected by the specified deadline.

#### Section 15

The use of any part of yield of the lottery or tombola which were not consumed shall be subject to the decision of the body that licensed the lottery or tombola.

#### Section 16

The use of the proceeds of the lottery or other like game

A part of the yield from the lottery or other like game according to Section 2 and Section 50 Paragraph 3 can be used only for the purpose beneficial to the public as specified in the license.

The consent with another use of a part of the yield may be granted by the licensing body on the grounds of the operator's application or if the operation of the lottery or other like game was cancelled.

The beneficiary of the due payment from a part of the yield of lotteries or other like games is obliged to bring the proof to the operator concerning the use of these financial means for the purpose of public benefit specified in the license, while such proof should be brought within ninety (90) days from the end of the fiscal period or the presentation of the accounting statement related to the game.

At latest within fifteen (15) days after the date of reception of the items, the operator is obliged to present these items, as they are specified in Paragraph 3, to the body which licensed the lottery or other like game, and if it concerns the operator of games that is specified in Section 2 Letter e), then to present them also to the competent body of state supervision.

If the duty specified in Paragraph 3 is breached, the body which licensed the lottery and/or other like game is free to change the use of a part of the yield for the publicly beneficial purpose.

## PART TWO

### Gaming machines

#### Section 17

A gaming machine is meant a compact functionally integral and programme-controlled technical device featuring external control and designed only for one gambler. With a gaming machine with programme control allowing the concurrent play on more gaming locations than one by more gamblers than one, then each such gaming place shall be considered to be a separate gaming machine. This circumstance shall be specified in the capability certificate issued according to Section 19 Paragraph 2 Letter c) and in the excerpt from this certificate.

The gaming machine must be placed in such a way not allow gambling to the minors under 18

years of age or the operator must adopt such measures so that such individuals could not participate in gambling. For this purpose, the operator is entitled to request the presentation of the documents on personal identity.

One game shall be considered to comprise a finished process in which, after one start-up the gaming machine enters the gaming mode and at latest by the end of this game the wager per game is deducted from the indicator of the wagered money. During the game, no other wagers can be made and one game may not be shorter than one second. Each game must give to the gambler a chance to win and collect a prize and/or to collect the money wagered by it in excess of the wagers made for the games already run. The manner of collection of the prize and/or the money paid in excess of the wagers per the games already run is described in the Gambling scheme and the game instructions. The highest prize is meant the aggregate amount of money which the gambler can gain from one game.

The highest wager per game is CZK 2.-; CZK 5.- for gaming machines installed in gaming parlours and CZK 50.- if the gaming machines are installed in casinos. The highest prize from one game is CZK 300.-, CZK 750.- in gaming machines installed in gaming parlours and CZK 50,000.- if the gaming machines are installed in a casino.

Only gaming machines, the design of which does not allow to set the prize ratio under 75 % and over 100 %, may be operated.

The highest hourly loss is CZK 1,000.-; CZK 2,000.- for gaming machines installed in gaming parlours and CZK 10,000.- if the gaming machines are installed in casinos. The hourly loss is the aggregate amount of money which the gambler can loose when gambling on one gaming machine during one hour. It is the product of the highest wager per game the limit number of games per hour and one hundredth of the difference between the set prize ratio and one hundred. If the gaming machine is operated in a foreign currency, the highest wager per game, the highest prize per game, the prize ratio and the highest hourly loss are specified by the Ministry in the license.

The gaming machines for Czech Crown (ěeská koruna) installed in gambling parlours and casinos may be connected to a device allowing accumulated prize to be won (jackpot device) for which the provisions set forth according to above Paragraph 4 do not apply. The highest jackpot prize in gambling parlours and casinos is CZK 10,000.- and 100,000.- respectively.

Gaming machines may be operated in casinos and gambling parlours. Moreover, they can be

operated in catering facilities and other places meeting the terms and conditions of the special operation mode as specified according to Paragraph 10 of this Section 17. More than six gaming machines may be operated only in gambling parlours and casinos.

A gambling parlour is according to stood to mean a room (or a set of rooms) intended mainly for the operation of gaming machines. Supervision service must be provided in the gambling parlour throughout its business hours. Minors according to 18 are not licensed to enter gambling parlours. The operation of the gambling parlour is governed by the approved gambling statutes.

The special operation mode requires the supervision by a person responsible for the compliance with the ban of gambling by the minors under 18 years of age who, in order to prevent them from participating in the gambling are prevented the entry to

the whole premises of the gambling parlour,

the room on the premises intended solely for the operation of the gaming machines, or

the separate section of the premises intended solely for the operation of the gaming machines.

No operation of gaming machines may be licensed at schools, school facilities, in social and medical services facilities, in buildings of government agencies and of churches and in the neighbourhood of such buildings. The circuit of 100 m from these buildings can be defined by the municipality by its decree.

#### Section 18

The license for the operation of gaming machines is issued upon the application by

the municipality for its territorial district, acting according to delegated authority,

the district office for its territorial district, if the municipality is to be the gaming machine operator with its own territorial district,

the Ministry, if a gaming machine for the Czech currency is operated in a casino, and for gaming machines operated for foreign currency.

In the application for the license to operate a gaming machine, the applicant is obliged to specify the name(s) of the person(s) who is (are) responsible for the compliance with the no entry ban on minors in the gambling parlour.

The license is issued for one calendar year at longest.

A part of the yield from the gaming machines is the income of the municipal budget of the municipality which issued the license for the gaming machine operation according to Section 1 Letter a).

In consideration of the issue of the license for the gaming machines operation the operator shall pay the administration fee for every gaming machines.

After the administration fee has been paid, the body which licensed the operation of the gaming machine shall issue the license and stamp. At latest by 15 days from the first day of validity of the license, the operator is obliged to affix the stamp to the gaming machine in a visible place in such a way that the stamp cannot be damaged. The details concerning the stamp are specified according to a special decree.<sup>6)</sup>

<sup>6)</sup> Regulation No. 223/1993 of Collect., on Gaming Machines of the Ministry of Finance.

#### Section 19

The license to operate a gaming machine includes mainly

the authorisation of the, Gambling Scheme (or the jackpot Gambling scheme as referred to according to Section 17 Paragraph 7) with any changes modifications and amendments, if made,

the authorisation of the permanent place of installation of the gaming machine,

the setting of the manner and conditions for the manipulation with the gaming machine, particularly when collecting the cash from it and when making repairs to it,

setting the preconditions for the manipulation with the device allowing the jackpot prize (Section 17 Paragraph 7) and with the linked machines, in particular when collecting the cash, with the payment of the jackpot prize and with repairs,

the name(s) of the person(s) who is (are) responsible for the compliance with the ban of gambling for minors on the premises authorised for the permanent installation of the gaming machine. In case of a gambling parlour this person(s) is (are) responsible for the banning of minors from the gambling parlour.

The license for the operation of the gaming machine is issued if

the license application includes all the details as set forth according to this Act and the applicant met the conditions as set forth according to this Act,

the applicant demonstrates professional servicing is ensured,

according to the certificate of the competent authorised person, the gambling machine is capable of operation.

The certificate referred to in Paragraph 2 Letter c) certifies that

no more than five years elapsed from the date of manufacture of the gaming machine,

the gaming includes as an in-built feature a system of at least double control of the deposited and disbursed cash and the counters of these control devices feature at least six positions,

the gaming machine conforms by its engineering design with Section 17 Paragraphs 3 to 6.

The body which issued the license may change the license on the grounds of a written application by the operator, as for the place of permanent installation of the gaming machine within the territorial district of such body, or a replacement of the gaming machine for the same model can be authorised by that body in case the gaming machine was demonstrably destroyed by fire or another natural disaster.

#### Section 20

Within two months after the expiry of the time for which the license was issued, the operator is obliged to prepare the accounting statement for the operation of different gaming machines and to present this statement to the body which issued the license and the competent financial office. If the license was issued by the Ministry, then this statement shall be presented to the authority exercising the government supervision according to Section 46 over the operation of gaming machine.

Any and all accounting cases effected in relation with the operation of the gaming machines must be accounted for separately from any other business of the operator, if any, and such accounts shall be based upon the records obtained from the readings of the electromechanical and electronic counters which may not be zeroed for this purpose. The costs and revenue as related to the operation of gaming machines form parts of the profit or loss of the operator for the accounting period. The filing of

bookkeeping documents is governed by a special regulation<sup>8)</sup>

#### PART THREE

#### Rate Betting

#### Section 21

#### Licensing of betting

The license for the operation of rate betting according to Section 2 Letter h) is issued on the grounds of an application by the Ministry for 10 years at longest. In the license, the terms and conditions for the operation of the rate betting are set forth, the Gambling Scheme is authorised, the object of betting is specified as well as the placement of the bookmaker office.

In the license application, the applicant shall specify the names of the bookmaker offices managers, as well of all other persons appointed to collect bets, supplying moreover the details about these persons as necessary for the issue of the licence according to Section 24. Any change shall be advised by the operator to the government supervision body by three days form the date such change occurred. The persons appointed to accept bets must be integral persons professionally capable to pursue such business.

#### Section 22

The license shall be issued to the applicant if it demonstrates the conformity with the terms and conditions for a proper operation of rate betting, in particular, that it has registered capital in compliance with the provisions of Section 4 Paragraph 8 of at least CZK 10,000,000.- and has deposited the surety as per Section 4b Paragraph 1 Letter d).

#### Section 23 Cancelled

#### Section 24

#### Issue of the licence to accept bets

All persons appointed to accept bets, shall be issued licence to accept bets (the Licence henceforth) by the government supervision body,

without which nobody is allowed to accept any bets. The license shall include the name, birth number and photograph of the person licensed to accept bets, the licence number, the specification of the operator, the date of issue and the seal and signature of the government supervision body. The licence is valid only for the territorial district of the government supervision body by which it was issued.

In case the activity is discontinued or the licence withdrawn, the operator shall hand over the licences issued to the government supervision body.

The operator shall hand over to the government supervision body the licences issued to the appointed persons also when their employment or other like relationship, according to which these persons have been pursuing the business, is terminated<sup>9)</sup> or of it was decided so by the government supervision body when these individuals ceased to meet the requirements as specified in Section 21 Paragraph 2 or if they acted in defiance with this Act or the license for the rate bets operation or the Gambling Scheme.

Every loss of the issued licence must be reported with the government supervision body within three days from its occurrence.

The licence is issued to the appointed persons once the applicant demonstrates to the government supervision body that the defined surety has been deposited.

#### Operation of bets

#### Section 25

Bets can be accepted in advance in cash or non-cash.

#### Section 26

The persons licensed to accept bets may not participate in the betting with the operator for whom they are accepting the bets.

#### Section 27

The operator may not accept bets for races, matches and competitions in which an animal,

individual or team that are at any relation (ownership or employment) to the operator.

#### Section 28

##### Accounting statement

Every year, within two months after the end of the last calendar year, the operator is obliged to present with the competent financial office<sup>4a)</sup> the accounting statement for the betting business of the previous calendar year. The operators with their registered addresses in the territory of the City of Prague present their accounting statements to the financial office in Prague 1 and those with their registered addresses located in the territory of the City of Brno, to the financial office in Brno 1.

In the accounting statement according to Paragraph 1, the items about the income from betting games which include the wagered amounts, about the prizes paid to the gamblers, about the costs related to the game operation, about the calculation of the administration fee<sup>4)</sup>, about the charges on account of the government supervision and about the calculation of the due for publicly beneficial purposes according to Section 4 Paragraph 2 are presented. The procedures involved in the drafting of this accounting statement are governed by a special regulation<sup>10)</sup>.

The accounting statement as referred in Paragraph 2 is presented by the operator also within two months after the end of the month in which it discontinued its rate betting business.

#### Section 29

The payment on account of the government supervision is paid by the operator and it amounts to 1 % of the income from the betting games reduced by the prizes paid. The charge is payable quarterly, by the end of the month following the last calendar quarter, to the bank account of the competent financial office. The charges of operators with their registered addresses in the territory of the City of Prague is paid to the financial office in Prague 1 and of those with their registered addresses located in the territory of the City of Brno, to the financial office in Brno 1. The charge on account of the government supervision is income of the government budget.

#### Section 30 Cancelled

#### Section 31

Rate betting is not allowed to be participated in by the minors under 18 years of age. For the purpose of the verification of the compliance with this provision the operator is entitled to request the presentation of the personal identity document.

### PART FOUR

#### Gambling in casino

#### Section 32

##### Licensing of casino gambling

The license for operating a gambling business according to Section 2 Letter i) is issued, on the grounds of an application, exclusively by the Ministry and for ten years at longest.

In the license, the Ministry sets the detailed terms and conditions of the casino gambling operation and, after reviewing the compliance with this Act and other laws, the Ministry approves the Gambling Scheme, the customer statutes and the types of games operated in the casino presented by the applicant.

As a precondition for the issue of the license, the applicant must demonstrate for the Ministry that its registered capital is in compliance with Section 4 Paragraph 8 and amounts to at least CZK 30,000,000.- and that the applicant has deposited the surety according to Section 4b Paragraph 1 Letter f). The registered capital of the legal entity may not be reduced below its minimum amount in the course of the validity of the license.

The applicant is obliged to apply with the ministry to have approved any contemplated changes modifications or amendments in the Gambling Scheme, customer statutes or types of gambling operated in the casino, at the latest by 30 days before their implementation.

##### Operation of games

#### Section 33

A gambling currency other than the Czech currency is licensed by the Ministry. Trading in a

foreign currency and foreign exchange services pursued within the framework of the gambling business according to Section 2 Letter i) are governed by special laws.<sup>11)</sup>

#### Section 34

All accounting cases<sup>8)</sup> implemented in relation with the operation of the casino gambling must be maintained on the accounts separated from other business of the operator and the costs and revenue related to the gambling operations form a part of the profit of the operator for the accounting period.

#### Section 35

##### Tokens

Cash tokens are used for casino gambling. The face values, size, weight, material, design and other features of the cash tokens are approved by the Ministry. The operator is obliged to present the approved cash tokens specimens to the government supervision body before the operation of the casino is started.

Every casino uses specifically identifiable cash tokens. Cash tokens of the same design may be used only in casinos operated by one and the same operator. The cash tokens bear the indication of their face value plus the official abbreviation of the gambling currency.

The cash tokens are purchased by the gamblers at the casino cashier's or at the gambling table. The prizes are paid to the gamblers solely and exclusively at the casino cashier's, against the cash tokens presented.

Gambling tokens are another type of tokens which are used for the roulette game. After finishing the game at the table, the gambling table assistant shall exchange the gambling tokens for the cash tokens for the gambler.

The operator is obliged to keep proper records on all tokens.

It is inadmissible to use cash tokens for the settlement of any liabilities other than those arising out of the gambling.

It is inadmissible to carry the cash tokens out of the casino. A protocol shall be drawn up by the casino management about any cash tokens which failed to be returned or were lost, such protocol to be made on the day the circumstance was uncovered. The copies of the protocols drawn up

over the calendar month shall be handed over by the casino management by seven calendar days after the end of the current month to the government supervision body.

#### Section 36

Upon entering the casino, the customers are obliged to present a document verifying their identity. No person under 18 years of age or such who is not admitted to the casino according to the customer statutes may be admitted in the casino.

The casino shall maintain its daily list of the names of its customers. The records on individual customers shall include the first and last names, the date of birth and birth number, the residential address and the number of the travel document and nationality of foreign nationals.

#### Section 37

The casino must be equipped with security and monitoring systems. The monitoring system shall make a video and audio recording of the whole procedure of all gambling operated as well as the preparatory works (issue of tokens) and finishing works (closing the tables, counting the tokens and cash). The operator is obliged to file the records made by the monitoring system for 90 calendar days and to make these records available to workers of the government supervision body and to allow these records to be carried from the casino premises if necessary. The monitoring must be accomplished in a record which is made at a regular speed and continuously. Additional details for the monitoring and filling of records are set forth by the Ministry according to a special regulation.

#### Section 38

Only the games specified in the license and at the set scope may be operated at the casino.

The persons employed at the casino are prohibited from participating in the gambling in the casino in which they are employed.

#### Section 39

For gambling in casino, Sections 28 and 29 shall be applicable on the pari passu basis.

#### PART FIVE

##### Horse betting

#### Section 40

To organise horse betting pursuant to the provisions of Section 2 Letter k) the state shall usually license an organisation authorised to breed racehorses.

The yield of horse betting may be used exclusively for subsidies granted to races of racehorses, subsidies to breeding racehorses or for other associated purposes.

#### Section 41Cancelled

#### PART SIX

##### Common, transient and concluding provisions

##### Common provisions

#### Section 42

The Gambling Scheme of the lottery and other like games defines in detail the terms and conditions of the game setting in particular the probability of winning a prize, the terms and conditions of the supervision, the method of inspection, the distribution of a part of the yield, the amount of deposit (the price of the lottery ticket), the amount of the game surety, the number of prizes and their individual and aggregate amounts, the manner in which the drawing of lots is accomplished or that in which the circumstance determining the prize winning is ascertained and the method of advertisement of the prize winning.

#### Section 43

The body which licensed the lottery or other like game shall withdraw the licence if there occur or become known any circumstances for which it would not have been possible to licence the lottery and/or other like game or if it proves later that the data according to which the license was issued are inaccurate.



The body which licensed the operation of a gaming machine shall withdraw the license for all gaming machines of the operator in the municipality should the operator default in its duties by

allowing in three individual cases occurring at different times minors to participate in the gambling,

operating a gaming machine which is not licensed,

the gaming machine failing to comply with its engineering design with the provisions set forth according to Section 17 Paragraphs 3 to 6, regardless of whether or not the non-compliance applied for one operated gaming machine only. The licensing body is free to issue another licence for this operator only after three years time.

The body which licensed the lottery and/or other like game may withdraw the licence or to suspend the operation of the lottery and/or other like game temporarily if either of the preconditions set forth in the license are not satisfied or the laws and regulations governing the operation of lotteries and other like games are not complied with.

The temporary suspension of the operation of a lottery and/or other like game according to Paragraph 3 of this Section 44 may be done for up to 30 calendar days. If there are some material reasons why the operator is unable to rectify the defects due to which the operation of the lottery and/or other like game was temporarily suspended by the licensing body, this period of grace may be prolonged by another thirty days. With the temporary suspension of the operation of the lottery and/or other like game the licensing body and, in the case of games licensed by the Ministry, also the financial office which exercises the government supervision authority over the gambling business on the given premises, are free to seal the gaming machines or other gambling devices. The financial office is obliged to advise about the sealing of the gaming machine or another gambling device the licensing body forthwith in writing. The temporary suspension of a lottery or other like game does not exclude the imposition of the fine according to Section 48. Unless the operator rectifies the defects by the dates set forth in this Paragraph 4, the license shall be cancelled by the licensing body.

The body which licensed the lottery and/or other like game may

specify additional preconditions in the license if it is necessary for the proper operation of the lottery and/or other like game,

change modify or amend a license already granted, if it is necessary for the proper operation of the lottery and/or other like game or in public interest.

The body which licensed a lottery and/or other like game may not set forth in the license according to Section 5 Letters a) and b) more stringent conditions for the operation of the lotteries and other like games that those established according to this Act.

Lotteries and other like games of chance that do not meet the conditions specified in this Act may not be licensed.

Section 44 Cancelled

Section 45

For procedures involving matters of lotteries and other games the Administration Procedures Act<sup>5)</sup> shall apply unless otherwise specified herein.

The license is not transferable onto a third party.

State supervision

Section 46

The state supervision over the conformity with this Act by the operators of lotteries and other like games is exercised by

the municipalities in cases when they grant the license for the operation of the lotteries and other like games,

the district offices in cases when they grant the license for the operation of the lotteries and other like games,

the competent financial offices<sup>4a)</sup> and the financial offices in the territorial districts, in which the gambling premises are situated, in cases when the license for the operation of the lotteries and other like games is granted by the Ministry. In cases when the license for the operation of the lotteries and other like games is granted by the Ministry and the registered address of the operator or its facility is situated in the territory of the City of Prague, then the state supervision is exercised by the financial Office in Prague 1. If the registered address of the operator or its

facility is situated in the territory of the City of Brno, then the state supervision is exercised by the Financial Office in Brno 1, the Ministry.

With gaming machines licensed by the municipalities or district office, as applicable, the state supervision over the conformity with the Act may be exercised also by the financial offices specified according to above Paragraph 1 Letter c). The financial office shall draw up a protocol about the outcome of the inspection which is handed down to the licensing body for additional measures and the operator. Any fine, if applicable, is imposed and collected by the licensing body which shall notify about the measure adopted (the imposition of a fine) the financial office which was exercising the state supervision.

If the state supervision over the operation of gaming machines includes also the technical inspection (the inspection of conformity with the specifications as included in the certificate of the technical performance of the gaming machine) the body exercising the state supervision is obliged to invite the appointed authorised entity to participate in the inspection.

#### Section 46a Official language

The official language in procedures before the licensing body and the government supervision body is Czech. Any written communications are presented in Czech and any documents which are not drawn up in Czech shall be presented together with the official translation. The licensing body and the state supervision body may admit a court registered interpreter to participate in the proceedings provided that the presence of such interpreter is secured by the party dealing with such bodies at its own costs.

Nationals of the Czech Republic belonging to the national and ethnic minorities may deal with the licensing and state supervision bodies in their own language provided that they secured the presence of a court registered interpreter. The expenses for such interpreter shall be born by the body before which the proceedings are carried out.

#### Section 46b Duty of confidentiality

The operator, the persons who are under the employment or other relationship with the operator, the workers of the state supervision, the Ministry or other administration body are all obliged to observe the confidentiality about the gamblers and their involvement in the gambling including their prize winnings or losses.

The duty to observe confidentiality does not apply to the situations when the bettor releases of the duty of confidentiality the persons referred in Paragraph 1 or of the circumstances, which are subject to the confidentiality obligation are to be conveyed to the competent bodies in the civil court proceedings, to bodies operating in the criminal proceedings and tax administrators for the purpose of the taxation procedure.

The breach of the obligation to observe the confidentiality about the bettors and their participation in gambling can be fined with CZK 50,000.- (at maximum). By the imposition of the fine, the provisions of special laws governing indemnification for damage are not affected.

The fine is imposed by

the financial office exercising the state supervision powers if the confidentiality is breached by the operator or persons who are under the employment or other like relationship with the operator,

the financial headquarters superior to the financial office exercising the state supervision powers, the worker of which breached the duty of confidentiality,

the Ministry, if the confidentiality obligation was defaulted by a worker of the financial headquarters or the ministry.

The body, which imposed the fine, also collects and claims this fine. The fines are the income to the state budget.

#### Section 47

The body, which issued the license for the operation of the lottery and/or other like game, is obliged to check the lottery and/or other like game. The body exercising the state supervision powers may check at any time whatsoever whether the lottery and/or other like game are operated according to the terms and conditions specified in the license and whether the applicable laws are complied with.

The operator of the lottery and/or other like game is obliged to enable the licensing body and the state supervision body to enter the business premises and to present the body with the accounting documents, accounting statement, reports, vouchers and other documents and records on data media and to enable the inspection of the operated games and technical devices and to supply information about the accounting cases and to co-operate in the inspection. If so required by the nature of the

thing, the licensing body and the state supervision body are free to collect the documents and to seize these for the time necessary to investigate and complete the case. The operator shall be issued a confirmation about seizure of the documents and records on data media.

In exercising the government supervision powers, a special law is pursued<sup>12)</sup>.

#### Section 48

Fine up to

CZK 150,000.- shall be imposed by the municipality on the legal entity which operates a lottery, tombola or gaming machine in the territorial district of the municipality without the license which the municipality would have been authorised to issue or if such business is carried out in contradiction to this Act, the Gambling Scheme or the terms and conditions set forth in the license,

CZK 300,000.- shall be imposed by the district office on the legal entity which operates a lottery or tombola in the territorial district of the district office without the license which the district office would have been authorised to issue or if such business is carried out in contradiction to this Act, the Gambling Scheme or the terms and conditions set forth in the license,

up to CZK 500,000.- shall be imposed by financial office specified in Section 46 Paragraph 1 Letter c) on the legal entity which operates a lottery, tombola or other like game without the license which the ministry would have been authorised to issue or if such business is carried out in contradiction to this Act, the Gambling Scheme or the terms and conditions set forth in the license, or if a part of the yield from such games are used by the entity for other than the specified purpose or violates the provisions of Section 1 Paragraph 4.

CZK 50,000.- shall be imposed by the state supervision body on the legal entity which defaulted in its duties as set forth in Section 47 Paragraph 2,

CZK 5,000.- shall be imposed by the state supervision body on any party losing the licence issued according to Section 24. Should the loss fail to be reported in time, the fine shall be imposed at the full rate,

CZK 50,000.- shall be imposed by the state supervision body on the physical person who is in the employment, membership or other like relation with the operator and the participant of

rate betting and gambling in casino if they acted in defiance with this Act or the license for gambling operation or the Gambling Scheme,

CZK 50,000.- shall be imposed by the state supervision body on the person who is specified in the license for the operation of lottery and/or other like game if such person is responsible for the observation of the ban on gambling of the minors younger than 18 years of age in case of the first provable breach of this ban,

CZK 500,000.- shall be imposed by the state supervision body on the person who is specified in the license for the operation of lottery and/or other like game if such person is responsible for the observation of the ban on gambling of the minors younger than 18 years of age in case of the second provable breach of this ban which occurred at a time different from the first one.

The district office which granted the municipality the license to operate a tombola or lottery with prizes in kind according to Section 6 Paragraph 1 Letter b) or which granted the municipality the license to operate gaming machines according to Section 18 Paragraph 1 Letter b), is authorised to impose a fine on the municipality according to the terms and at the rate as set forth in Paragraph 1 Letter a). If a license was issued according to Section 6 Paragraph 1 Letter c) in case when the tombola or lottery with prizes in kind is operated by the government as represented by the district office, the fine according to the terms and at the rate as specified in Paragraph 1 Letter b) may be imposed by the locally competent financial office.

A fine of up to CZK 150,000.- can also be imposed on a physical person if such person is operating a lottery and/or other like game. If it concerns the operation of a gaming machine in the Czech currency, the fine is imposed by the municipality in the territorial district of which the machine was operated. In other cases, the fine is imposed by the financial office referred to according to Section 46 Paragraph 1 Letter c).

The fine may be imposed within one year after the date when the body authorised to impose the fine learned of the breach of the duty or loss of the licence and within up to three years after the date when the breach of the duty or loss of the licence occurred.

The fine is payable within one month after the date on which the resolution on its imposition came into power.

The fines imposed by the municipalities are the income of the budget of the municipality which imposed the fine. The fines imposed by the district offices are the income of the budget of the district office. The fines imposed by the financial

offices are the income of the state budget of the Czech Republic. The fines are collected and claimed by the body by which they were imposed.

The municipality, which granted the license for the operation of a lottery, tombola or gaming machine, and which withdrew such license according to Section 43, may decide that upon the fulfilment of the tax and other financial obligations of the operator towards the state, the yield may be transferred to the budget of such municipality. A likewise procedure may be adopted in case the operator operated a lottery and/or other like game without the license and the municipality was authorised to issue such license.

The financial office may decide that the proceeds of the lottery and/or other like game operated at its territorial district without a license which the ministry was authorised to grant shall be transferred to the state budget of the Czech Republic.

The Ministry which issued the license for the operation of lottery and/or other like game and which withdrew such license according to Section 43 hereof may decide that the proceeds of such games shall be transferred to the state budget of the Czech Republic.

Section 49 Cancelled

Section 50

Empowering provisions

Under its regulation, the Ministry is free to increase the highest wager amount per game and the highest prize per game as set forth in Section 17 Paragraph 4, the highest hourly loss as set forth in Section 17 Paragraph 6 and to amend the details of the stamp as specified in Section 18 Paragraph 6.

The ministry shall set forth by a bye-law the details and specific conditions for the monitoring and filing of records as referred in Section 37.

The ministry may license lotteries and other like games which are not regulated according to this Act in Parts One to Four provided that all terms and conditions for such operations are specified in detail in the license. The provisions of Parts One to Four of the Act shall be applied on the *pari passu* basis.

The municipality may set forth according to a generally binding regulation issued according to its individual powers that gaming machines may

be operated only in places and at times specified according to such Regulation or it may specify in which publicly accessible places in the municipality the operating of gaming machines is prohibited.

Section 51 Transient provisions

The licenses for the operation of gaming machines issued for year 1990, appropriately for year 1991, before effectiveness of this Act, shall have remained valid according to the terms determined by the previous rules.

The licenses for the operation of other lotteries and betting games issued before effectiveness of this Act, are valid without change as of 31<sup>st</sup> December 1990. The operator shall require for a further license for operation of lotteries and betting games which validity finishes by the 31<sup>st</sup> December 1990 at the latest on 30<sup>th</sup> November 1990.

This proceeding also concerns the operator of a state lottery, enterprise SAZKA and the State race course Praha.

Article V Transient provisions

The licenses for the operation of lotteries and other like games valid as of 31<sup>st</sup> August 1998 shall have remained valid until 31<sup>st</sup> December 1998. The existing operators may, however, apply with the competent body for the issue of the license in pursuance hereof provided that they meet the provisions as set forth in Section 4b Paragraph 1 by 31<sup>st</sup> December 1999. This can not be applied for the license to operate gaming machines which are issued for one calendar year at longest. If the applications for the issue of the license to operate gaming machines were filed with the competent body before the effective date of this Act, the existing laws shall be followed in the proceedings about such applications.

The certificates on operational fitness of gaming machine that were issued by the authorised entity before the effective date hereof shall remain valid until 31<sup>st</sup> December 1999 unless the validity specified in the certificate expires earlier.

If the term "gaming machine" is used in other legal regulations, then it is understood the gaming machine as specified in Act No. 202/1990 of Collect. on lotteries and other like games as currently amended.

Remark of the establisher of the whole wording: The Transient provisions of the Act No. 202/1990 of Collect. and No. 149/1998 of Collect. were not cancelled by any legal provision. However, with

regard to its contain they fully loss its validity except for the Paragraph 3 in the Article V of the Act No. 149/1998 of Collect.

Cancelling provisions to the Act No. 202/1990 of Collect.

Section 52Cancelling provisions

Bellow mentioned provisions are cancelled:

Provision of the Section 2 Paragraphs 10 through 14, provision of the Section 19 Paragraph 2, provision of the Section 20 and the part referring to the lotteries and other like games in the Section 15 through 18 of the Czech National Council Act No. 37/1973 Collect., on the Public Gatherings, lotteries and other like games,

Decree of the Ministry of Finance of the Czech Socialist Republic No. 61/1973 that sets forth details of lotteries and other like games,

Decree of the Ministry of Finance of the Czech Socialist Republic, Ref. No. 153/13 700/1973 of 8<sup>th</sup> June 1973, promulgated in issue 32/1973 of Collect., on approving, reporting, operating and control of gaming machines.

Article VICancelling provisions

Provisions of the Section 1 Paragraphs 1 through 5 of the Decree of the Ministry of Finance No. 223/1993 of Collect on gaming machines are cancelled.

Effectiveness of the Act

Act No. 202/1990 of Collect. entered into effect as of the date of its promulgation, with the exception of Section 18 Paragraph 4 that became effective as of 1st January 1991.

Act No. 70/1994 of Collect. entered into effect as of the date of its promulgation.

Act No. 149/1998 of Collect. entered into effect on 1st September 1998 with the exception of Section 4 Paragraphs 6 through 8, Section 4b Paragraph 1 and Section 17 Paragraph 8 which became into effect on 1st January 1999.

Act No. 63/1999 of Collect. entered into effect on 9th April 1999, with the exception of the Part One, Paragraphs 1, 6, 8, 12 through 15, 17 and 29, Part Two and Part Three that become into effect on 1st January 2000.

4.6.2. Act on Income Taxes

No. 586/1992 Sb.

(excerpt)

§ 18 The subject of the tax

(...)

3) In case of taxpayers who are not founded for the purpose of business, income from advertisement, from membership contributions and from lease except for the case referred to in paragraph 4 letter d) shall always be subject to the tax.

(4) In case of the taxpayers referred to in paragraph 3, the following kinds of income shall not be subject to the tax:

income from activities following from their mission provided that costs (expenses) spent according to this Act in connection with execution of these activities are higher; activities that are considered mission of these taxpayers are defined by special regulations, statutes, by-laws, establishment or foundation documents;

income from subsidies and other forms of state support and support given from municipal and regional budgets if this support is granted according to a special regulation;

income from interest from deposit on current account;

income from transfers and use of the state property between organizational components of the state and state organizations against a payment and income from lease or sale of the state property that is a revenue of the state budget according to a special legal regulation.

(...)

8) The taxpayers according to paragraph 3 shall be defined particularly as professional associations of legal entities if these associations themselves are legal entities and are not established for the purpose of gainful activity, civic associations including trade unions, political parties and political movements, registered churches and religious companies, foundations, endowment funds, generally benefiting companies, public universities, municipalities, organizational components of the state, higher territorial self-governing units, contributory organizations, state funds and entities defined so by a special act. Business companies and co-operatives shall not be considered these taxpayers even if they were

not established for the purpose of business. Provisions of special legal regulations shall not be affected by this rule.

#### § 19 Exemption from the tax

(1) The following kinds of income shall be exempted from the tax:

a) membership contributions according to the by-laws, statutes, establishing or founding documents received by professional associations of legal entities, professional chambers with voluntary membership, civic associations including trade unions, political parties and political movements;

### 5. Estonia

#### 5.1. Law on Associations

Non-profit Associations Act

6 June 1996

#### Chapter 1

#### General Provisions

##### 1. Definition

(1) A non-profit association is a voluntary association of persons the objective or main activity of which shall not be the earning of income from economic activity.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) The income of a non-profit association may be used only to achieve the objectives specified in its articles of association. A non-profit association shall not distribute profits among its members.

(3) Exceptions for foundation, activities and dissolution of particular classes of non-profit associations may be provided by law.

(4) Transformation of a non-profit association into a legal person of a different class is prohibited.

##### 2. Passive legal capacity

(1) A non-profit association is a legal person in private law. The passive legal capacity of a non-profit association commences as of entry of the non-profit association in the non-profit associations and foundations register (hereinafter register) and terminates as of deletion of the non-profit association from the register.

(2) Associations of persons with non-profit characteristics which are not entered in the register are not legal persons and the provisions for civil law partnerships apply to them. Persons who enter into transactions in the name of such associations are personally and solidarily liable for such transactions.

##### 3. Location

The location of a non-profit association is the place where the management board of the non-profit association is located unless the articles of association prescribe otherwise.

##### 4. Name

(1) The name of a non-profit association shall clearly differ from the names of other non-profit associations and foundations entered in the register in Estonia or deleted from the register less than three years ago.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

(2) The name of a non-profit association shall not be misleading with regard to the objective, scope of activity or legal form of the non-profit association.

(3) (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) A non-profit association may have only one name.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(5) The name of a non-profit association shall be written in the Estonian-Latin alphabet.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(6) The name of a non-profit association shall contain an appendage in Estonian referring to the fact that this is an association of persons.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(7) The name of a non-profit association shall not be contrary to good morals.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(8) The documents of a non-profit association shall indicate the name, location and registry code of the non-profit association.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

## Chapter 2

### Foundation

#### 5. Founders

A non-profit association may be founded by at least two persons. The founders may be natural persons or legal persons.

#### 6. Memorandum of association

(1) In order to found a non-profit association, the founders shall enter into a memorandum of association.

(2) A memorandum of association shall set out:

1) the name, location, address and objectives of the non-profit association being founded;

2) the names and residences or locations, and the personal identification codes or registry codes of the founders;

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

3) the obligations of the founders with regard to the non-profit association;

4) the names, personal identification codes and residences of the members of the management board.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) Upon conclusion of a memorandum of association, the founders shall also approve the articles of association of the non-profit association as an annex to the memorandum of association.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(4) The memorandum of association and articles of association approved thereby shall be signed by all founders. A representative of a founder may sign the memorandum of association if the representative has been granted an authorisation document therefor. Articles of association shall be amended after entry in the register of the non-profit association pursuant to the procedure provided for in ? 23 of this Act and shall not require amendment of the memorandum of association.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 7. Articles of association

(1) The articles of association of a non-profit association shall be in writing. The articles of association shall set out:

1) the name of the non-profit association;

2) the location of the non-profit association;

3) the objectives of the non-profit association;

4) the conditions and procedure for membership in the non-profit association and for leaving and exclusion from the non-profit association;

5) the rights of members;

6) the obligations of members or the procedure for establishment of obligations for members;

7) upon the existence of departments, their rights and obligations;

8) the conditions and procedure for calling the general meeting and the procedure for adoption of resolutions;

8<sup>1</sup>) the number of members of the management board or the maximum and minimum number of members;

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

9) the distribution of assets of the non-profit association upon dissolution of the association;

10) other conditions provided by law.

(2) The articles of association may also prescribe other conditions which are not contrary to law. If a provision of the articles of association is contrary to a provision of law, the provision of law applies.

(3) If the articles of association do not prescribe a term for the non-profit association, it shall be deemed to be founded for an unspecified term.

(4) In the articles of association different names may be used for bodies and departments of non-profit associations than those provided by the law, however, in such case the articles of association shall indicate to which names provided by the law these names correspond to.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

8. Application for entry in register

(1) In order to enter a non-profit association in the register of its location, the management board of the non-profit association shall submit an petition which sets out the information specified in ? 10 of this Act and is signed by all members of the management board. The following shall be appended to the petition:

1) the memorandum of association and the articles of association approved thereby;

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

2) (Repealed - 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

3) notarised specimen signatures of the members of the management board;

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

4) telecommunications numbers (telephone, facsimile, etc.);

5) other documents provided by law.

(2) Any other petition submitted to the register shall be signed by a member of the management board. If the members of the management board are only entitled to represent the non-profit association jointly, all members of the management board entitled to represent the non-profit association jointly shall sign the petition.

9. Refusal to enter in register

A registrar shall not enter a non-profit association in the register if its articles of association or other documents do not comply with the requirements of law. Upon rejection of a petition, the registrar shall indicate the reason for rejection.

10. Entry of information in register and change thereof

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(1) The following shall be entered in the register:

1) the name of the non-profit association;

2) the location and address of the non-profit association;

3) the date of approval of the articles of association;

4) the names, personal identification codes and residences of the members of the management board;

5) the specifications for the right of representation of the management board pursuant to 27 of this Act;

6) the term of the association if the non-profit association has a specified term;

7) other information provided by law.

(2) Upon a change in the information entered in the register, the management board shall submit a petition for entry of the changes in the register.

(3) Minutes of the general meeting or other body which decided on the change shall be appended to the petition specified in subsection (2) of this section; such minutes shall contain information on the time and place of the meeting, voting results and adopted resolutions. The minutes shall be signed by the chair and the secretary of the meeting. The list of participants in the meeting with the signature of each participant shall be an integral part of the minutes. In order to enter a new member of the management board in the register, the notarised specimen signature of the new member shall be appended to the petition.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)



#### 11. Transactions entered into before entry in register

(1) Persons who enter into transactions in the name of a non-profit association being founded before entry of the non-profit association in the register are solidarily liable for performance of the obligations arising from the transactions.

(2) The obligations specified in subsection (1) of this section transfer to the non-profit association as of entry in the register if the persons who entered into the transaction had the right to enter into the transaction in the name of the association.

(3) If a person did not have the right to enter into a transaction in the name of an association, the obligations arising from the transaction transfer to the non-profit association if the general meeting approves the transaction.

### Chapter 3

#### Members of Non-profit Associations

#### 12. Members

(1) Every natural person or legal person who complies with the requirements of the articles of association of a non-profit association may be a member of the non-profit association. A non-profit association shall comprise at least two members unless the law or the articles of association prescribe a greater number of members.

(2) The management board shall organise the registration of members of a non-profit association. At any time the registrar has the right to demand information from the management board of a non-profit association on the number of members of the non-profit association.

(3) The management board of a non-profit association shall submit a petition for dissolution of the non-profit association within three months if the number of members of the non-profit association falls below two or any other number prescribed by law or the articles of association. If the management board does not submit a petition during the specified term, the registrar shall commence the compulsory dissolution of the non-profit association.

(4) The articles of association determine the proprietary and other obligations of members with regard to a non-profit association. Obligations may be imposed on members only pursuant to the procedure prescribed by the articles of association.

#### 13. Membership

(1) The management board decides on membership in a non-profit association unless this is placed in the competence of the general meeting or some other body by the articles of association.

(2) If the management board or a body other than the general meeting denies membership to an applicant, the applicant may demand that the general meeting decide on his or her membership.

#### 14. Non-transferability of membership

(1) Membership in a non-profit association or exercise of the rights of a member cannot be transferred or bequeathed unless otherwise provided by law. Membership in a non-profit association terminates upon the death of a natural person who is a member or dissolution of a legal person who is a member.

(2) A legal person retains membership upon its transformation in the manner provided by law. Upon merger or division of a legal person who is a member, the rights of the person as a member terminate.

(3) Upon separation of a legal person from another legal person who is a member, the membership of the legal person being divided is retained.

#### 15. Departure of member

(1) A member of a non-profit association has the right to leave the non-profit association on the basis of a petition.

(2) The articles of association may prescribe that a member may only leave a non-profit association at the end of a financial year or after expiration of a term for advance notice which shall not be longer than two years.

(3) The provisions of subsection (2) of this section do not apply if the rights or obligations of the member are significantly changed or whereby the

membership cannot be maintained according to a just valuation.

#### 16. Exclusion of member

(1) A member may be excluded from a non-profit association by a resolution of the management board in the cases and pursuant to the procedure prescribed by the articles of association. The articles of association may prescribe that exclusion of members is decided by the general meeting.

(2) Regardless of the provisions of the articles of association, a member may be excluded from a non-profit association due to failure to adhere to the articles of association or for significantly damaging the association.

(3) A member who is excluded from a non-profit association shall be promptly notified in writing of the adoption of a resolution to exclude the member from the association and of the reasons therefor.

(4) If exclusion of a member is decided by the management board, the member may demand that exclusion be decided by the general meeting. If a member was excluded by some other competent body of the non-profit association, the general meeting may declare the resolution on exclusion invalid on the basis of a petition by the excluded member.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 17. Consequences of termination of membership

(1) If a membership terminates during a financial year, the membership fee prescribed by the articles of association shall be paid for the whole financial year unless the articles of association prescribe otherwise.

(2) A person whose membership in a non-profit association has terminated shall not have a right to the assets of the association.

### Chapter 4

#### Management

#### 18. General meeting

(1) The highest body of a non-profit association is the general meeting of its members. All members of a non-profit association may participate in the general meeting unless otherwise provided by law.

(2) The general meeting adopts resolutions on all management matters of the non-profit association which are not placed within the competence of the management board or another body of the non-profit association by law or the articles of association.

#### 19. Competence of general meeting

The general meeting is competent to:

1) amend the articles of association;

2) change objectives;

3) appoint the members of the management board unless the articles of association prescribe otherwise;

4) elect members to other bodies (? 31) prescribed by the articles of association unless the articles of association prescribe otherwise;

5) decide on entry into transactions with members of the management board or another body, decide on the assertion of claims against such members or appoint a representative of the non-profit association in such transactions or claims;

6) decide other matters which are not placed in the competence of other bodies by law or the articles of association.

#### 20. Calling general meeting

(1) The management board calls the general meeting.

(2) The management board shall call the general meeting in the cases and pursuant to the procedure prescribed by law or the articles of association, and if it is required in the interests of the association.

(3) The management board shall call the general meeting if at least one-tenth of the members of the non-profit association so demand in writing indicating the reason, and the articles of association do not prescribe a smaller representation requirement.

(4) If the management board does not call the general meeting under the circumstances specified in subsection (3) of this section, the members who demanded the general meeting may call the general meeting themselves pursuant to the same procedure as the management board.

(5) Notice of the general meeting shall be given at least seven days in advance unless the articles of association prescribe a longer term.

#### 21. Procedure of general meeting

(1) The general meeting may adopt resolutions if the meeting was called in adherence to all requirements arising from the law and the articles of association of the non-profit association. The articles of association of a non-profit association may provide for the proportion of members of the non-profit association upon the participation of which the general meeting has a quorum, and for the procedure for calling a new general meeting in the case where the required number of members of the non-profit association did not participate in the general meeting.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) (Repealed - 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) If the requirements of law or the articles of association are violated in calling the general meeting, the general meeting shall not have the right to adopt resolutions except if all members participate in or are represented at the general meeting.

(4) The general meeting is competent to adopt resolutions on matters of which notice was given upon calling the general meeting unless the articles of association prescribe otherwise. Resolutions on matters of which notice was not given upon calling the general meeting may be adopted if all members of the non-profit association participate in or are represented at the general meeting.

(5) A member of a non-profit association or representative of a member who is granted an unattested proxy may participate and vote in the general meeting. Only another member of the non-profit association may be a representative.

#### 22. Resolution of general meeting

(1) A resolution of the general meeting is adopted if over one-half of the members or their representatives of the non-profit association who participate in the meeting vote in favour of the resolution unless the articles of association prescribe a greater majority requirement.

(1<sup>1</sup>) In the election of a person at a general meeting, the candidate who receives more votes than the others shall be deemed to be elected unless a greater majority requirement is established by the articles of association. Upon an equal division of votes, lots shall be drawn unless the articles of association prescribe otherwise.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) (Repealed - 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) A resolution of the general meeting shall be deemed to be adopted without calling the general meeting if all members of a non-profit association vote in favour of the resolution in writing.

(4) Each member of a non-profit association has one vote. A member shall not vote if entry into a transaction with the member or with a person with an equivalent economic interest or commencement or termination of a court action against the member is being decided by the non-profit association.

(5) The consent of a member is required to extinguish or alter a right of the member which is different from the rights of other members of the non-profit association and to impose obligations on the members which are different from the obligations of other members.

(6) Members of a non-profit association who are also members of the management board or another body shall not vote on a resolution to assert a claim against the member. The votes of members of a non-profit association specified in this section shall not be taken into account in the determination of representation.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 23. Amendment of articles of association

(1) A resolution on amendment of the articles of association is adopted if over two-thirds of the members or their representatives who participate in the general meeting vote in favour and the articles of association do not prescribe a greater representation requirement.

(1<sup>1</sup>) The consent of at least 9/10 of the members is required to change the objective of the non-profit association prescribed in the articles of association unless the articles of association prescribe a greater majority requirement. The consent of members who did not participate in the general meeting which decided on an amendment shall be submitted in writing.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) An amendment of the articles of association enters into force as of entry in the register. The minutes of the general meeting which decided on amendment of the articles of association and the new text of the articles of association shall be appended to a petition for entry of the amendment of the articles of association in the register. The new text of the articles of association shall be signed by at least one member of the management board or, if the members of the management board are only authorised to represent the association jointly, by all the members of the management board authorised to represent the association jointly.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 24. Invalidation of resolution of general meeting

(1) On the basis of a petition of a member or a member of the management board of a non-profit association, a court may declare invalid a resolution of the general meeting which is contrary to law or the articles of association if the petition is submitted within three months after adoption of the resolution.

(2) Invalidation of resolutions of other bodies of a non-profit association may also be requested pursuant to the procedure provided for in subsection (1) of this section.

#### ? 25. Meeting of proxies

(1) The articles of association of a non-profit association may prescribe that the duties of the general meeting to the extent specified by the articles of association are performed by a meeting of proxies elected by and from among the members of the non-profit association. The number of proxies and the procedure for their election shall be prescribed by the articles of association. All members of the non-profit association have the right to participate in the election of proxies.

(2) The provisions of this Act concerning the general meeting apply to the meeting of proxies

unless other Acts or the articles of association prescribe otherwise.

(3) The articles of association may prescribe that certain resolutions of the meeting of proxies enter into force after approval by the members of the non-profit association. The time and procedure for voting shall be prescribed in the articles of association.

#### 26. Management board

(1) A non-profit association shall have a management board which manages and represents the association. The management board may have one member (director) or several members. The minimum number of members of the management board shall be prescribed by the articles of association.

(2) Members of the management board must be natural persons with active legal capacity.

(3) At least one-half of the members of the management board must be persons whose residence is in Estonia.

#### 27. Right of representation of management board

(1) Every member of the management board has the right to represent the non-profit association in all legal acts unless otherwise provided by law.

(2) The articles of association may prescribe that all or some of the members of the management board may represent the non-profit association only jointly. Such restriction applies with regard to third persons only if it is entered in the register.

(3) The right of the management board to represent a non-profit association may be restricted by the articles of association or by a resolution of the general meeting. A restriction on the right of representation does not apply with regard to third persons.

(4) The management board may transfer or encumber with a real right immovables or movables of the non-profit association entered in the register by a resolution of the general meeting and under the conditions prescribed by the resolution unless the articles of association prescribe otherwise. Such restriction applies with regard to third persons if it is entered in the register.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 28. Appointment and competence of management board

(1) The general meeting appoints the members of the management board unless the articles of association prescribe otherwise.

(2) A member of a management board may be removed at any time regardless of the reason by a resolution of the body that appointed the member, but the rights and obligations arising from a contract entered into with the member terminate pursuant to the contract. If a member of the management board was removed by some other competent body of the non-profit association, the general meeting may declare the resolution on removal invalid on the petition of the removed member.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) The articles of association may prescribe that a member of the management board may be removed only in the case of significant non-performance of duties, incapacity to direct the non-profit association or with other good reason.

(4) Members of the management board shall not transfer performance of their duties to a third person unless this is prescribed by the articles of association or a resolution of the general meeting.

(5) The management board shall provide the members of the non-profit association with necessary information concerning management of the non-profit association and present a corresponding report at their request unless the articles of association prescribe otherwise.

(6) Members of the management board have the right to demand reimbursement of necessary expenditure incurred in the performance of tasks unless the articles of association prescribe otherwise.

#### 29. Resolution of management board

(1) A management board may adopt resolutions if over one-half of the members of the management board participate in a meeting of the management board and the articles of association do not prescribe a greater representation requirement.

(2) If the management board comprises several members, a majority of votes of the members of the management board who participate in the meeting of the management board is required to adopt a resolution of the management board

unless the articles of association prescribe a greater majority requirement.

(3) Without observing the provisions of subsection (1) of this section, a management board may adopt a resolution without calling a meeting if all members of the management board vote in favour of the resolution in writing and the articles of association do not prescribe otherwise.

(4) A member of the management board shall not participate in voting if entry into a transaction with the member or with a person with an equal economic interest or commencement or termination of a court action by the non-profit association with the member is being decided.

#### 30. Appointment of member of management board by court

With good reason, which above all is the temporary or extended inability of a member of a management board to perform his or her duties, a court may appoint a new member to replace a withdrawn member of the management board at the request of an interested person. The authority of a court-appointed member of the management board continues until the appointment of a new member of the management board by the general meeting or in another manner prescribed by the articles of association.

#### 31. Other bodies

(1) The articles of association may prescribe that another body in addition to the management board be appointed for the performance of specific legal acts, the competence and procedure for foundation of which shall be prescribed by the articles of association.

(2) In the case of doubt, the right of another body to represent a non-profit association extends to all legal acts which are the result of the normal area of activity prescribed by the articles of association for the body.

#### 32. Liability of member of management board or other body

(1) Members of the management board and of other bodies, who cause damage to the non-profit association by violation of their obligations shall be solidarily liable for compensation for the damage caused.

(2) A claim for payment of compensation to a non-profit association for damage specified in subsection (1) of this section may also be submitted by an obligee of the non-profit association if the assets of the non-profit association are not sufficient to satisfy the claims of the obligee.

(3) An obligee has the right to submit a claim specified in subsection (2) of this section also if the non-profit association has waived a claim against a member of the management board or of another body or has entered into a contract of compromise with such member.

(4) The limitation period for submission of claims against a member of the management board or of another body shall be five years as of violation of an obligation.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

### 33. Departments

(1) A non-profit association may have departments if this is prescribed by the articles of association. Departments are not legal persons.

(2) The bodies of departments and their competence shall be prescribed by the articles of association of the non-profit association. If a department has its own general meeting and management board, the provisions of ?? 18?22, 24?26, 28?30 and 32 of this Act apply thereto.

### 34. Supervision

(1) The general meeting supervises the activities of other bodies. In order to perform this duty, the general meeting may call for a review or audit.

(1<sup>1</sup>) A member of the management board or an accountant of the non-profit association shall not be a controllers or auditor.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) The members of the management board and of other bodies shall enable controllers or auditors to examine all documents necessary for conduct of a review or audit and shall provide necessary information.

(3) Controllers and auditors shall prepare a report concerning the results of a review or audit, which they shall present to the general meeting.

### 35. Accounting

The management board shall organise the accounting of the non-profit association pursuant to the Accounting Act (RT I 1994, 48, 790; 1995, 26-28, 355; 92, 1604; 1996, 40, 773; 42, 811; 49, 953; 1998, 59, 941; 1999, 55, 584; 101, 903; 2001, 87, 527).

### 36. Annual report

(1) After the end of a financial year, the management board shall prepare the annual accounts and activity report pursuant to the procedure provided by law.

(2) The management board shall submit the reports to the general meeting within six months after the end of the financial year. If a non-profit association has an auditor or audit committee, the auditor's report or the opinion of the audit committee shall be appended to the reports.

(3) Approval of the annual report shall be decided by the general meeting.

Approved annual reports shall be signed by all members of the management board.

## Chapter 5

### Dissolution

#### 37. Bases for dissolution

A non-profit association is dissolved:

- 1) by a resolution of the general meeting;
- 2) upon commencement of bankruptcy proceedings against the non-profit association;
- 3) upon a decrease of the number of members of the non-profit association to below two or another number specified by law or the articles of association;
- 4) due to the inability of the general meeting to appoint the members of bodies prescribed by law or the articles of association;

5) upon expiry of a term if the non-profit association has a specified term;

6) on another basis prescribed by law or the articles of association.

#### 38. Dissolution by resolution of general meeting

Dissolution of a non-profit association may always be decided by a resolution of the general meeting. A resolution is adopted if over two-thirds of the members who participate in or are represented at the general meeting vote in favour and the articles of association do not prescribe a greater majority requirement.

#### 39. Submission of bankruptcy petition

The management board shall submit a bankruptcy petition if it becomes evident that the non-profit association has less assets than assumed obligations. The members of the management board at fault are solidarily liable for damage caused to the non-profit association or to third persons by failure to submit a petition or by delay in submission of a petition.

#### 40. Compulsory dissolution

(1) A non-profit association is dissolved by a court judgment at the request of the Minister of Internal Affairs or another interested person if:

1) the objectives or activities of the non-profit association are contrary to law, the constitutional order or good morals;

2) the activities of the non-profit association do not comply with the objectives in the articles of association;

3) economic activity becomes the main activity of the non-profit association;

4) the management board does not submit a petition for dissolution provided by law;

5) in other cases provided by law.

(2) A court may set a deadline for elimination of deficiencies specified in subsection (1) of this section.

#### 41. Petition for dissolution

(1) If a non-profit association is dissolved by a resolution of the general meeting, upon expiry of its term or on another basis, the management board shall submit a petition for entry of the dissolution in the register. Upon compulsory dissolution, bankruptcy or termination of bankruptcy proceedings, a corresponding entry shall be made pursuant to a court judgment.

(2) If a resolution of the general meeting is the basis for dissolution, the minutes of the general meeting which decided on the dissolution shall be appended to the petition.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) A court which issues a bankruptcy order shall notify the registrar of the declaration of bankruptcy of the non-profit association and of the termination of bankruptcy proceedings. A bankruptcy entry shall contain the name, personal identification code and residence of the trustee in bankruptcy.

#### 42. Liquidation

(1) A non-profit association is liquidated (liquidation proceeding) upon dissolution unless otherwise provided by law.

(2) In a liquidation proceeding, the notation ?likvideerimisel? [in liquidation] shall be appended to the name of the non-profit association.

#### 43. Liquidators

(1) The liquidators of a non-profit association are the members of the management board unless the articles of association or a resolution of the general meeting prescribe otherwise. Upon compulsory dissolution, a court shall appoint the liquidators and specify the procedure for and amount of remuneration of liquidators.

(2) Liquidators must be natural persons with active legal capacity.

(3) At least one-half of the liquidators must be persons whose residence is in Estonia.

(4) The provisions of ? 28 of this Act apply to appointment and removal of liquidators.

(5) A court may remove a liquidator with good reason at the request of a member of the non-profit association, a liquidator or other interested person, or on the court's own initiative. In such case, the court shall appoint a new liquidator.

#### 44. Entry of liquidator

(1) A management board shall submit a petition for entry of the liquidators in the register. If the liquidators are appointed by a resolution of the general meeting, the minutes of the general meeting which decided on the appointment of liquidators shall be appended to the petition for entry of the liquidators in the register. Notarised specimen signatures of the liquidators shall be appended to the petition.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

(2) If a liquidator is appointed by a court judgment, the court shall send the order to the registrar for entry.

(3) The names, residences and personal identification codes of the liquidators shall be entered in the register.

#### 45. Rights and obligations of liquidators

(1) Liquidators have the rights and obligations of the management board which are not contrary to the objective of the liquidation.

(2) Liquidators terminate the activities of the non-profit association, collect debts, sell assets, satisfy the claims of creditors and distribute the assets remaining after satisfaction of the claims of creditors among entitled persons.

(3) Liquidators need not sell assets unless this is necessary for satisfaction of the claims of creditors or for distribution of remaining assets among entitled persons, and the general meeting consents thereto.

(4) Liquidators may only enter into transactions which are necessary for liquidation of the non-profit association.

#### 46. Right of representation of liquidators

(1) If a non-profit association has several liquidators, they only have the right to represent the non-profit association jointly unless the articles of association or the resolution on appointment of the liquidators prescribe otherwise. Such restriction applies with regard to third persons only if it is entered in the register.

(2) The liquidators may authorise one or several from among themselves to perform particular transactions or a particular type of activity.

#### 47. Notification of creditors

(1) Liquidators shall promptly publish a notice of the liquidation proceeding of a non-profit association in the official publication *Ametlikud Teadaanded*<sup>2</sup>. The liquidators shall send a notice of liquidation to the known creditors.

(20.06.2000 entered into force 12.07.2000 - RT I 2000, 55, 365)

(2) A notice of liquidation shall indicate that creditors are to submit their claims within two months after publication of the notice.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

#### 48. Submission of claims

(1) Creditors shall notify liquidators of all their claims against a non-profit association within two months after publication of the notice of liquidation. A notice shall set out the content, basis and amount of the claim, and documents substantiating the claim shall be appended thereto.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

(2) If a known creditor does not submit a claim, the money belonging to the creditor shall be deposited.

(3) If the due date for fulfilment of the claim of a creditor has not arrived or a creditor does not accept fulfilment, the money belonging to the creditor shall be deposited.

#### 49. Submission of bankruptcy petition upon liquidation

If the assets of a non-profit association being liquidated are insufficient for satisfaction of all claims of creditors, the liquidators shall submit a bankruptcy petition.



#### 50. Distribution of assets

(1) After satisfaction of all claims of creditors and the deposit of money, the remaining assets shall be distributed among the persons entitled by the articles of association.

(2) The articles of association may prescribe that the entitled persons are to be designated upon the distribution of assets by a resolution of the general meeting.

(3) If the articles of association or a resolution of the general meeting do not prescribe among whom assets of a non-profit association are to be distributed, and if pursuant to the articles of association the non-profit association was founded only in the interests of its members, assets shall be distributed in equal parts among the persons who are members of the non-profit association at the time of dissolution of the non-profit association.

(4) If assets cannot be distributed on the bases prescribed for in subsections (1)-(3) of this section, the assets transfer to the state which shall use the assets to the extent possible according to the objectives of the non-profit association.

(5) Upon compulsory dissolution of a non-profit association on the basis that its objectives or activities are contrary to the constitutional order, criminal law or good morals, the assets remaining after satisfaction of the claims of creditors transfer to the state.

(6) Assets shall not be distributed among entitled persons within six months after publication of the notice of liquidation.

(06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

#### 51. Continuation of activities of dissolved non-profit association

(1) If dissolution of a non-profit association is prescribed by the articles of association or is decided by the general meeting, the general meeting may, until commencement of the distribution of assets, decide on continuation of the activities of the non-profit association or on merger or division of the non-profit association. A resolution on continuation of activities is adopted if over two-thirds of the members who participate in or are represented at the general meeting vote in favour.

(2) If continuation of activities is decided, the same resolution shall appoint the new

management board and the members of other bodies prescribed by the articles of association.

(3) Liquidators shall submit a petition for entry of the continuation of activities in the register. The resolution on continuation enters into force as of its entry in the register.

#### 52. Deletion from register and supplementary liquidation

(1) After the completion of liquidation, the liquidators shall submit a petition for deletion of the non-profit association from the register.

(2) If after deletion of a non-profit association from the register it becomes evident that supplementary liquidation measures are necessary, a court shall, at the request of an interested person, restore the rights of the former liquidators or appoint new liquidators.

#### 53. Deletion of non-profit association from register

(1) Upon dissolution of a non-profit association, the non-profit association shall be deleted from the register on the basis of a petition of the non-profit association or on another basis provided by law.

(2) If a petition for deletion of a non-profit association from the register is not submitted upon completion of the liquidation of the non-profit association, the registrar has the right to delete the non-profit association from the register.

(3) A non-profit association shall not be deleted from the register without the written consent of the Tax and Customs Board unless the latter submitted the petition for deletion of the non-profit association from the register. The Tax and Customs Board shall not refuse consent unless it has claims against the non-profit association. If consent is not received within twenty days after sending petition, the Tax and Customs Board shall be deemed to consent to deletion from the register.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

#### 54. Preservation of documents

(1) Liquidators shall deposit the documents of a non-profit association with a liquidator or an

archives. If the liquidators do not appoint a depositary of documents, a court shall appoint one.

(25.03.98 entered into force 1.05.98 - RT I 1998, 36/37, 552)

(2) The name, personal identification or registry code and, residence or location of a depositary of documents shall be entered in the register on the petition of the liquidators. In the case of a court-appointed depositary, the entry shall be made on the basis of the court judgment. Upon a change of depositary, the transferor shall notify the registrar before the transfer in order to allow for the entry of new information in the register.

(25.03.98 entered into force 1.05.98 - RT I 1998, 36/37, 552; 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) A non-profit association is responsible for the preservation of documents created or received as a result of its activities during the term prescribed by the law. Upon liquidation of a non-profit association, the documents of the non-profit association which are to be preserved may be transferred to an archives upon agreement with the archives. Upon a transfer of documents to an archives, the responsibility for preservation of the documents transfers to the archives.

(25.03.98 entered into force 1.05.98 - RT I 1998, 36/37, 552)

55. (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

## Chapter 6

### Merger and division

#### Division 1

#### Merger

##### 56. Definition of merger

(1) A non-profit association (non-profit association being acquired) may merge with another non-

profit association (acquiring non-profit association). Articles of association may prescribe that merger is or is not allowed only under the conditions prescribed by the articles of association. A non-profit association being acquired shall be deemed to be dissolved.

(2) Non-profit associations may also merge such that they form a new non-profit association. In such case, the merging non-profit associations shall be deemed to be dissolved.

(3) Merger is effected without a liquidation proceeding.

(4) Upon merger, the assets (rights and obligations) of a non-profit association being acquired transfer to the acquiring non-profit association. Upon foundation of a new non-profit association, the assets of the merging non-profit associations transfer to it.

(5) The members of a non-profit association being acquired become members of the acquiring non-profit association upon merger. Upon foundation of a new non-profit association, the members of the merging non-profit associations become its members.

(6) A non-profit association may only merge with another non-profit association.

(7) In the cases provided by law, the permission of a competent agency is required for merger.

##### 57. Merger agreement

(1) In order to merge, the management boards of the non-profit associations shall enter into a merger agreement. Rights and obligations arise from a merger agreement after approval of the agreement pursuant to the procedure provided for in ? 58 of this Act. The merger agreement shall set out:

1) the names and locations of the non-profit associations;

2) the rights which the acquiring non-profit association grants to the members of the non-profit association being acquired;

3) the consequences of merger for the employees of the non-profit association being acquired.

(2) A merger agreement shall be in writing.

(3) If an approved merger agreement is conditional and the condition is not fulfilled within five years after entry into the agreement, a non-profit association may terminate it by giving at

least six months? advance notice of termination unless the merger agreement prescribes a shorter term for advance notice.

#### 58. Merger resolution

(1) Rights and obligations arise from a merger agreement if the merger agreement is approved by all merging non-profit associations. A merger resolution shall be in writing.

(2) A merger resolution is adopted if over two-thirds of the members who participate in or are represented at the general meeting vote in favour and the articles of association do not prescribe a greater majority requirement.

#### 59. Protection of creditors

(1) Upon merger, the management board of a participating (merging) non-profit association shall, within fifteen days after adoption of the merger resolution, send written notice concerning the merger to the known creditors of the non-profit association who have claims against the non-profit association which predate the adoption of the merger resolution.

(2) A management board shall publish two notices concerning a merger resolution with at least a fifteen day interval in the official publication *Ametlikud Teadaanded*. The notice shall indicate that creditors are to submit their claims within two months.

(20.06.2000 entered into force 12.07.2000 - RT I 2000, 55, 365)

(3) A non-profit association shall secure the claims of creditors if they are submitted within two months after publication of the last notice. If the deadline for fulfilment of a claim has arrived or if a claim is not sufficiently secured, the creditor may demand satisfaction of the claim.

(4) A creditor of an acquiring non-profit association may demand security or satisfaction of the creditor's claim only if the creditor proves that the merger endangers fulfilment of the creditor's claim.

#### 60. Submission of petition to register

(1) The management board of a merging non-profit association shall submit a petition for entry of the merger in the register of the location of the non-profit association after three months after

publication of the second merger notice. The following shall be appended to the petition:

1) a notarised copy of the merger agreement;

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

2) the merger resolution;

3) the permission for merger, if required;

4) a reference to the issues of the *Ametlikud Teadaanded* in which the notices specified in subsection 59 (2) of this Act are published.

(06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

(2) In a petition, the members of the management board shall confirm that the claims of creditors who submitted their claims by the deadline or who opposed the merger are secured or satisfied.

#### 61. Name of acquiring non-profit association

An acquiring non-profit association may continue activities under the name of a non-profit association being acquired.

#### 62. Merger entry

(1) A merger shall be entered in the register of the location of the acquiring non-profit association if it is entered in the registers of the locations of all non-profit associations being acquired. An entry in the register of a location of a non-profit association being acquired shall indicate that the merger is deemed to be effected as of its entry in the register of the location of the acquiring non-profit association.

(2) The registrar of the location of an acquiring non-profit association shall notify the registrar of the location of the non-profit association being acquired of entry of the merger in the register. Upon receipt of notification, the registrar shall make a notation in the register regarding when the merger was entered in the register of the location of the acquiring non-profit association. The registrar of the non-profit association being acquired shall send the documents of the non-profit association held by the registrar to the registrar of the location of the acquiring non-profit association.

63. Legal effect of entry

(1) The assets (rights and obligations) of a non-profit association being acquired transfer to the acquiring non-profit association as of entry of the merger in the register of the location of the acquiring non-profit association. After entry of a merger in the register of the location of the acquiring non-profit association, entries regarding the transfer of assets shall be made in the land register and movable property registers on the basis of a petition of the management board of the acquiring non-profit association.

(2) A non-profit association being acquired shall be deemed to be dissolved as of entry of the merger in the register of the location of the acquiring non-profit association. The registrar shall delete the non-profit association being acquired from the register.

(3) The members of a non-profit association being acquired become members of the acquiring non-profit association as of entry of the merger in the register of the location of the acquiring non-profit association.

64. Merger whereby new non-profit association founded

(1) The provisions of ?? 56-63 of this Act together with other complementary provisions prescribed by law apply to merger whereby a new non-profit association is founded.

(2) The provisions regarding non-profit associations being acquired apply to merging non-profit associations, and the provisions regarding acquiring non-profit associations apply to non-profit associations being founded. Non-profit associations shall be deemed to be merged as of entry of a new non-profit association in the register.

(3) The provisions for foundation of non-profit associations apply to foundation of new non-profit associations unless the provisions of this chapter provide otherwise. The founders are the merging non-profit associations.

(4) In addition to the provisions of subsection 57 (1) of this Act, a merger agreement shall set out the name and location, and the members of the management board of the new non-profit association. The articles of association of the non-profit association being founded which shall be approved by the merger resolution shall be appended to the merger agreement.

(5) The management board of a merging non-profit association shall submit a petition for entry

of the merger in the register of the location of the non-profit association.

(6) The management boards of merging non-profit associations shall submit a joint petition for entry of the new non-profit association in the register of its location.

Division 2

Division

65. Definition of division

(1) Division is effected without a liquidation proceeding by distribution or separation. Articles of association may prescribe that division is or is not allowed only under the conditions prescribed by the articles of association.

(2) Upon distribution, a non-profit association being divided transfers its assets to the recipient non-profit associations. A recipient non-profit association may be an existing non-profit association or a non-profit association being founded. Upon distribution, a non-profit association being divided shall be deemed to be dissolved.

(3) Upon separation, a non-profit association being divided transfers part of its assets to one or several recipient non-profit associations. A recipient non-profit association may be an existing non-profit association or a non-profit association being founded.

(4) Upon division, the members of a non-profit association being divided become members of the recipient non-profit associations pursuant to the division agreement.

(5) A non-profit association may only divide into non-profit associations and may only participate in the division of a non-profit association.

(6) In the cases provided by law, the permission of a competent agency is required for division.

66. Division agreement

(1) In order to divide, the management boards of the non-profit associations participating in division shall enter into a division agreement. Rights and obligations arise from a division agreement after

approval of the agreement pursuant to the procedure provided for in ? 67 of this Act. A division agreement shall set out:

- 1) the names and locations of the non-profit associations participating in division;
- 2) the rights which a recipient non-profit association grants to the members of the non-profit association being divided;
- 3) a list of assets to be transferred to each recipient non-profit association;
- 4) the consequences of division for the employees.

(2) A division agreement shall be in writing.

(3) If an approved division agreement is conditional and the condition is not fulfilled within five years after entry into the agreement, a non-profit association may terminate it by giving at least six months? advance notice of termination unless the division agreement prescribes a shorter term for advance notice.

#### 67. Division resolution

(1) Rights and obligations arise from a division agreement if the division agreement is approved by all non-profit associations participating in the division. A division resolution shall be in writing.

(2) A division resolution is adopted if over two-thirds of the members who participate in the general meeting vote in favour and the articles of association do not prescribe a greater majority requirement.

#### 68. Protection of creditors

(1) The management board of a non-profit association participating in division shall, within fifteen days after adoption of the division resolution, send written notice concerning the division to the known creditors of the non-profit association who have claims against the non-profit association which predate the adoption of the division resolution.

(2) A management board shall publish two notices concerning a division resolution with at least a fifteen day interval in the official publication Ametlikud Teadaanded, calling on creditors to submit their claims. The notice shall indicate that creditors are to submit their claims within two months.

(20.06.2000 entered into force 12.07.2000 - RT I 2000, 55, 365)

(3) A non-profit association shall secure the claims of creditors if they are submitted within two months after publication of the last notice. If the due date for fulfilment of a claim has arrived or if a claim is not sufficiently secured, the creditor may demand satisfaction of the claim.

(4) A creditor of a recipient non-profit association may demand security or satisfaction of the creditor?s claim only if the creditor proves that the division endangers fulfilment of the creditor?s claim, except if the due date for fulfilment of the creditor?s claim has arrived.

#### 69. Submission of petition to register

(1) The management board of a non-profit association participating in division shall submit a petition for entry of the division in the register of the location of the non-profit association after three months after publication of the second division notice. The following shall be appended to the petition:

- 1) a notarised copy of the division agreement;

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

- 2) the division resolution;
- 3) the permission for division, if required;
- 4) a reference to the issues of the Ametlikud Teadaanded in which the notices specified in subsection 68 (2) of this Act are published.

(06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

(2) In a petition, the members of the management board shall confirm that the claims of creditors who submitted their claims by the deadline or who opposed the division are secured or satisfied.

#### 70. Name of recipient non-profit association

Upon division, a recipient non-profit association may continue activities under the name of the non-profit association being divided.

#### 71. Division entry

(1) A division shall be entered in the register of the location of the non-profit association being divided if it is entered in the registers of the locations of all recipient non-profit associations. Entries in the registers of the locations of the recipient non-profit associations shall indicate that the division is deemed to be effected as of its entry in the register of the location of the non-profit association being divided.

(2) The registrar of the location of a non-profit association being divided shall notify the registrars of the locations of the recipient non-profit associations of entry of the division in the register and shall send an extract from the register to them. Upon receipt of notification, the registrar shall make a notation in the register regarding when the division was entered in the register of the location of the non-profit association being divided.

#### 72. Legal effect of entry

(1) All assets of a non-profit association being divided or, upon separation, the separated assets pursuant to the distribution prescribed in the division agreement, transfer to the recipient non-profit associations as of entry of the division in the register of the location of the non-profit association being divided. After entry of a division in the register of the location of the non-profit association being divided, entries regarding the transfer of assets shall be made in the land register and movable property registers on the petition of the management board of the recipient non-profit association.

(2) Upon division, a non-profit association being divided is dissolved as of entry of the division in the register of the location of the non-profit association being divided. The registrar shall delete the non-profit association being divided from the register.

(3) The members of a non-profit association being divided become members of the recipient non-profit associations pursuant to the division agreement as of entry of the division in the register of the location of the non-profit association being divided.

(4) Assets which are not divided upon division shall be divided among the recipient non-profit associations in proportion to their share in the assets being divided.

#### 73. Liability for obligations of non-profit association being divided

(1) Non-profit associations participating in division are solidarily liable for the obligations of the non-profit association being divided which arise before entry of the division in the register of the location of the non-profit association being divided. In relations between solidary debtors, only persons to whom obligations are assigned by the division agreement are obligated persons.

(2) A non-profit association participating in division to which obligations are not assigned by the division agreement is liable for the obligations of the non-profit association being divided if the due date for their fulfilment arrives within five years after entry of the division in the register of the location of the non-profit association being divided.

#### 74. Division whereby new non-profit association founded

(1) The provisions of ?? 65-73 of this Act together with other complementary provisions prescribed by law apply to division whereby a new non-profit association is founded.

(2) The provisions regarding recipient non-profit associations apply to non-profit associations being founded.

(3) The provisions for foundation of non-profit associations apply to foundation of new non-profit associations unless the provisions of this chapter provide otherwise. The founder is the non-profit association being divided.

(4) Upon division whereby a new non-profit association is founded, the management board of the non-profit association being divided shall prepare a division plan which substitutes for the division agreement. In addition to the provisions of subsection 66 (1) of this Act, a division plan shall set out the name and location, and the members of the management board of the new non-profit association. The articles of association of the non-profit association being founded, which shall be approved by the division resolution, shall be appended to the division plan.

(5) The management board of a non-profit association being divided shall submit a petition for entry of the new non-profit associations in the registers of their locations and for entry of the division in the register of the location of the non-profit association being divided.

(6) The registrar of the location of each new non-profit association shall notify the registrar of the location of the non-profit association being divided of entry of the new non-profit association in the register. Upon receipt of notification concerning all

new non-profit associations, the registrar of the location of the non-profit association being divided shall enter the division in the register, notify the registrar of the location of each new non-profit association of the entry and send an extract from the register to them. Upon receipt of notification, the registrar shall make a notation in the register regarding when the division was entered in the register of the location of the non-profit association being divided.

## Chapter 7

### Non-profit Associations and Foundations Register

#### 75. Maintenance of register

(1) A register is maintained of non-profit associations and foundations.

(2) The registration departments (registrars) of the county and city courts shall maintain a register of non-profit associations and foundations located in their jurisdiction.

(3) The duties of the registration department may be assigned to the land register of a county or city court by a regulation of the Minister of Justice.

(4) Entries in the register are made by the registrar in whose jurisdiction the non-profit association or foundation is located.

#### 76. Application of Commercial Code

Subsections 22 (4)-(6), ? 23, subsections 24 (1)-(6), ?? 25?27, 32 and 32<sup>1</sup>, subsections 33 (4)-(9), subsections 41 (1) and (2), ?? 43?47, 50, 52?56, subsections 57 (1) and (2), ? 58, subsections 59 (5) and (6), ?? 66?74 and 511<sup>1</sup> and subsection 541 (1<sup>1</sup>) of the Commercial Code (RT I 1995, 26/28, 355; 1998, 91/93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596; 102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373; 2001, 34, 185; 56, 332 and 336; 89, 532; 93, 565) correspondingly apply to the register.

(06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

#### 77. Access to register

(1) Entries in the register are public. Everyone has the right to examine the card register and the public files of non-profit associations and to obtain copies of registry cards and of documents in the public files of non-profit associations.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) At the request of a person, a registrar shall issue a certificate attesting that an entry has not been amended or that a particular entry is not in the register.

(3) An assistant judge or an authorised registry secretary shall certify the authenticity of copies of registry cards and copies of other documents preserved in a registration department.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

(4) A registry file may be examined by any person with a legitimate interest.

#### 78. Information to be entered in register and documents to be submitted to register

(1) Information prescribed by law shall be entered in the register.

(2) A non-profit association is required to submit the documents which are the basis for an entry and other documents provided by law to the registrar. The documents submitted to the registrar shall set out the information provided by law.

#### 78<sup>1</sup>. Personal data submitted to registrar

(1) If by law a personal identification code must be set out in a document submitted to a registrar but the person does not have an Estonian personal identification code, the day, month and year of birth of the person shall be set out and entered in the register instead.

(2) A legal person in public law shall, in a document submitted to a registrar, set out its registry code and reference to the Act pursuant to which the person is founded. A legal person is not required to submit its registry code or other registration number to a registrar if the legal person is not subject to entry in a public register.

(3) The name of the local government in which a natural person lives shall be submitted to a registrar and entered in the register as his or her residence.

(4) The name of the local government in which the seat of a legal person is located shall be submitted to a registrar and entered in the register as the seat of the legal person.

(5) Specific data concerning the address of a person's residence or seat (street number, apartment number, street name or name of the farm, settlement, local government and county, postal code) shall be submitted to a registrar as the person's address.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 79. Entry in register

(1) Entries in the register are made on the basis of a petition of the management board of a non-profit association, pursuant to a court judgment or on another basis provided by law. A person entitled to submit a petition or other documents to the register is required to do so.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) A petition submitted to the registrar shall be notarised. If a memorandum of association includes the petition, the memorandum of association shall be notarised.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

(3) A person entitled to sign a petition submitted to the registrar may authorise another person to sign. An authorisation document provided for signature of a petition shall be notarised.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

(4) A registrar shall promptly notify the non-profit association of making or refusing to make an entry.

(5) A registrar shall refuse to make an entry if a petition or documents appended thereto do not comply with law.

#### 80. Legal effect of entry

(1) An entry in the register shall enter into force upon signature by the person enforcing the judgment on entry and by the person who is competent to make the judgment on entry.

(2) An entry shall be held as correct with regard to a third person, except if the third person knew or should have known that the entry is not correct. An entry shall be deemed not to apply with regard to legal acts which are performed within fifteen days after the entry is made if a third person proves that the third person was not aware nor should have been aware of the content of the entry.

(3) If facts which must be entered in the register are not entered in the register, such facts shall have legal effect with regard to a third person only if the third person knew or should have known about them.

(4) The facts contained in an entry made on the basis of a court judgment shall acquire legal effect as of the entry into force of the court judgment.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 81. Notification obligation of administrative agencies

The courts, state and local government agencies, and notaries are required to notify the registrar of any incorrect information in the register or of any information not submitted to the register of which they become aware due to their office.

#### 82. Making entry without petition

(1) If a registrar has information concerning the incorrectness of an entry or that an entry is missing, the registrar may make the appropriate inquiries.

(2) Upon ascertaining that an entry is incorrect or missing, the registrar shall notify the non-profit association on the basis of whose petition the entry should have been made. If no objection to making, correcting or deleting the entry is made within two weeks after notification, the registrar shall make, correct or delete the entry.

(3) The making of an entry without a petition does not exempt a non-profit association which is required to submit a petition from the obligation to pay the prescribed state fee for making the entry. If the incorrectness of the entry is caused by the activities of the registrar, he or she shall exempt the non-profit association from payment of state fees by a judgment on entry.

(06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)



(4) If the making of an entry pursuant to subsection (2) of this section would result in the deletion of a non-profit association from the register, the registrar may initiate the compulsory dissolution of the non-profit association in court.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 83. Composition of register

The register includes:

1) the card register;

2) the public files;

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

3) the registry files.

#### 84. Card register

(1) A separate registry card is opened for each non-profit association entered in the register.

(2) Registry cards form the card register.

#### 85. Public files

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(1) A public file is opened for each non-profit association entered in the register.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) Documents which a non-profit association submits to the registrar pursuant to law are maintained in the public file. Information on members of non-profit associations submitted to the registrar at the request of the registrar shall also be maintained in public files.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) Documents submitted to the registrar shall be originals or notarised copies unless otherwise provided by law.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

#### 86. Registry file

(1) A registry file is opened for each non-profit association entered in the register.

(2) Documents concerning a non-profit association which are not to be maintained in the public file are maintained in the registry file.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 87. Registry journal

(1) Entry petitions are registered in the registry journal.

(2) A notation is made in the registry journal on whether a petition is satisfied.

#### 88. Registry code

Every non-profit association is given a non-recurrent registry code upon entry in the register.

#### 89. Entries of registry card of non-profit association

The following information concerning a non-profit association is entered in a registry card of a non-profit association:

1) the registry code and consecutive numbers of registry entries;

2) the name;

3) the location and address;

4) information on the members of the management board;

5) information on the trustee in bankruptcy;

6) information on the liquidators;

7) the right of representation of the members of the management board and the liquidators if such right differs from the general rule prescribed by the Act;

8) the time of approval and amendment of the articles of association;

9) the term of operation if the non-profit association is founded for a specified term;

10) the dissolution;

11) the merger or division;

12) the declaration of bankruptcy and termination of bankruptcy proceedings;

13) the deletion from the register;

14) information on the depositary of documents of a liquidated non-profit association;

15) the date of entry, and signature, name and title of the person enforcing the judgment on entry and of the person competent to make the judgment on entry;

16) references to earlier and later entries, and notations.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 89<sup>1</sup>. Removal from judgment on entry

A person who is competent to make a judgment on entry shall not participate in the proceedings of a petition for an entry, shall not make a judgment on entry or issue a court ruling if:

1) the person or his or her relative or relative by marriage is a founder or a member of the management board of the non-profit association or the foundation, or a member the supervisory board of the foundation, or an auditor of the foundation within the extent provided for in clause 18 (1) 2) of the Code of Civil Procedure (RT I 1993, 31/32, 538; 1994, 1, 5; 1995, 29, 358; 1996, 3, 57; 42, 811; 1997, 87, 1466; 1998, 43-45, 666);

2) other circumstances raise doubt concerning his or her impartiality.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 90. Procedure for storage of registry cards

(1) Registry cards are stored according to their registry codes.

(2) The registry cards of a non-profit association are stored together.

(3) The registry cards of non-profit associations which are deleted from the register are separated from the card register and stored separately.

#### Chapter 8

#### Implementation of Act

91. Application of this Act to non-profit associations, their alliances and other non-profit associations

(1) As of 1 October 1996, non-profit associations may only be founded pursuant to the procedure provided for in this Act, and the provisions of this Act apply to them.

(2) The provisions of ? 1, the first sentence of subsection 2 (1), ? 3, subsections 4 (2) and (3), ? 5, subsection 12 (1), the first sentence of subsection 12 (2), subsections 12 (3) and (4), ?? 13-22, subsections 23 (1) and (1<sup>1</sup>), ?? 24-26, subsection 27 (1), the first sentence of subsection 27 (2), subsection 27 (3), the first sentence of subsection 27 (4), ?? 28-45, the first sentence of subsection 46 (1), subsection 46 (2), and ?? 47-55 of the Non-profit Associations Act apply to non-profit associations and their alliances, and to other non-profit associations founded before 1 October 1996 until their entry in the non-profit associations and foundations register. If the articles of association of a non-profit association, alliance of non-profit associations or other non-profit association is contrary to this Act, the provisions of this Act apply.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) Upon entry in the non-profit associations and foundations register of a non-profit association which was entered in the enterprise register the whole Non-profit Associations Act applies.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 92. Merger and division

(1) Merger and division of non-profit associations entered in the register shall be effected pursuant to the procedure provided for in this Act. A non-profit association entered in the register shall not merge with a non-profit association, alliance of

associations or other non-profit association which is not entered in the register.

(2) Merger and division of non-profit associations, alliances of associations and other non-profit associations which are not entered in the register as non-profit associations are prohibited.

### 93. Application for entry in register

(1) Non-profit associations, alliances of non-profit associations or other non-profit associations founded and registered in the register of enterprises, agencies and associations of the Republic of Estonia (hereinafter enterprise register) before 1 October 1996 which comply with the requirements specified in this Act shall be entered in the register as non-profit associations on the basis of their petitions. Non-profit associations founded pursuant to legislation in force before the entry into force of the Non-profit Associations and Their Alliances Act (RT I 1994, 28, 425; 49, 805; 1995, 23, 332; 1996, 42, 811; 49, 953) and which were not registered in the enterprise register shall be entered in the register as non-profit associations.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) A petition for entry in the register shall set out information concerning the non-profit association as provided by law, and the documents provided by law, except the memorandum of association, the certificate of registration of the non-profit association in the enterprise register and the minutes of the general meeting or meeting of proxies whereby the valid wording of the articles of association was approved and the management board which signed the petition was elected shall be appended to the petition. Instead of the certificate of registration of the non-profit association in the enterprise register, non-profit associations specified in the second sentence of subsection (1) of this section shall submit to the registrar the foundation resolution and other documents which were the basis of its foundation. A judge or assistant judge shall decide on a petition within two months after submission of the petition and all other prescribed documents. If the petition for registration of a non-profit association is reviewed by the Secretary of State and the making of the entry is decided by a judge, the Secretary of State shall sign the entry instead of the judge.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) For entry in the register as non-profit associations, the articles of association of non-

profit associations, alliances of non-profit associations or other non-profit associations shall be brought into accordance with the provisions of this Act.

(4) Non-profit associations founded before 1 October 1996 the objective of which is the accumulation and distribution of assets for specific purposes and which have members may be transformed into a foundation pursuant to the Foundations Act. Transformation shall be decided and the new articles of association shall be adopted by the general meeting of the members of the association. Members have the rights of founders of a foundation.

(5) Upon transformation under the circumstances specified in subsection (4) of this section, the assets transferred to a foundation are exempt from income tax and value added tax.

(6) Amendments to the articles of association of non-profit associations specified in subsection 91 (2) of this Act and to information subject to registration in the enterprise register shall be effected pursuant to the procedure effective before 1 October 1996.

### 94. Notations in registers

(1) Upon entry in the register as a non-profit association of a non-profit association, alliance of non-profit associations or other non-profit association which is entered in the enterprise register, a corresponding notation shall be made in the entry of the enterprise register on the basis of a notice from the registrar.

(2) Upon entry in the register as a non-profit association of a non-profit association, alliance of associations or other non-profit association founded before 1 October 1996, a notation concerning the earlier registration of the non-profit association in the enterprise register shall be made in the register, indicating the former registration number.

### 95. Deletion from register

(1) Non-profit associations, their alliances or other non-profit associations (hereinafter associations) in the enterprise register which by 1 March 1999 are not entered as non-profit associations in the register or for which, by 1 March 1999, no petition for entry in the register has been submitted to the registrar or whose petition for entry in the register has been denied shall be deemed to have undergone compulsory dissolution. The term for

this for political parties in the enterprise register is 1 October 1998.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(1<sup>1</sup>) The term specified in subsection (1) of this section does not extend to legal persons in the register of churches, congregations and alliances of congregations of Estonia maintained by the Ministry of Internal Affairs and such legal persons shall be entered in the register by the term and pursuant to the procedure prescribed by the Churches and Congregations Act.

(17.02.99 entered into force 19.03.99, implemented after 1.03.99 - RT I 1999, 23, 355)

(2) The registrar of the enterprise register shall publish notices of compulsory dissolutions of enterprises in the official publication *Ametlikud Teadaanded*. If the registrar makes a judgment concerning a petition for entry of an association in the register by which the registrar denies the petition after 1 March 1999, or denies the petition of a political party after 1 October 1999, the registrar shall publish a notice in the official publication *Ametlikud Teadaanded*.

(20.06.99 entered into force 01.03.99 - RT I 1999, 10, 155)

(3) A notice of compulsory dissolution shall indicate that creditors and members of the association are to submit their claims within two months after publication of the notice in the official publication *Ametlikud Teadaanded* to the court according to the location of the association for liquidation, the appointment of liquidators or a declaration of bankruptcy.

(20.06.99 entered into force 01.03.99 - RT I 1999, 10, 155)

(4) The right of representation of the management board of an association which has undergone compulsory liquidation or of the body substituting therefor shall be retained until a court appoints liquidators or declares a bankruptcy or deletes the enterprise from the enterprise register. The composition of the management board or of the body substituting therefor may be changed until such time with good reason and the permission of the court; changes in the composition of a management board or of a body substituting therefor shall enter into force as of registration in the enterprise register. The primary good reasons shall be:

1) a lengthy or serious illness due to which performance of the duties of the management board or of the body substituting therefor becomes impossible;

2) the death of a member of the management board or of the body substituting therefor or the declaration of a member of the management board or of the body substituting therefor as missing or dead or to be without active legal capacity;

3) the entry into force of a court judgment by which punishment with imprisonment is imposed;

4) the entry into force of a court judgment by which a member of the management board or of the body substituting therefor is deprived of the right to operate in a particular area of activity;

5) the taking up of residence in a foreign country permanently.

(5) An association which has undergone compulsory dissolution shall not:

1) transfer or rent immovables, movables registered in a state register (buildings, vehicles, etc.) or holdings in companies (shares) belonging to the association, or encumber immovables, movables registered in a state register (buildings, vehicles, etc.) or holdings in companies (shares) belonging to the association with a restricted real right;

2) amend the articles of association;

3) found legal persons.

(6) The restrictions provided for in clause (5) 1) of this section shall apply until a court appoints liquidators or declares a bankruptcy. Such restrictions shall apply with regard to third persons.

(7) Creditors and members of an association which has undergone compulsory dissolution may submit a petition to the court according to the location of the association for liquidation, appointment of liquidators or a declaration of bankruptcy within two months after publication of the notice of compulsory dissolution in the official publication *Ametlikud Teadaanded*.

(20.06.99 entered into force 01.03.99 - RT I 1999, 10, 155)

(8) The following shall be set out in a petition for liquidation submitted on the basis of subsection (7) of this section:

1) information on the association which has undergone compulsory dissolution, including reference to the issue of the official publication *Ametlikud Teadaanded* in which the notice of compulsory dissolution was published;

(20.06.99 entered into force 01.03.99 - RT I 1999, 10, 155)

2) the name, residence or seat and postal address of the petitioner;

3) information on the amount, basis and term for payment of the claim on which the petition is based if the petition is submitted by a creditor; in such case proof of existence of the claim on which the petition is based shall be appended to the petition;

4) a request for a person to be appointed as liquidator, and the name, residence and postal address of such person.

The consent of a person shall be appended to the petition if the person's appointment as liquidator is requested unless the petition is for appointment of the director of an association entered in the enterprise register as liquidator. A receipt for payment of the state fee shall also be appended to the petition.

(9) The court may give preference to appointment of the director of the association entered in the enterprise register as the liquidator, who is obligated to accept the duties of liquidator unless refusal to accept such duties is due to a good reason specified in subsection (4) of this section.

(10) If the court has already appointed a liquidator for an association which has undergone compulsory dissolution, any subsequent petitions for liquidation shall be deemed to be notices of claims and the court shall forward them to the liquidator.

(11) Any person who submits a knowingly false petition for liquidation to a court shall compensate for any damage caused thereby to the association, its creditors or members.

(12) If creditors do not submit their petitions during the term specified in subsection (7) of this section or if a liquidation proceeding is completed, the association shall be deemed to be dissolved and shall be deleted from the register.

(12<sup>1</sup>) If after the dissolution of an association and its deletion from the register it becomes evident that the association has additional assets which were not taken into consideration in the liquidation proceeding, the court shall commence, on the basis of an application by a member of the association which has been deleted from the register, a follow-up liquidation proceeding to which the provisions concerning liquidation proceedings apply. Upon the commencement of a follow-up liquidation proceeding, the notice concerning the commencement shall set out that this is a follow-up proceeding. In follow-up

proceedings, creditors have no right to submit demands concerning the assets being divided.

(15.11.2000 entered into force 29.11.2000 - RT I 2000, 88, 576)

(12<sup>2</sup>) If after the dissolution of an association and its deletion from the register it becomes evident that the association has assets but no liquidation proceeding has been conducted or the assets belong to a non-profit association which has not been registered in the register of enterprises and has been founded pursuant to legislation valid before the entry into force of the Non-profit Associations and their Alliances Act, the court shall commence, on the basis of an application by an interested person, a liquidation proceeding to which the provisions of this section apply.

(15.11.2000 entered into force 29.11.2000 - RT I 2000, 88, 576)

(13) If an association is dissolved due to failure to submit a petition, the director of the association entered in the enterprise register at the time of dissolution shall be deemed to be the depositary of the documents of the liquidated association and shall be entered in the enterprise register by the registrar of the enterprise register.

(14) The depositary of the documents of a liquidated association shall be responsible for the preservation of documents during the retention period prescribed by law and is required to enable persons with a legitimate interest in the matter to examine such documents.

(15) The Minister of Justice may, by a regulation, establish a specific procedure for carrying out compulsory dissolution specified in this section and establish the procedure for remuneration of liquidators and the maximum amounts of remuneration.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### 96. Name of non-profit association

(1) Upon entry of a non-profit association in the register, the registrar shall make an inquiry to the registrar of the enterprise register concerning the existence of the same or a similar name in the enterprise register.

(2) A name being applied for shall not be entered in the register if the name or a misleadingly similar name is registered in the enterprise register by another non-profit association, alliance of non-profit associations or other non-profit association before the applicant.

97. (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

98. Entry in register of associations which possess weapons, are militarily organised or perform military exercises

Non-profit associations which possess weapons, are militarily organised or perform military exercises may be entered in the register only with the consent of the Government of the Republic. The conditions and procedure for granting consent shall be provided by law.

99. Association of activities of employees? associations

(1) Until passage of an Act providing for activities of employees? [t?jate] (employees' [t?tjate]) associations, the provisions of the Estonian SSR Trade Unions Act (ENSV Teataja<sup>3</sup> 1989, 40, 623; RT 1992, 35, 462) which are not contrary to this Act apply.

(18.08.99 entered into force 04.09.99 - RT I 1999, 67, 658)

(2) To trade unions, their federations and central federation in the enterprise register which have not submitted petitions for entry in the register or the petitions of which for entry in the register have been denied, ? 95 of this Act applies as of 1 December 1999. Such associations may submit petitions for entry in the register until 1 December 1999.

(18.08.99 entered into force 04.09.99 - RT I 1999, 67, 658)

(3) If a term for elimination of deficiencies in a petition for entry in the register has been granted to an association specified in subsection (2) of this section pursuant to ? 54 of the Commercial Code, the running of the term is suspended until 1 December 1999.

(18.08.99 entered into force 04.09.99 - RT I 1999, 67, 658)

(4) Liquidation proceedings shall not be conducted with regard to associations specified in subsection (2) of this section which are deemed to have undergone compulsory dissolution on the basis of ? 95 of this Act.

(18.08.99 entered into force 04.09.99 - RT I 1999, 67, 658)

100. Amendments to the State Fees Act

The State Fees Act (RT 1990, 11, 118; RT I 1995, 36, 465; 57, 981; 58, 1005; 61, 1028; 87, 1540; 1996, 3, 56; 38, 752; 40, 773) is amended as follows:

1) clause 2 7) is amended and worded as follows:

"7) entries in the commercial register and the non-profit associations and foundations register, and certification of copies by the commercial register and the non-profit associations and foundations register;"

2) subsection 4 9) is amended and worded as follows:

"(9) Upon entry of a non-profit association or a foundation in the non-profit associations and foundations register, non-profit associations and foundations registered in the enterprise register before 1 October 1996 are exempt from the state fee.";

3) Annex 1 is added to clause 9) worded as follows:

"9. For registry entries of the register of non-profit associations and foundations:

1) entry of non-profit association or foundation in register 300 kroons;

2) entry of changes in register 100 kroons;

3) copy of page of card register or file 2 kroons.

Notice. If the making of an entry simultaneously in several columns is applied for, state fee shall be paid for one entry."

101. Amendments to the Courts Act

The Court Act (RT 1991, 38, 472; 1993, 1, 2; RT I 1993, 24, 429; 65, 922; 1994, 81, 1382; 86/87, 1487; 94, 1609; 1995, 29, 358; 87, 1540; 1996, 31, 631; 42, 811; 51, 967; 1998, 4, 62; 2000, 35, 219; 51, 321; 2001, 21, 113; 43, 240; 48, 264) is amended as follows:

1) subsection 7 21) is amended and worded as follows:

"(2<sup>1</sup>) A judge sitting alone decides on making of a ruling on entry order or imposition of fine pursuant to the procedure provided for in the Commercial Code, Non-profit Associations Act and Foundations Act.";

2) subsection 17 3) is amended and worded as follows:

"(3) The chairman of a county or city court or one or several judges or on his or her appointment decide on the making on commercial registry entries and imposition on fines concerning associations which fall within the territorial jurisdiction of the court, and on the making of non-profit associations and foundations registry entries and imposition of fines concerning non-profit associations and foundations which fall within the territorial jurisdiction of the court.";

3) subsection 37<sup>3</sup> 2) is amended and worded as follows:

"(2) The registration department maintains a commercial register concerning undertakings within the territorial jurisdiction of the registration department and a non-profit associations and foundations register concerning non-profit associations and foundations within the territorial jurisdiction of the registration department."

4) subsection 37<sup>3</sup> 4) is amended and worded as follows:

"(4) The procedure for maintenance of the commercial register is provided for by the Commercial Code and the procedure for maintenance of the non-profit associations and foundations register is provided for by the Non-profit Associations Act and the Foundations Act."

#### 102. Amendment to Number and Membership of Courts and Number of County and City Lay Judges Act of the Republic of Estonia

Subsection (3) is added to ? 1 of the Number and Membership of Courts and Number of County and City Lay Judges Act of the Republic of Estonia (RT 1993, 1, 1; RT I 1993, 24, 429; 43, 622; 65, 922; 76, 1131; 1994, 81, 1382; 1995, 29, 358; 97, 1664; 1996, 31, 631; 42, 811; 1999, 88, 809; 2000, 102, 678) worded as follows:

"(3) In connection with the maintenance of the non-profit associations and foundations register the number of county and city court judges is increased by four in addition to the provisions of subsections (1) and (2) of this section. The distribution of additional judges between county and city courts is decided by the Minister of Justice in concordance with the Supreme Court."

#### 103. Amendment to Code of Civil Procedure

Subsection 27 (8) of the Code of Civil Procedure (RT I 1993, 31/32, 538; 1994, 1, 5; 1995, 29, 358; 1996, 3, 57) is amended and worded as follows:

"(8) A summons delivered at the seat of an undertaking entered in the commercial register is deemed to be delivered to the undertaking. A summons delivered at the address of a non-profit association or foundation entered in the non-profit associations and foundations register is deemed to be delivered to the non-profit association or foundation."

#### 104. Amendments to Political Parties Act

The Political Parties Act (RT I 1994, 40, 654; 1996, 37, 739; 42, 811; 1998, 59, 941; 1999, 27, 393) is amended as follows:

1) subsection 2 (2) is repealed;

2) subsection 6 1) is amended and worded as follows:

"(1) A political party shall be founded by a memorandum of association which shall also approve the articles of association of the political party and appoint the members of the leadership and other bodies prescribed in the articles of association.";

3) the words "approved by the foundation meeting and registered pursuant to the prescribed procedure" are omitted from subsection 7 (1) and the words " and their alliances" are omitted from subsection 7 (2);

4) subsection 8 is amended and worded as follows:

"? 8. Application for entry in register

The following shall be appended to the application of a political party for entry in the non-profit associations and foundations register, in addition to that provided for in ? 10 of the Non-profit Associations Act:

1) a platform signed by the members of the leadership;

2) a list of the members of the political party, indicating the names, residences and personal identification codes of the members;

3) a sample or sketch of the insignia of the political party if these are prescribed by the articles of association.";

5) subsection 9 (1) is repealed;

6) in subsection 10 (4), the words "the state agency which registered the political party" are substituted by the words "the registrar of non-profit associations and foundations"

7) in subsection 11 (2), the words "which registered the articles of association of the political party" are substituted by the words "designated by the Government of the Republic";

8) subsection 12 is amended and worded as follows:

"? 12. " Ensurance of legality of activities of political party, and merger, division and termination thereof

The legality of the activities of political parties shall be ensured and the merger, division and termination of political parties shall be effected pursuant to the procedure provided for in the Non-profit Associations Act."

9) in subsection 13 (2), the words "their articles of associations are registered" are substituted by the words "are registered".

#### 105. Amendments to Accounting Act

The Accounting Act (RT I 1994, 48, 790; 1995, 26-28, 355; 92, 1604; 1996, 40, 773; 42, 811; 49, 953; 1998, 59, 941; 1999, 55, 584; 101, 903; 2001, 87, 527) is amended as follows:

1) the words "and non-profit associations and alliances of non-profit associations" are omitted from subsection 2 (5);

2) the second sentence is added to subsection 2 (9) worded as follows:

" Foundations shall submit a copy of the annual report to the non-profit associations and foundations register.";

3) subsection (11) is added to ? 2 worded as follows:

"(11) Non-profit associations are not required to comply with the requirements provided for in clauses 22 (2) 3) and 4) and subsections 24 (1) and (2).";

4) clause 23 (1) 41) is amended by adding the words "non-profit association and" after the word "all"."

#### 106. Amendments to General Principles of Civil Code Act

The General Principles of the Civil Code Act (RT I 1994, 53, 889; 65, # p. 1838; 89, 1516; 1995, 26-28, 355; 49, 749; 87, 1540; 1996, 40, 773; 42, 811; 1998, 30, 409; 59, 941; 1999, 10, 155) is amended as follows:

1) in subsection 6 (1), the words "non-profit association and their alliances" are substituted by the words "and non-profit associations";

2) subsection (5) is added to ? 44 worded as follows:

"(5) At the request of an interested person, a court may declare a resolution of a body of a legal person which is contrary to law or the articles of association invalid if the request is filed within three months after adoption of the resolution.";

3) subsection 49 1) is amended and worded as follows:

"(1) "(1) A legal person is dissolved by a court order at the request of the Minister of Internal Affairs, another person or agency so entitled by law or another interested person:

1) if the objective or activities of the legal person are contrary to the constitutional order, law or good morals;

2) if the law was violated upon the foundation of the legal person;

3) if the articles of association of the legal person are contrary to law to a significant extent;

4) if the legal person does not comply with the requirements established by law for the legal person;

5) on another basis provided by law.";

4) subsection (1<sup>1</sup>) is added to ? 49 worded as follows:

"(1<sup>1</sup>) A court may set a deadline for elimination of the deficiencies specified in clauses (1) 1), 3) and 4)."

5) subsection (4) is added to ? 52 worded as follows:



"(4) If in the case of liquidation of a legal person no persons are entitled to the assets of the legal person, the assets remaining after satisfaction of the claims of creditors and the deposit of money are retained by the state which shall use these assets according to their current purpose to the greatest possible extent."

#### 107. Amendments to Dwelling Act of Republic of Estonia

The Dwelling Act of the Republic of Estonia (RT 1992, 17, 254; RT I 1998, 71, 1199; 2000, 88, 576; 2001, 85, 509; 93, 565) is amended as follows:

1) subsection 13 (3) is repealed;

2) the words "(RT 1992, 36, 477; RT I 1995, 26-28, 335)" and "and their alliances" and "(RT I 1994, 28, 425; 49, 805; 1995, 23, 332)" are omitted from ? 15.

#### 108. Amendments to Apartment Associations Act

The Apartment Associations Act (RT I 1995, 61, 1025; RT I 1999, 42, 498) is amended as follows:

1) in subsection 3 (1), the words "in chapters 2 and 3 of the Non-profit Associations and Their Alliances Act " are substituted by the words "in the Non-profit Associations Act";

2) the second sentence is added to subsection 3 (1) worded as follows:

"A memorandum of association shall not be entered into.";

3) in subsection 3 (2), the words "to the county government" are substituted by the words " to the registrar of the non-profit associations and foundations register.";

4) the words "and their alliances" are omitted from subsection 4 (2).

#### ? 109. Amendments to Foundations Act

The Foundations Act (RT I 1995, 92, 1604; 1996, 42, 811; 1998, 36/37, 552; 59, 941; 1999, 10, 155; 2000, 55, 365; 2001, 56, 336; 93, 565) is amended as follows:

1) subsection 3 (1) is amended by adding the words "and non-profit associations" after the word "foundations";

2) the words "unless otherwise provided by law" are omitted from subsection 18 (1);

3) in subsection 53 (2), the word "four" is substituted by the word "one";

4) the first sentence of subsection 80 (2) is amended by adding the words "and which have no members" before the words "for specific purposes" and the words "subsection 34 (4) and ?? 35?39" after the number "15", and the second sentence is amended by adding the words "specified in the first sentence of this subsection" after the words "for specific purposes";

5) the third sentence is added to subsection 80 (2) worded as follows:

"The provisions of ?? 16?32 and 40?42 apply to non-profit associations the objective of which is the accumulation and distribution of assets for specific purposes and which have no members in so far as their articles of association do not provide otherwise.";

6) subsections (3) - (5) are added to ? 80 worded as follows:

"(3) The provisions of ?? 91-96 of the Non-profit Associations Act apply to non-profit associations founded before 1 October 1996 the objective of which is the accumulation and distribution of assets for specific purposes and which have no members.

(4) The annual report of non-profit associations specified in subsection (2) of this section shall be approved by the competent body set out in the articles of association. The provisions of ? 24 of the Accounting Act do not apply to such associations.

(5) Until the entry into force of a corresponding Act, the bases and procedure for the activities of auditors and the requirements set for auditors shall be specified pursuant to the procedure established by the Government of the Republic."

7) subsection (4) is added to ? 82 worded as follows:

"(4) Amendments to the articles of association of non-profit associations specified in subsection 80 (2) and to information subject to registration in the enterprise register shall be effected pursuant to the procedure effective before 1 October 1996."

8) in subsection 84 (2), the word "January" is substituted by the word "October".

#### ? 110. Repeal of Non-profit Associations and Their Alliances Act

The Non-profit Associations and Their Alliances Act (RT I 1994, 28, 425; 49, 805; 1995, 23, 332) is repealed.

? 111. Implementing regulations

(1) The Government of the Republic may in accordance with this Act issue regulations for implementation of this Act.

(2) The Minister of Justice may issue regulations for organisation of the activities of registration departments.

? 112. Entry into force of Act

This Act enters into force on 1 October 1996.

**5.2. Law on Foundations**

Foundations Act

15 November 1995, RT I 1995, 92, 1604

Chapter 1

General Provisions

§ 1. Definition of foundation

(1) A foundation is a legal person in private law which has no members and which is established to administer and use assets to achieve the objectives specified in its articles of association.

(2) The passive legal capacity of a foundation commences as of entry in the non-profit associations and foundations register (register) and terminates as of deletion from the register.

(3) Transformation of a foundation into a legal person of a different class is prohibited.

§ 2. Restrictions on activities

(1) Restrictions on the economic activities of foundations may be provided by law.

(2) A foundation shall not grant loans to or secure the loans of founders or members of the management board or supervisory board of the foundation, or of persons with an equivalent economic interest, unless otherwise provided by law.

(3) A foundation may use its income only to achieve the objectives specified in its articles of association.

(4) A foundation shall not be a partner of a general partnership or a general partner of a limited partnership or manage a general partnership or limited partnership.

§ 3. Name

(1) The name of a foundation shall clearly differ from the names of other non-profit associations and foundations entered in the register in Estonia or deleted from the register less than three years ago.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

(2) The name of a foundation shall not be misleading with regard to the objectives, scope of activity or legal form of the foundation.

(3) The name of a foundation shall contain the appendage "sihtasutus" [foundation].

(4) The documents of a foundation shall indicate the name, location and registry code of the foundation.

(5) (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(6) A foundation may have only one name.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(7) The name of a foundation shall be written in the Estonian-Latin alphabet.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(8) The name of a foundation shall not be contrary to good morals.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

§ 4. Location

The location of a foundation is the place where the management board of the foundation is located unless the articles of association prescribe otherwise.

Chapter 2

Foundation of foundation

§ 5. Founders and conditions of foundation

(1) A foundation is founded by one or several founders for an unspecified term, until stated objectives are achieved, or for a specified term.

(2) The founders of a foundation may be natural persons or legal persons.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) A foundation may be founded on the basis of a will.

(4) If a foundation is founded by several founders, they may only exercise the rights of founders jointly unless the foundation resolution prescribes otherwise.

(5) The rights of a founder do not transfer to a legal successor of the founder.

(6) A person who transfers assets to a foundation after it is founded does not acquire the legal status of a founder.

#### § 6. Foundation resolution

(1) A foundation shall be founded by a foundation resolution which shall set out:

1) the name, location and address of the foundation;

2) the names and residences or locations and addresses of the founders and their personal identification codes or registry codes;

3) the sum of money or other assets, and their value, to be transferred to the foundation by the founders;

4) the names, residences and personal identification codes of the members of the management board and supervisory board.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) The founders shall also approve the articles of association of the foundation as an annex to the foundation resolution.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) All founders shall sign a foundation resolution and the articles of association approved thereby. A foundation resolution and the articles of association approved thereby shall be notarised. A representative of a founder may sign if the authorisation document granted to the representative therefor is notarised. Articles of

association shall be amended after entry in the register of the foundation pursuant to the procedure provided for in §§ 41-42 of this Act and shall not require amendment of the foundation resolution.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### § 7. Foundation of foundation on basis of will

(1) A foundation may be founded on the basis of a notarised will which must contain a foundation resolution which complies with the requirements of § 6 of this Act.

(2) If a will does not designate an executor of the will who must ensure the entry of the foundation in the register, the court shall designate an administrator therefor who has the rights and obligations of an executor of a will.

(3) If a foundation resolution contained in a will specified in subsection (1) of this section does not comply with the requirements provided for in § 6 of this Act, the executor or administrator of a will may, if necessary, appoint the members of the management board and supervisory board of the foundation and determine the conditions of the foundation resolution and articles of association which are not determined by the will.

(4) Until the appointment of the management board and supervisory board, an executor or administrator of a will has the right to exercise rights arising from the foundation resolution and to administer transferred assets pursuant to the articles of association of the foundation.

(5) The executor or administrator of a will has the right to demand reimbursement of necessary expenses incurred in the performance of his or her tasks and remuneration for the performance of tasks, the amount of which shall be determined by a court.

(6) The authority of the executor or administrator of a will terminates upon entry of the foundation in the register or if entry in the register is no longer possible.

#### § 8. Articles of association of foundation

(1) The articles of association of a foundation shall be in writing. The articles of association shall set out:

1) the name of the foundation;

2) the location of the foundation;

3) the objectives of the foundation;

4) the procedure for transfer of assets to the foundation;

5) the set of beneficiaries, except if all persons who are entitled to receive disbursements pursuant to the objectives of the foundation are beneficiaries;

6) the term of the foundation if it is founded for a specified term;

7) the distribution of the assets of the foundation upon dissolution of the foundation;

8) the procedure for appointment and removal of members of the management board and their term of office;

9) the procedure for appointment and removal of members of the supervisory board and their term of office;

10) the procedure for appointment and removal of auditors and their term of office;

11) the procedure for amendment of the articles of association;

12) whether and under what conditions the founders have the right to dissolve the foundation;

13) the procedure for remuneration of the members of the management board and supervisory board;

14) the procedure for use and disposal of assets;

15) other conditions provided by law.

(2) The articles of association may also prescribe other conditions which are not contrary to law. If a provision of the articles of association is contrary to a provision of law, the provision of law applies.

(3) If the articles of association do not prescribe a term for the foundation, it shall be deemed to be founded for an unspecified term.

#### § 9. Beneficiaries

A beneficiary is a person to whom disbursements from the assets of the foundation may be made pursuant to the articles of association of the foundation. If a set of beneficiaries is not determined by the articles of association, all persons who are entitled to receive disbursements pursuant to the objectives of the foundation shall be deemed to be beneficiaries.

#### § 10. Foundation of foundation

(1) Upon foundation of a foundation, the founders shall use the proposed name of the foundation together with the appendage "asutamisel" [in foundation] in order to operate in the name of the foundation.

(2) If an immovable or a movable subject to registration is transferred to a foundation which is being founded, the foundation being founded shall be entered in the land register and other registers under the name and appendage specified in subsection (1) of this section.

(3) In order to transfer money to a foundation, the founders shall open a bank account in the name of the foundation being founded using the name and appendage specified in subsection (1) of this section, which may be disposed of in the name of the foundation after entry of the foundation in the register.

(4) If a foundation is not entered in the register, movables entered in the register and immovables entered in the land register in the name of the foundation, and bank accounts opened in the name of the foundation may be disposed of only pursuant to procedure specified by a court order. A court shall issue a ruling on the basis of an application of a founder or other interested person. The application shall set out the reason for failure to found, the persons who have made contributions, the amounts of the contributions and who has made contributions to what extent.

#### § 11. Application for entry in register

(1) In order to enter a foundation in the register of its location, the management board of the foundation shall submit an application which sets out the information specified in clauses 14 (1) 2)-5), 8), 9) and 11) of this Act and is signed by all members of the management board. The following shall be appended to the application:

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565; 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

1) the foundation resolution and articles of association approved thereby;

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

2) (Repealed - 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941);

3) a bank notice concerning the money transferred to the foundation;

4) (Repealed - 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941);

5) notarised specimen signatures of the members of the management board;

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

6) telecommunications numbers (telephone, facsimile, etc.);

7) other documents provided by law.

(2) Any other application submitted to the register shall be signed by a member of the management board. If the members of the management board are only entitled to represent the foundation jointly, all members of the management board entitled to represent the foundation jointly shall sign the application.

(3) Transfers of assets to a foundation shall be certified by the members of the management board by their signatures. If an immovable or a movable subject to registration is transferred, an extract from the land register or other register shall be appended to the application.

#### § 12. Refusal to enter in register

A registrar shall not enter a foundation in the register if its foundation resolution, articles of association or other documents do not comply with the requirements of law. Upon rejection of an application, the registrar shall indicate the reason for rejection.

#### § 13. Liability for submission of incorrect information

If the management board submits incorrect information to the register, the members of the management board are solidarily liable for any damage caused thereby.

#### § 14. Register and information to be entered therein

(1) The following information concerning a foundation is entered on the registry card of the foundation:

1) the registry code and consecutive numbers of registry entries;

2) the name;

3) the location and address;

4) objective;

5) information on the members of the management board;

6) information on the trustee in bankruptcy;

7) information on liquidators;

8) the right of representation of the members of the management board and the liquidators if such right differs from the general rule prescribed by the Act;

9) the time of making of the foundation resolution;

10) the time of amendment of articles of association and general description of the content of the amendment;

11) the term of operation if the foundation is founded for a specified term;

12) the dissolution;

13) the merger or division;

14) the declaration of bankruptcy and termination of bankruptcy proceedings;

15) the deletion from the register;

16) information on the depository of documents of the liquidated foundation;

17) the date of entry, and the signature, name and title of the person enforcing the judgment on entry and of the person competent to make the judgment on entry;

18) references to earlier and later entries and other notations.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) Upon a change in the information entered in the register, the management board shall submit an application for entry of the change in the register.

(2<sup>1</sup>) Minutes of the meeting of the body which decided on the change shall be appended to the application specified in subsection (2) of this section; such minutes shall contain information on the time and place of the meeting, voting results and adopted resolutions. The minutes shall be signed by all the members of the body who participated in the meeting. In order to enter a new member of the management board in the register, a notarised specimen signature of the new member shall be appended to the application.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

(3) The provisions of the Non-profit Associations Act apply to the register.

(4) A petition submitted to the registrar shall be notarised. The petition may be included in the foundation resolution.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

§ 15. Transactions entered into before entry in register

(1) Persons who enter into transactions in the name of a foundation being founded before entry of the foundation in the register are solidarily liable for performance of the obligations arising from the transactions.

(2) The obligations specified in subsection (1) of this section transfer to the foundation as of entry in the register if the persons who entered into the transaction had the right to enter into the transaction.

(3) If a person did not have the right to enter into a transaction, the obligations arising from the transaction transfer to the foundation if the supervisory board approves the transaction.

### Chapter 3

#### Management of Foundation

##### § 16. Bodies

The bodies of a foundation are the management board and the supervisory board.

##### § 17. Management board

(1) A foundation shall have a management board which manages and represents the foundation. The management board may consist of one or several members.

(2) Members of the management board must be natural persons with active legal capacity.

(3) The residence of at least one-half of the members of the management board must be in Estonia.

(4) If the management board has more than two members, the members of the management board shall elect a chairman of the management board from among themselves, who shall organise the activities of the management board.

(5) If the articles of association determine a set of beneficiaries, the beneficiaries or persons with an equivalent economic interest shall not be members of the management board.

(6) A member of the supervisory board or a bankrupt shall not be a member of the management board. The articles of association may prescribe other persons who cannot be members of the management board.

(7) In managing a foundation, the management board shall adhere to the lawful orders of the supervisory board. Transactions which are beyond the scope of everyday economic activities may only be entered into by the management board with the consent of the supervisory board.

(8) The management board shall present an overview of the economic activities and financial status of the foundation to the supervisory board at least once every four months and shall immediately give notice of any material deterioration of the financial status of the foundation or of any other material circumstances related to the economic activities of the foundation.

##### § 18. Right of representation of management board

(1) Every member of the management board has the right to represent the foundation in all legal acts.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811)

(2) The articles of association may prescribe that all or some of the members of the management board may represent the foundation only jointly. Such restriction applies with regard to third persons only if it is entered in the register.

(3) The right of the management board to represent a foundation may be restricted by the articles of association or by a resolution of the supervisory board. A restriction on the right of representation does not apply with regard to third persons.

##### § 19. Appointment of members of management board

(1) The members of the management board shall be appointed by the foundation resolution.

(2) Changes to the membership of the management board and removal of members of the management board shall be decided by the supervisory board.

(3) Members of the management board shall not transfer performance of their duties to a third person unless this is prescribed by the articles of association or a resolution of the supervisory board.

(4) The management board shall provide the members of the supervisory board with necessary information concerning management of the foundation and present a corresponding report at their request unless the articles of association prescribe otherwise.

#### § 20. Substitute members of management board

With good reason, which above all is the temporary or extended inability of a member of the management board to perform his or her duties, a court may appoint a new member of the management board to replace a withdrawn member of the management board at the request of the supervisory board or an interested person. The authority of a court-appointed member of the management board continues until the appointment of a new member of the management board by the supervisory board.

#### § 21. Removal of member of management board

(1) The supervisory board may remove a member of the management board at any time regardless of the reason. Rights and obligations arising from contracts entered into with him or her terminate pursuant to the contracts.

(2) The articles of association may prescribe that a member of the management board may be removed only with good reason which is above all failure to perform his or her duties to a material extent or inability to manage the foundation.

#### § 22. Remuneration and reimbursement of expenses of members of management board

(1) Remuneration corresponding to the tasks of a member of the management board and to the financial status of the foundation may be paid to members of the management board unless the articles of association prescribe otherwise.

(2) The amount and procedure for payment of remuneration shall be determined by the supervisory board.

(3) Members of the management board have the right to demand reimbursement of necessary expenses incurred in the performance of tasks unless the articles of association prescribed otherwise.

#### § 23. Liability of members of management board

(1) Members of the management board who cause damage to the foundation by violation of their obligations shall be solidarily liable for compensation for the damage caused.

(2) A claim for payment of compensation to a foundation for damage specified in subsection (1) of this section may also be submitted by an obligee of the foundation if the assets of the foundation are not sufficient to satisfy the claims of the obligee.

(3) An obligee has the right to submit a claim specified in subsection (2) of this section also if the foundation has waived a claim against a member of the management board or has entered into a contract of compromise with such member.

(4) The limitation period for submission of claims against a member of the management board shall be five years as of violation of an obligation.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

#### § 24. Tasks of supervisory board

The supervisory board shall plan the activities of the foundation, organise the management of the foundation and supervise the activities of the foundation.

#### § 25. Competence of supervisory board

(1) The consent of the supervisory board is required for the management board to enter into transactions which are beyond the scope of everyday economic activities, in particular to enter into transactions which result in:

1) the acquisition or termination of participation in commercial undertakings;

2) the transfer or encumbrance with a real right of immovables and movables entered in the register.

(2) The articles of association may prescribe that the consent of the supervisory board is not required to enter into transactions specified in subsection (1) of this section or is only required in the cases specified in the articles of association; the articles of association may also prescribe other transactions for entry into which the consent of the supervisory board is required.

(3) The restrictions specified in subsections (1) and (2) of this section do not apply with regard to third persons.

(4) The consent of the supervisory board specified in subsections (1) and (2) of this section is not required for entry into a transaction if a delay in

entry into the transaction would bring about significant damage to the foundation.

(5) In order to perform its tasks, the supervisory board has the right to examine all documents of the foundation and to audit the accuracy of accounting, the existence of assets and the compliance of the activities of the foundation with law and the articles of association.

(6) The supervisory board has the right to obtain information concerning the activities of the foundation from the management board and to demand an activity report and preparation of a balance sheet from the management board.

(7) The supervisory board shall represent the foundation in disputes and upon entry into transactions with members of the management board.

(8) The supervisory board also has other rights provided by law.

#### § 26. Members of supervisory board

(1) The supervisory board shall have three members unless the articles of association prescribe a greater number of members. Members of the supervisory board must be natural persons with active legal capacity.

(2) Member of the management board and auditors or persons with an equivalent economic interest, or bankrupts shall not be members of the supervisory board. The articles of association may prescribe other persons who cannot be members of the supervisory board.

(3) The members of the supervisory board shall elect a chairman from among themselves, who shall organise the activities of the supervisory board.

(4) Upon a change of the members of the supervisory board, the management board shall, within five working days, submit an application to the register and notify of the time of the change of the members and the basis therefor as specified in the articles of association. A complete list of the members of the supervisory board, including the names, personal identification codes and residences of the members, the dates of commencement of the authority of member and the consent of new members concerning membership.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### § 27. Appointment and removal of members of supervisory board

The procedure for appointment and removal of members of the supervisory board shall be provided by the articles of association.

#### § 28. Appointment and removal of members of supervisory board by court

(1) If the members of the supervisory board as prescribed by law or the articles of association do not exist, a court shall appoint them at the request of an interested person or on its own initiative.

(2) A court shall remove a member of the supervisory board at the request of an interested person or on its own initiative if this is prescribed by the articles of association or with other good reason, which above all is failure to perform his or her duties to a material extent, inability to participate in the work of the supervisory board or significant damaging of the interests of the foundation in any other manner, or upon the commencement of bankruptcy proceedings against the member of the supervisory board.

(3) During the proceedings specified in subsection (2) of this section, a court may issue necessary orders for the management of the foundation and suspend the authority of the member of the supervisory board for the duration of the proceedings.

(4) A member of a supervisory board removed by a court shall not be a member of the management board or supervisory board of any foundation for five years after removal.

#### § 29. Meeting of supervisory board

(1) Meetings of the supervisory board shall be held as necessary but not less frequently than once a year. Meetings shall be called by the chairman of the supervisory board or by a member of the supervisory board substituting for the chairman.

(2) Meetings of the supervisory board have a quorum if over one-half of the members of the supervisory board participate. The articles of association may prescribe a greater representation requirement.

(3) A meeting of the supervisory board shall be called if this is demanded by a member of the supervisory board, the management board or an auditor.

(4) Minutes shall be taken of meetings of the supervisory board. The minutes shall be signed by the chairman of the supervisory board or by the member of the supervisory board substituting for the chairman, and the secretary unless the articles of association prescribe that the minutes



must be signed by all members of the supervisory board who participate in the meeting. The dissenting opinion of a member of the supervisory board shall be entered in the minutes, which shall be confirmed by his or her signature.

#### § 30. Resolution of supervisory board

(1) Resolutions of the supervisory board are adopted if over one-half of the members of the supervisory board who participate in the meeting vote in favour. The articles of association may prescribe a greater majority requirement.

(1<sup>1</sup>) In the election of a person, the candidate who receives more votes than the others shall be deemed to be elected. Upon an equal division of votes, lots shall be drawn unless the articles of association prescribe otherwise.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) A supervisory board may adopt a resolution without calling a meeting if all members of the supervisory board vote in favour of the resolution in writing unless the articles of association prescribe otherwise.

(3) Each member of the supervisory board has one vote. A member of the supervisory board does not have the right to abstain from voting or to remain undecided.

(4) A member of the supervisory board shall not participate in voting if approval of entry into a transaction between the member and the foundation is being decided, or if approval of entry into a transaction between a third person and the foundation is being decided if the interests of the member of the supervisory board arising from such transaction are in conflict with the interests of the foundation.

#### § 31. Remuneration of members of supervisory board

Remuneration corresponding to the tasks of a member of the supervisory board and to the financial status of the foundation may be paid to members of the supervisory board unless the articles of association prescribe otherwise.

#### § 32. Liability of member of supervisory board

(1) Members of the supervisory board who cause damage to the foundation by violation of their obligations shall be liable in the same manner as members of the management board.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(2) (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(3) (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

(4) A member of the supervisory board shall be released from liability to the foundation if he or she maintained a dissenting opinion in the adoption of a resolution which was the basis for an illegal activity, and the dissenting opinion is entered in the minutes.

### Chapter 4

#### Accounting and Supervision

#### § 33. Accounting

The management board shall organise the accounting of the foundation pursuant to the Accounting Act.

#### § 34. Annual report

(1) After the end of a financial year, the management board shall prepare the annual accounts and activity report pursuant to procedure provided by law.

(2) The management board shall submit the reports for approval to the supervisory board not later than four months after the end of the financial year. Before submission of the reports for approval to the supervisory board, the management board shall forward the reports to the auditor for audit.

(3) Approved annual reports shall be signed by all members of the management board.

(4) The management board shall submit approved annual reports to the register within six months after the end of a financial year.

#### § 35. Auditor

A foundation shall have an auditor.

#### § 36. Appointment of auditor

(1) The number of auditors shall be specified and auditors shall be appointed by the supervisory board, which shall also specify the procedure for remuneration of auditors.

(2) Persons to whom the right to be an auditor is granted pursuant to law may be auditors.

(3) Members of the management board or supervisory board or employees of the foundation, or persons with an equivalent economic interest

shall not be auditors. If a set of beneficiaries is determined by the articles of association, a beneficiary or a person with an equivalent economic interest shall not be an auditor.

(4) The management board shall submit a list of auditors to the register. Upon a change of auditors, the management board shall submit a new list of auditors to the register within five days.

#### § 37. Term of authority of auditor

An auditor may be appointed to conduct a single audit or for a specified term. The written consent of a person shall be required for appointment of the person as auditor and it shall be appended to a list of auditors submitted to the registrar.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### § 38. Special audit

(1) The management board or supervisory board of a foundation, or a member of the management board or supervisory board or other interested person may request that conduct of a special audit on matters regarding the management or financial status of the foundation be decided and that an auditor for the special audit be appointed by a court. The court shall decide on conduct of a special audit only with good reason.

(2) Only auditors may be the auditors for a special audit. The procedure for and amount of their remuneration shall be specified by a court.

(3) The members of the management board and supervisory board shall enable the auditors for a special audit to examine all documents necessary to conduct the special audit and shall provide necessary information. The auditors for the special audit shall preserve the business secrets of the foundation.

(4) The division of expenses incurred in the conduct of a special audit between the person who requested the special audit and the foundation shall be decided by a court on the basis of the results of the special audit. If a request is made without basis due to the intent or gross negligence of the persons who requested the special audit, they shall be solidarily liable for damage caused to the foundation by the special audit.

(5) The auditors for a special audit shall prepare a report concerning the results of the special audit, which they shall present to the court.

(6) On the basis of the results of a special audit, a court shall decide whether and which measures

must be applied to bring the activities of the foundation into compliance with the objectives of the foundation.

#### § 39. Access to information on activities of foundation

(1) A beneficiary or other person with a legitimate interest may demand information from a foundation concerning the fulfilment of the objectives of the foundation. The beneficiary or other person with a legitimate interest may examine the annual accounts of the foundation and the activity report of the management board, the auditor's report, accounting documents, the foundation resolution and the articles of association.

(2) If a set of beneficiaries is not determined by the articles of association, all interested persons have the right specified in subsection (1) of this section.

(3) If a foundation does not comply with the demand specified in subsection (1) of this section, an entitled person may demand exercise of the entitled person's rights by a court proceeding.

#### Chapter 5

#### Amendment of Articles of Association of Foundation

#### § 40. Annulment or amendment of foundation resolution and articles of association prior to entry of foundation in register

(1) Until a foundation is entered in the register, the founder may annul or amend the foundation resolution or amend the articles of association. If a foundation has several founders, the founders may annul or amend the foundation resolution or amend the articles of association only jointly.

(2) If one of several founders is deceased or dissolved or for another reason is not able or willing to exercise the rights of a founder (withdrawn), the other founders shall not annul the foundation resolution. The foundation resolution or articles of association may be amended by the other founders only in accordance with the objectives of the foundation.

(3) If all founders are withdrawn and impediments to entry in the register have become evident, the management board may amend the foundation resolution or articles of association in accordance with the objectives of the foundation in order to eliminate the impediments or take into account changed circumstances.

#### § 41. Amendment of articles of association after entry of foundation in register

(1) After a foundation is entered in the register, the founder may amend the articles of association of the foundation only pursuant to the provisions of subsection (3) of this section. If a foundation has several founders, all founders may amend the articles of association only jointly.

(2) The supervisory board may amend the articles of association of the foundation only if:

1) all founders are withdrawn; or

2) the founders fail to agree on amendment of the articles of association; or

3) this right is granted to the supervisory board by the articles of association.

(3) A founder or the supervisory board may amend the articles of association only in order to take into account changed circumstances in accordance with the objectives of the foundation.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(4) If the articles of association of a foundation must be amended due to changed circumstances, but the persons entitled to amend the articles of association fail to do so, a court may decide on amendment of the articles of association at the request of a founder, the supervisory board or an interested person.

§ 42. Entry of amendment of articles of association

The amendment of articles of association is effective as of the entry of the amendment in the register. The resolution to amend the articles of association and the new text of the articles of association shall be appended to the application for entry of the amendment of the articles of association in the register. The new text of the articles of association shall be signed by at least one member of the management board or, if the members of the management board are only authorised to represent the association jointly, by all the members of the management board authorised to represent the association jointly.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

Chapter 6

Dissolution

§ 43. Bases for dissolution

A foundation is dissolved:

1) by a resolution of the supervisory board;

2) by a resolution of the founders if this right is prescribed for founders in the articles of association;

3) if the objectives of the foundation are achieved;

4) due to the expiry of a term if the foundation has a specified term;

5) on another basis prescribed by law or the articles of association.

§ 44. Dissolution on basis of resolution of supervisory board

The supervisory board may decide the dissolution of the foundation only in the cases prescribed in the articles of association. A resolution is adopted if all members of the supervisory board vote in favour.

§ 45. Submission of bankruptcy petition

The management board shall submit a bankruptcy petition if it becomes evident that the foundation has less assets than assumed obligations. The members of the management board at fault are solidarily liable for damage caused to the foundation or to third persons by failure to submit a petition or by delay in submission of a petition.

§ 46. Compulsory dissolution

(1) A foundation is dissolved by a court order at the request of the Minister of Internal Affairs or another interested person if:

1) the objectives or activities of the foundation are contrary to law, the constitutional order or good morals;

2) the activities of the foundation do not comply with the requirements provided for in § 2 of this Act or with its objectives set out in the articles of association;

3) the assets of the foundation are clearly insufficient for the achievement of its objectives, and acquisition of sufficient assets in the immediate future is unlikely;

4) the supervisory board does not adopt a dissolution resolution in the cases prescribed in the articles of association, or the management board does not submit an application for dissolution prescribed by law;

5) in other cases provided by law.

(2) A court may set a deadline for elimination of deficiencies specified in subsection (1) of this section.

#### § 47. Application for dissolution

(1) Upon dissolution of a foundation, the management board shall submit an application for entry of the dissolution in the register. Upon compulsory dissolution, bankruptcy or termination of bankruptcy proceedings, a corresponding entry shall be made pursuant to a court order.

(2) If a resolution of the supervisory board is the basis for dissolution, it shall be appended to the application.

(3) A court which issues a bankruptcy order shall notify the registrar of the declaration of bankruptcy of the foundation and of the termination of bankruptcy proceedings. A bankruptcy entry shall contain the name, personal identification code and residence of the trustee in bankruptcy.

#### § 48. Liquidation

(1) A foundation is liquidated (liquidation proceeding) upon dissolution unless otherwise provided by law.

(2) In a liquidation proceeding, the notation "likvideerimisel" [in liquidation] shall be appended to the name of the foundation.

#### § 49. Liquidators

(1) The liquidators of a foundation are the members of the management board unless the articles of association prescribe otherwise. Upon compulsory dissolution, a court shall appoint the liquidators, and shall specify the procedure for and amount of remuneration for the liquidators.

(2) Liquidators must be natural persons with active legal capacity.

(3) The residence of at least one-half of the liquidators must be in Estonia.

(4) A court may remove a liquidator with good reason at the request of a founder of the foundation, another liquidator or other interested person, or on the court's own initiative. In such case, the court shall appoint a new liquidator.

#### § 50. Entry of liquidator

(1) A management board shall submit an application for entry of the liquidators in the register.

(2) If a liquidator is appointed by a court order, the court shall send the order to the registrar for entry.

(3) The names, residences and personal identification codes of the liquidators shall be entered in the register.

#### § 51. Rights and obligations of liquidators

(1) Liquidators have the rights and obligations of the management board and supervisory board which are not contrary to the objective of the liquidation.

(2) Liquidators terminate the activities of the foundation, collect debts, sell assets, satisfy the claims of creditors and distribute the assets remaining after satisfaction of the claims of creditors among entitled persons.

(3) Liquidators need not sell assets unless this is necessary for satisfaction of the claims of creditors or for distribution of remaining assets among the entitled persons.

(4) Liquidators may only enter into transactions which are necessary for liquidation of the foundation.

#### § 52. Right of representation of liquidators

(1) If a foundation has several liquidators, they only have the right to represent the foundation jointly unless the articles of association or the resolution on appointment of the liquidators prescribe otherwise. Such restriction applies with regard to third persons only if it is entered in the register.

(2) The liquidators may authorise one or several from among themselves to perform particular transactions or activities.

#### § 53. Notification of creditors

(1) Liquidators shall promptly publish a notice of the liquidation proceeding of a foundation in the official publication *Ametlikud Teadaanded*<sup>2</sup>. The liquidators shall send a notice of liquidation to the known creditors.

(20.01.1999 entered into force 01.01.2000 - RT I 1999, 10, 155)

(2) A notice of liquidation shall indicate that creditors are to submit their claims within two months after publication of the notice.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811; 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 06.06.2001

entered into force 07.07.2001 - RT I 2001, 56, 336)

#### § 54. Submission of claims

(1) Creditors shall notify liquidators of all their claims against a foundation within two months after publication of the notice of liquidation. A notice shall set out the content, basis and amount of the claim, and documents substantiating the claim shall be appended thereto.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

(2) If a known creditor does not submit a claim, the money belonging to the creditor shall be deposited.

(3) If the due date for satisfaction of the claim of a creditor has not arrived or the creditor does not accept satisfaction, the money belonging to the creditor shall be deposited.

#### § 55. Submission of bankruptcy petition upon liquidation

If the assets of a foundation being liquidated are insufficient for satisfaction of all claims of creditors, the liquidators shall submit a bankruptcy petition.

#### § 56. Distribution of assets

(1) After satisfaction of all claims of creditors and the deposit of money, the remaining assets shall be distributed among the persons entitled by the articles of association. The assets shall be distributed among the entitled persons in equal shares unless the articles of association prescribe otherwise.

(2) If a foundation is dissolved by a resolution of founders who are natural persons, the assets remaining upon liquidation transfer to such founders unless the articles of association prescribe otherwise. The assets shall be transferred to founders who are natural persons in equal shares unless the articles of association prescribe otherwise.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) If the articles of association do not prescribe to whom the assets remaining upon liquidation transfer, the assets transfer to the state which shall use the assets to the extent possible according to the objectives of the foundation.

(4) Upon compulsory dissolution of a foundation on the basis that its objectives or activities are

contrary to the constitutional order, criminal law or good morals, the assets remaining after satisfaction of the claims of creditors transfer to the state.

(5) Assets shall not be distributed among entitled persons within five months after publication of the notice of liquidation.

(06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

#### § 57. Deletion from register and supplementary liquidation

(1) After the completion of liquidation, the liquidators shall submit an application for deletion of the foundation from the register.

(2) If after deletion of a foundation from the register it becomes evident that supplementary liquidation measures are necessary, a court shall, at the request of an interested person, restore the rights of the former liquidators or appoint new liquidators.

#### § 58. Deletion of foundation from register

(1) Upon dissolution of a foundation, the foundation shall be deleted from the register on the basis of an application of the foundation or on another basis provided by law.

(2) If an application for deletion of a foundation from the register is not submitted upon completion of the liquidation of the foundation, the registrar has the right to delete the foundation from the register.

(3) A foundation shall not be deleted from the register without the written consent of the Tax and Customs Board unless the latter submitted the application for deletion of the foundation from the register. The Tax and Customs Board shall not refuse consent unless it has claims against the foundation. If consent is not received within twenty days after sending an application, the Tax and Customs Board shall be deemed to consent to deletion from the register.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

#### § 59. Preservation of documents

(1) Liquidators shall deposit the documents of a foundation with a liquidator or an archives. If the liquidators do not appoint a depository of documents, a court shall appoint one.

(25.03.98 entered into force 01.05.98 - RT I 1998, 36/37, 552)

(2) The name, personal identification or registry code and, residence or location of a depositary of documents shall be entered in the register on the application of the liquidators. In the case of a court-appointed depositary, the entry shall be made on the basis of the court judgment. Upon a change of depositary, the transferor shall notify the registrar before the transfer in order to allow for the entry of new information in the register.

(25.03.98 entered into force 01.05.98 - RT I 1998, 36/37, 552; 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) A foundation is responsible for the preservation of documents created or received as a result of its activities during the term prescribed by law. Upon liquidation of a foundation, the documents of the foundation which are to be preserved may be transferred to an archives upon agreement with the archives. Upon a transfer of documents to an archives, the responsibility for preservation of the documents transfers to the archives.

(25.03.98 entered into force 01.05.98 - RT I 1998, 36/37, 552)

§ 60. (Repealed - 05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

## Chapter 7

### Merger and division

#### Division 1

#### Merger

##### § 61. Definition of merger

(1) A foundation (foundation being acquired) may merge with another foundation (acquiring foundation) in the cases prescribed in their articles of association. A foundation being acquired shall be deemed to be dissolved.

(2) Foundations may also merge such that they form a new foundation. In such case, the merging foundations shall be deemed to be dissolved.

(3) Merger is effected without a liquidation proceeding.

(4) Upon merger, the assets of a foundation being acquired transfer to the acquiring foundation. Upon foundation of a new foundation, the assets of the merging foundations transfer to it.

(5) A foundation may only merge with another foundation.

(6) In the cases provided by law, the permission of a competent agency is required for merger.

##### § 62. Merger agreement

(1) In order to merge, the management boards of the foundations shall enter into a merger agreement which shall set out the names and locations of the foundations and the consequences of merger for the employees of the foundation being acquired.

(2) A merger agreement shall be notarised.

(3) If an approved merger agreement is conditional and the condition is not fulfilled within five years after entry into the agreement, a foundation may terminate it by giving at least six months' advance notice of termination unless the merger agreement prescribes a shorter term for advance notice.

##### § 63. Merger resolution

(1) Rights and obligations arise from a merger agreement if the merger agreement is approved by the supervisory boards of all merging foundations. A merger resolution shall be in writing.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) A merger resolution is adopted if over two-thirds of the members of the supervisory board vote in favour unless the articles of association prescribe a greater majority requirement.

##### § 64. Protection of creditors

(1) The management board of each merging foundation shall, within fifteen days after adoption of the merger resolution, send written notice concerning the merger to the known creditors of the foundation who have claims against the foundation which predate the adoption of the merger resolution.

(2) A management board shall publish two notices concerning a merger resolution with at least a fifteen day interval in a national newspaper, calling on creditors to submit their claims. The notice shall indicate that creditors are to submit their claims within two months.

(3) A foundation shall secure the claims of creditors if they are submitted within two months after publication of the last notice. If the due date for fulfilment of a claim has arrived or if a claim is not sufficiently secured, the creditor may demand satisfaction of the claim.

(4) A creditor of an acquiring foundation may demand security or satisfaction of the creditor's claim only if the creditor proves that the merger endangers satisfaction of the creditor's claim.

(5) If a creditor does not give notice of a claim during the term specified in subsection (3) of this section, the creditor shall be deemed to agree to the merger.

#### § 65. Submission of application to register

(1) The management board of a foundation participating in a merger shall submit an application for entry of the merger in the register of the location of the foundation not earlier than three months after publication of the second merger notice. The following shall be appended to the application:

1) a notarised copy of the merger agreement;

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

2) the merger resolution;

3) the permission for merger, if required;

4) a reference to the issues of the Ametlikud Teadaanded in which the notices specified in subsection 64 (2) of this Act are published.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

(2) In an application, the members of the management board shall confirm that the claims of creditors who submitted their claims by the deadline or who opposed the merger are secured or satisfied.

#### § 66. Name of acquiring foundation

An acquiring foundation may continue activities under the name of a foundation being acquired.

#### § 67. Merger entry

(1) A merger shall be entered in the register of the location of the acquiring foundation if it is entered in the registers of the locations of all foundations being acquired. An entry in the register of the location of a foundation being acquired shall indicate that the merger is deemed to be effected as of its entry in the register of the location of the acquiring foundation.

(2) The registrar of the register of the location of an acquiring foundation shall notify the registrar of the location of the foundation being acquired of

entry of the merger in the register. Upon receipt of notification, the registrar shall make a notation in the register regarding when the merger was entered in the register of the location of the acquiring foundation. The registrar of the location of the foundation being acquired shall send the documents of the foundation held by the registrar to the registrar of the location of the acquiring foundation.

#### § 68. Legal effect of entry

(1) The assets of a foundation being acquired transfer to the acquiring foundation as of entry of the merger in the register of the location of the acquiring foundation. After entry of a merger in the register of the location of the acquiring foundation, entries regarding the transfer of assets shall be made in the land register and movable property registers on the basis of an application of the management board of the acquiring foundation.

(2) A foundation being acquired shall be deemed to be dissolved as of entry of the merger in the register of the location of the acquiring foundation. The registrar shall delete the foundation being acquired from the register.

#### § 69. Merger whereby new foundation founded

(1) The provisions of §§ 61–68 of this Act together with other complementary provisions prescribed by law apply to merger whereby a new foundation is founded.

(2) The provisions regarding foundations being acquired apply to merging foundations, and the provisions regarding acquiring foundations apply to foundations being founded. Foundations shall be deemed to be merged as of entry of a new foundation in the register.

(3) The provisions for foundation of foundations apply to foundation of new foundations unless the provisions of this chapter provide otherwise. The founders are the merging foundations.

(4) In addition to the provisions of subsection 62 (1) of this Act, a merger agreement shall set out the name and location, and members of the management board of the new foundation. The articles of association of the foundation being founded which shall be approved by the merger resolution shall be appended to the merger agreement.

(5) The management board of a merging foundation shall submit an application for entry of the merger in the register of the location of the foundation.

(6) The management boards of merging foundations shall submit a joint application for entry of the new foundation in the register of its location.

#### Division 2

#### Division

#### § 70. Definition of division

(1) Division is effected without a liquidation proceeding by distribution or separation. A foundation may participate in division only in the cases prescribed in the articles of association.

(2) Upon distribution, a foundation being divided transfers its assets to the recipient foundations. A recipient foundation may be an existing foundation or a foundation being founded. Upon distribution, a foundation being divided shall be dissolved.

(3) Upon separation, a foundation being divided transfers part of its assets to one or several recipient foundations. A recipient foundation may be an existing foundation or a foundation being founded.

(4) A foundation may only divide into foundations and may only participate in the division of a foundation.

(5) In the cases provided by law, the permission of a competent agency is required for division.

#### § 71. Division agreement

(1) In order to divide, the management boards of the foundations participating in division shall enter into a division agreement. A division agreement shall set out:

1) the names and locations of the foundations participating in division;

2) a list of assets to be transferred to each recipient foundation;

3) the consequences of division for the employees.

(2) A division agreement shall be notarised.

(3) If an approved division agreement is conditional and the condition is not fulfilled within five years after entry into the agreement, a foundation may terminate it by giving at least six months' advance notice of termination unless the division agreement prescribes a shorter term for advance notice.

#### § 72. Division resolution

(1) Rights and obligations arise from a division agreement if the division agreement is approved by the supervisory boards of all foundations participating in the division. A division resolution shall be in writing.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(2) A division resolution is adopted if over two-thirds of the members of the supervisory board vote in favour unless the articles of association prescribe a greater majority requirement.

#### § 73. Protection of creditors

(1) The management board of a foundations participating in division shall, within fifteen days after adoption of the division resolution, send written notice concerning the division to the known creditors of the foundation who have claims against the foundation which predate the adoption of the division resolution.

(2) A management board shall publish two notices concerning a division resolution with at least a fifteen day interval in the official publication *Ametlikud Teadaanded*, calling on creditors to submit their claims. The notice shall indicate that creditors are to submit their claims within two months.

(20.06.2000 entered into force 12.07.2000 - RT I 2000, 55, 365)

(3) A foundation shall secure the claims of creditors if they are submitted within two months after publication of the last notice. If the due date for fulfilment of a claim has arrived or if a claim is not sufficiently secured, the creditor may demand satisfaction of the claim.

(4) A creditor of a recipient foundation may demand security or satisfaction of the creditor's claim only if the creditor proves that the division endangers fulfilment of the creditor's claim, except if the due date for fulfilment of the creditor's claim has arrived.

#### § 74. Submission of application to register of foundations

(1) The management board of a foundation participating in division shall submit an application for entry of the division in the register of the location of the foundation not earlier than three months after publication of the second division notice. The following shall be appended to the application:

1) a notarised copy of the division agreement;



(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

2) the division resolution;

3) the permission for division, if required;

4) a reference to the issues of the Ametlikud Tedaanded in which the notices specified in subsection 73 (2) of this Act are published.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941; 06.06.2001 entered into force 07.07.2001 - RT I 2001, 56, 336)

(2) In an application, the members of the management board shall confirm that the claims of creditors who submitted their claims by the deadline or who opposed the division are secured or satisfied.

#### § 75. Name of recipient foundation

Upon distribution, a recipient foundation may continue activities under the name of the foundation being divided.

#### § 76. Division entry

(1) A division shall be entered in the register of the location of the foundation being divided if it is entered in the registers of the locations of all recipient foundations. Entries in the registers of the locations of the recipient foundations shall indicate that the division is deemed to be effected as of its entry in the register of the location of the foundation being divided.

(2) The registrar of the register of the location of a foundation being divided shall notify the registrars of the locations of the recipient foundations of entry of the division in the register and shall send an extract from the register to them. Upon receipt of notification, the registrar shall make a notation in the register regarding when the division was entered in the register of the location of the foundation being divided.

#### § 77. Legal effect of entry

(1) All assets of a foundation being divided or, upon separation, the separated assets pursuant to the distribution prescribed in the division agreement, transfer to the recipient foundations as of entry of the division in the register of the location of the foundation being divided. After entry of a division in the register of the location of the foundation being divided, entries regarding the transfer of assets shall be made in the land register and movable property registers on the application of the management board of the recipient foundation.

(2) Upon distribution, a foundation being divided is dissolved as of entry of the division in the register of the location of the foundation being divided. The registrar shall delete the foundation being divided from the register.

(3) Assets which are not divided upon distribution shall be divided among the recipient foundations in proportion to their share in the assets being divided.

#### § 78. Liability for obligations of foundation being divided

(1) Foundations participating in division are solidarily liable for the obligations of the foundation being divided which arise before entry of the division in the register of the location of the foundation being divided. In relations between solidary debtors, only persons to whom obligations are assigned by the division agreement are obligated persons.

(2) A foundation participating in division to which obligations are not assigned by the division agreement is liable for the obligations of the foundation being divided if the due date for their fulfilment arrives within five years after entry of the division in the register of the location of the foundation being divided.

#### § 79. Division whereby new foundation founded

(1) The provisions of §§ 70–78 of this Act together with other complementary provisions prescribed by law apply to division whereby a new foundation is founded.

(2) The provisions regarding recipient foundations apply to foundations being founded.

(3) The provisions for foundation of foundations apply to foundation of new foundations unless the provisions of this chapter provide otherwise. The founder is the foundation being divided.

(4) Upon division whereby a new foundation is founded, the management board of the foundation being divided or shareholders entitled to represent the foundation shall prepare a division plan which substitutes for the division agreement. In addition to the provisions of subsection 71 (1) of this Act, a division plan shall set out the name and location, and the members of the management board of the new foundation. The articles of association of the foundation being founded, which shall be approved by the division resolution, shall be appended to the division plan.

(5) The management board of a foundation being divided shall submit an application for entry of the new foundations in the registers of their locations

and for entry of the division in the register of the location of the foundation being divided.

(6) The registrar of the register of the location of each new foundation shall notify the registrar of the location of the foundation being divided of entry of the new foundation in the register. Upon receipt of notification concerning all new foundations, the registrar of the register of the location of the foundation being divided shall enter the division in the register, notify the registrar of the location of each new foundation of the entry and send an extract from the register to them. Upon receipt of notification, the registrar shall make a notation in the register regarding when the division was entered in the register of the location of the foundation being divided.

## Chapter 8

### Implementation of Act

§ 80. Application of the Foundations Act to non-profit organisations the objective of which is accumulation and distribution of assets for specific purposes

(1) As of 1 October 1996, foundations may only be founded pursuant to the procedure provided for in the Foundations Act and the provisions of the Foundations Act apply to them.

(2) The provisions of subsection 1 (1), § 2, subsection 3 (5), §§ 4 and 17, subsection 18 (1), the first sentence of subsection 18 (2), subsection 18 (3), §§ 20-23, § 33, subsections 34 (1) and (3), § 38, §§ 43-51, the first sentence of subsection 52 (1), subsection 52 (2), §§ 53-60 of this Act apply to non-profit organisations founded before 1 October 1996 the objective of which is the accumulation and distribution of assets for specific purposes and which have no members until entry in the register as foundation, upon entry in the register, this whole Act applies. If the articles of association of a non-profit organisation the objective of which is the accumulation and distribution of assets for specific purposes specified in the first sentence of this subsection is contrary to the Foundations Act, the provisions of the Act apply. The provisions of §§ 16-32 and 40-42 apply to non-profit organisations the objective of which is the accumulation and distribution of assets for specific purposes and which have no members in so far as their articles of association do not provide otherwise.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811; 17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

(3) The provisions of §§ 91-96 of the Non-profit Associations Act apply to non-profit organisations founded before 1 October 1996 the objective of

which is the accumulation and distribution of assets for specific purposes and which have members.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811)

(4) The annual report of non-profit organisations specified in subsection (2) of this section shall be approved by the competent body set out in the articles of association. The provisions of § 24 of the Accounting Act do not apply to such organisations.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811)

(5) Until the entry into force of a corresponding Act, the bases and procedure for the activities of auditors and the requirements set for auditors shall be specified pursuant to procedure established by the Government of the Republic.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811)

### § 81. Merger and division

(1) Merger and division of foundations entered in the register shall be effected pursuant to procedure provided for in this Act. A foundation entered in the register shall not merge with a non-profit organisation the objective of which is the accumulation and distribution of assets for specific purposes and which is not entered in the register.

(2) Merger and division of non-profit organisations the objective of which is the accumulation and distribution of assets for specific purposes and which are not entered in the register as foundations is prohibited.

### § 82. Application for entry in register

(1) Non-profit organisations founded before 1 October 1996 and registered in the register of enterprises, agencies and organisations of the Republic of Estonia (hereinafter enterprise register) the objective of which is the accumulation and distribution of assets for specific purposes and which comply with the requirements of the Foundations Act shall be entered as foundations in the non-profit associations and foundations register on the basis of their application.

(2) An application for entry in the register shall set out information concerning the foundation as provided by law, and the documents provided by law, and the certificate of registration of the foundation in the enterprise register shall be appended to the application.

(3) For entry in the register as foundations, the articles of association of non-profit organisations the objective of which is the accumulation and distribution of assets for specific purposes shall be brought into accordance with the provisions of this Act.

(4) Amendments to the articles of association of non-profit organisations specified in subsection 80 (2) and to information subject to registration in the enterprise register shall be effected pursuant to the procedure effective before 1 October 1996.

(06.06.96 entered into force 01.10.96 - RT I 1996, 42, 811)

#### § 83. Notations in registers

(1) Upon entry in the register as a foundation of a non-profit organisation the objective of which is the accumulation and distribution of assets for specific purposes and which is entered in the enterprise register, a corresponding notation shall be made in the entry of the enterprise register on the basis of a notice from the registrar.

(2) Upon entry in the register as a foundation of a non-profit organisation founded before 1 October 1996 the objective of which is the accumulation and distribution of assets for specific purposes, a notation concerning the earlier registration of the foundation in the enterprise register shall be made in the register, indicating the former registration number.

#### § 84. Deletion from register

The provisions of § 95 of the Non-profit Associations Act (RT I 1996, 42, 811; 1998, 96, 1515; 1999, 10, 155; 23, 355; 67, 658; 2000, 55, 365; 88, 576; 2001, 24, 133; 56, 336; 93, 565; 2002, 53, 336) apply to non-profit organisations entered in the enterprise register the objective of which is the accumulation and distribution of assets for specific purposes which by 1 October 1998 are not entered as foundations in the register or for which no application for entry in the register has been submitted to the registrar or whose application for entry in the register has been denied.

(17.06.98 entered into force 10.07.98 - RT I 1998, 59, 941)

#### § 85. Name of foundation

(1) Upon entry of a foundation in the register, the registrar shall make an inquiry to the registrar of the enterprise register concerning registration of the same or a similar name in the enterprise register.

(2) A name being applied for shall not be entered in the register if the name or a misleadingly similar name is registered in the enterprise register by another non-profit organisation the objective of which is the accumulation and distribution of assets for specific purposes before the applicant.

§ 86. Amendments to Accounting Act (RT I 1994, 48, 790; 1995, 26-28, 355; 92, 1604; 1996, 40, 773; 42, 811; 1998, 59, 941)

(1) Subsection (9) is added to § 2 worded as follows:

"(9) Foundations are not required to comply with the requirement provided for in clause 22 (2) 4) of this Act."

(2) Clause 4<sup>1</sup>) is added to subsection 23 (1) worded as follows:

"4<sup>1</sup>) all members of the management board and supervisory board of the foundation;"

#### § 87. Implementation regulations

The Minister of Justice may issue regulations for organisation of the activities of the registration departments.

#### § 88. Entry into force of Act

This Act enters into force on 1 October 1996.

### 5.3. Law on NPO

### 5.4. Law on NGO

### 5.5. Law on Other Legal Forms

### 5.6. Other Laws

#### 5.6.1. Gambling law

#### HASARTMÄNGUSEADUS

Vastu võetud 14. 06. 1995. a seadusega (RT I 1995, 58, 1005), jõustunud 21. 07. 1995.

Muudetud järgmiste seadustega (vastuvõtmise aeg, avaldamine Riigi Teatajas, jõustumise aeg):

1. peatükk

ÜLDSÄTTED

#### Paragrahv 1. Reguleerimisala

(1) Käesoleva seadusega sätestatakse õiguslikud alused hasartmängude, välja arvatud loteriid, korraldamiseks:

1) Eesti Vabariigi tolliterritooriumil;

2) Eesti Vabariigi riigilipu all sõitval laeval ja Eesti Vabariigis äriregistrisse kantud isiku poolt prahtimislepingu alusel prahitud laeval.

(2) Loteriide korraldamist reguleerib loteriiseadus (RT I 1994, 50, 845).

(3) Käesolevas seaduses ettenähtud haldusmenetlusele kohaldatakse haldusmenetluse seaduse (RT I 2001, 58, 354) sätteid, arvestades käesoleva seaduse erisusi.

[RT I 2002, 61, 375 - jõust. 1. 08. 2002]

#### Paragrahv 2. Hasartmängu korraldamise lubatavus

(1) Hasartmängu korraldamise õigus on riigil, kes võib seda õigust edasi anda käesolevas seaduses sätestatud tingimustel ja korras väljaantava tegevusloaga.

(2) Vabariigi Valitsusel on õigus kehtestada hasartmängude loetelu, mille korraldamine on keelatud.

#### Paragrahv 3. Hasartmängu mõiste

(1) Hasartmäng käesoleva seaduse mõttes on mäng, milles osalemine võimaldab omandada raha, muud vara või varalisi õigusi ning mille tulemus määratakse täielikult või osaliselt juhuslikkusele põhineva tegevusega, kusjuures hasartmängus osaleja (edaspidi mängija) riskib kaotada mängus osalemise õiguse eest tehtud panuse.

(2) Hasartmänguks käesoleva seaduse mõttes ei loeta mängu mänguautomaadil, kui ainsaks võiduvõimaluseks on tasuta mäng samal mänguautomaadil.

#### Paragrahv 4. Hasartmängude liigid

(1) Hasartmängud jagunevad:

1) õnnemängud - hasartmängud, mille tulemus määratakse täielikult juhuslikkusele põhineva tegevusega, kusjuures ühtlaselt jaotuvaid juhuslikke arve, millest mängu tulemus sõltub, saadakse kaardipaki, ruletiketta, täringu, elektroonilise või mehhaanilise mänguautomaadiga või muul viisil;

2) osavusmängud - hasartmängud, mille tulemus sõltub osaliselt mängija füüsilisest osavusest;

3) totalisaatorid - hasartmängud, mille tulemus määratakse osaliselt juhuslikkusele põhineva tegevusega, kus mängija teeb panuse spordivõistluse tulemusele ning mängukorraldaja on kohustatud võitjale või võitjatele maksma võidusumma, mille suurus sõltub sissemakstud panuste kogusummast;

4) kihlveod - hasartmängud, mille tulemus määratakse osaliselt juhuslikkusele põhineva tegevusega, kus mängija teeb panuse mingi sündmuse toimumisele või toimumata jäämisele ning mängukorraldaja kohustub võitjale või võitjatele maksma võidusumma, mille suurus sõltub mängija tehtud panusest ja enne sündmuse toimumist kindlaksmääratud võidusumma arvutamisel kasutatavast suhtarvust.

(2) Vaidluse korral on Vabariigi Valitsusel või tema poolt volitatud ministril õigus otsustada, millisesse hasartmängude liiki hasartmäng kuulub.

#### Paragrahv 5. Piirangud hasartmängu läbiviimisele, selles osalemisele ja selle reklaamimisele

(1) Õnnemängu mängida ning kihlveos ja totalisaatoril osaleda võib vähemalt 21-aastane isik.

(2) Mängukohas, kus korraldatakse õnnemängu mängulaual, võib viibida ainult isik, kelle viibimine mängukohas on fikseeritud Vabariigi Valitsuse kehtestatud korras.

(3) Hasartmängu korraldav füüsilisest isikust ettevõtja või füüsiline isik, kes kuulub äriühingust hasartmängukorraldaja aktsionäride, osanike, juhatuse liikmete või mängukohas töötavate isikute hulka, kelle otseseks tööülesandeks on hasartmängu läbiviimine või selle üle kontrolli teostamine, ei tohi mängida hasartmängu mängukohas, kus hasartmängukorraldajaks on eelnimetatud hasartmängukorraldaja.

(4) Hasartmängukorraldaja ei tohi anda mängijale krediiti panuste tegemiseks.

(5) Osavusmängu võitudeks võivad olla ainult asjad, kusjuures ühe võidu väärtus ei tohi ületada 500 krooni.

(6) Hasartmängu ja mängukohtade reklaam on keelatud, välja arvatud mängukohas tehtav reklaam. Nõuded hasartmängu reklaamile sätestab reklaamiseadus (RT I 1997, 52, 835).

#### Paragrahv 6. Mängureeglid

(1) Hasartmäng korraldatakse vastavalt hasartmängu korraldava füüsilisest isikust

ettevõtja allkirjaga või äriühingu juhatuse või seda asendava organi otsusega kinnitatud mängureeglitele, mis peavad sisaldama:

- 1) hasartmängukorraldaja ärinime;
- 2) kasutatava mängusüsteemi täpset kirjeldust;
- 3) võitude väljaandmise kohta, korda ja lõpptähtaega;
- 4) mängijate esitatavate pretensioonide lahendamise korda ja tähtaega.

(2) Önnemängu, kihlveo ja totalisaatori mängureglid esitatakse korraldusloa väljaandjale ning neid võib muuta ainult korraldusloa väljaandja kirjalikul nõusolekul.

(3) Osavusmängu mängureglid esitatakse valla- või linnavalitsusele mängukoha avamise õiguse taotlemisel ning neid võib muuta ainult valla- või linnavalitsuse kirjalikul nõusolekul.

(4) Vabariigi Valitsusel või tema poolt volitatud ministril on õigus kehtestada tingimusi konkreetse hasartmängu või hasartmängude grupi mängureeglitele käesoleva paragrahvi 1. lõike punktides 2-4 sätestatu osas.

(5) Mängureglid peavad olema eksponeeritud kohas, kus korraldatakse hasartmängu (edaspidi mängukoht), või tuleb esitada mängija esimesel nõudmisel.

#### Paragrahv 7. Mängukoht

(1) Önnemängu, kihlvedu või totalisaatorit võib korraldada ainult käesoleva seaduse paragrahv 12 2. lõikes sätestatud korraldusloal märgitud asukohas. Osavusmängu võib korraldada valla- või linnavalitsuse lubatud kohas.

(2) Hasartmängukorraldaja on kohustatud kirjalikult teatama mängukoha avamisest asukohajärgsele politsei jaoskonnale ja hasartmängu-järelevalveasutusele vähemalt viis päeva enne mängukoha avamist.

(3) Önnemängu, kihlveo või totalisaatori mängukoha võib avada üksnes aadressil, mille kohta vastav valla- või linnavalitsus on andnud kirjaliku nõusoleku enne käesoleva seaduse paragrahv 12 2. lõikes nimetatud korraldusloa taotlemist. Valla- või linnavalitsus otsustab nõusoleku andmise või mitteandmise hiljemalt kahe kuu jooksul vastava taotluse laekumisest, lähtudes kohalikule omavalitsusele õigusaktidega pandud ülesannetest.

#### Paragrahv 8. Nõuded mängukohale

(1) Ruumis, kus korraldatakse önnemängu, kihlvedu või totalisaatorit, on keelatud muu majandustegevus peale valuutavahetuse, toitlustamise ning suupistete ja jookide müügi.

(2) Ruumis, kus korraldatakse önnemängu, kihlvedu või totalisaatorit, on keelatud korraldada osavusmängu või paigutada sinna mänguautomaate, mille ainsaks võiduvõimaluseks on tasuta mäng samal mänguautomaadil.

(3) Önnemängu mängulaual võib korraldada ainult mängukohas, kus paikneb vähemalt neli mängulauda.

(4) Önnemängu mänguautomaadil võib korraldada ainult mängukohas, kuhu on paigaldatud ja kus töötab vähemalt kaheksa mänguautomaati.

(5) Käesoleva paragrahvi 3. ja 4. lõikes sätestatud nõuded ei laiene mängukohtadele, mis asuvad Eesti Vabariigi riigilipu all sõitval laeval või Eestis äriregistrisse kantud juriidilise isiku poolt prahtimislepingu alusel prahitud laeval.

(6) Mängukohas, kus korraldatakse önnemängu mängulaual, peab olema eraldi kassa, kus vahetatakse raha önnemängus panuste tegemiseks kasutatavateks mängumärkideks ja mängumärke rahaks.

(7) Ruumis, kus korraldatakse önnemängu, kihlvedu või totalisaatorit, ei või viibida alla 21-aastased isikud.

(8) Lisaks käesolevas seaduses sätestatule võib valla- või linnavalitsus kehtestada piiranguid oma haldusterritooriumil asuvate mängukohtade lahtiolekuajale.

#### Paragrahv 9. Hasartmängukorraldaja kohustused

(1) Hasartmängukorraldaja on kohustatud:

1) tagama mängukohas avaliku korra ja mängijate turvalisuse;

2) mitte lubama mängima isikut, kellel käesoleva seaduse paragrahv 5 1.-3. lõike alusel puudub õigus vastavast mängust osa võtta, ning isikut, kes alkoholi, narkootikumi või muu tugevatoimelise aine mõju all olles või muul põhjusel ei suuda ilmselt mõista oma tegude tähendust;

3) registreerima mängukohas, kus korraldatakse önnemängu mängulaual, väljamakstavad võidud alates 5000 kroonist Vabariigi Valitsuse kehtestatud korras;

4) andma mängijale välja võidu vastavalt mängureeglitele;

5) andma mängija nõudmisel talle Vabariigi Valitsuse või tema poolt volitatud ministri kehtestatud vormis kirjaliku tõendi võidu väljaandmise kohta;

6) lahendama mängija esitatud pretensioonid mängureeglites ettenähtud tähtjal ja korras;

7) hoidma saladuses mängija võidu või kaotuse suuruse, andes selle kohta teavet ainult seaduses ettenähtud juhtudel;

8) täitma teisi temale käesoleva seaduse ja muude õigusaktidega pandud kohustusi.

(2) Hasartmängukorraldajal on keelatud sõlmida alla 21-aastase isikuga töölepingut või töötetevõtulepingut, mille sisuks on vahetult hasartmängu korraldamisega seotud töökohal töötamine või tööde tegemine või kontrolli teostamine hasartmängu korraldamise üle.

Paragrahv 10. Nõuded hasartmängu korraldamisel kasutatavale mänguinventarile

(1) Önnemängu korraldamiseks kasutatavad mängulauad, mänguautomaadid ja kihlveo või totalisaatori korraldamiseks kasutatavad seadmed (edaspidi mänguinventar) peavad olema hasartmängukorraldaja omand. Mänguinventari soetamisel kapitalirendi korras võib mänguinventar kuni kapitalirendi maksete täieliku tasumiseni kuuluda kapitalirendile andjale, kusjuures väljaostu tähtaeg ei tohi ületada korraldusloa kehtivusaega.

(2) Vabariigi Valitsus või tema poolt volitatud minister kehtestab:

1) [Kehtetu - RT I 2000, 86, 545 - jõust. 2.12.2000]

2) Önnemängu korraldamisel mänguautomaadil väljaantava võidu minimaalse protsendi kogu tehtud panuste summast.

Paragrahv 11. Erinõuded hasartmängukorraldaja raamatupidamisele

Vabariigi Valitsusel või rahandusministril on õigus kehtestada erinõudeid hasartmängude korraldamise kajastamisele raamatupidamises ja raamatupidamise algdokumentide kohustuslikke vorme.

2. peatükk

TEGEVUSLOA JA KORRALDUSLOA VÄLJAANDMINE NING TÜHISTAMINE

Paragrahv 12. Tegevusluba ja korraldusluba

(1) Hasartmängu korraldamise tegevusluba (edaspidi tegevusluba) on dokument, mis annab selles märgitud isikule õiguse tegelda hasartmängu korraldamisega. Tegevusluba antakse 10 aastaks eraldi Önnemängu, osavusmängu, kihlveo või totalisaatori korraldamiseks.

(2) Korraldusluba on kuni viieaastase kehtivusega dokument, mis annab isikule, kellel on tegevusluba Önnemängu, kihlveo või totalisaatori korraldamiseks, õiguse korraldada korraldusloal märgitud Önnemänge, kihlvedusid või totalisaatoreid korraldusloal märgitud aadressil asuvas mängukohas. Osavusmängude puhul asendab korraldusluba käesoleva seaduse paragrahv 23 alusel väljaantud valla- või linnavalitsuse kirjalik nõusolek.

(3) Tegevusloa väljaandmise või sellest keeldumise otsustab Vabariigi Valitsuse määratud kaheksaliikmeline komisjon, mille esimees on ametikoha järgi rahandusminister (edaspidi tegevusloa väljaandja).

(4) Korraldusloa väljaandmise või sellest keeldumise otsustab Vabariigi Valitsuse määratud riigivalitsemisasutus (edaspidi korraldusloa väljaandja).

Paragrahv 13. Tegevusloa taotlemise õigust omavad isikud

(1) Tegevusluba osavusmängu korraldamiseks võib taotleda äriühing või füüsilisest isikust ettevõtja.

(2) Tegevusluba Önnemängu, kihlveo ja totalisaatori korraldamiseks võib taotleda nimelisteks aktsiateks jaotatud aktsiakapitaliga aktsiaselts või osaühing, kelle:

1) aktsia- või osakapitali suurus on vähemalt 2 miljonit krooni;

2) ainsaks tegevusalaks on hasartmängude korraldamine;

3) aktsionäride, osanike, juhatuse liikmete, samuti mängukohas töötavate isikute hulka, kelle otseseks tööülesandeks on hasartmängu läbiviimine või selle üle kontrolli teostamine, ei kuulu isik, kes kannab karistust tahtliku kuriteo eest või kelle karistus selle kuriteo eest ei ole kustunud või kes on kuulunud äriühingu organisse, kes on korraldanud hasartmängu ilma tegevus- või korraldusloata või mille tegevusluba on tühistatud käesoleva seaduse paragrahv 16 1. lõike punktides 1, 4, 6, 7 või 8 toodud alustel.

Paragrahv 14. Tegevusloa taotlemine

(1) Tegevusloa taotlemisel peab käesoleva seaduse paragrahvis 13 nimetatud isik esitama tegevusloa väljaandjale avalduse tegevusloa saamiseks, milles on märgitud:

- 1) taotleja nimi ja aadress;
- 2) taotlejal telefoni ja faksi olemasolu korral nende numbrid;
- 3) korraldada soovitava hasartmängu liik;
- 4) avalduse täitnud isiku nimi, ametikoht, volitus ja allkiri.

(2) Tegevusloa taotlemisel osavusmängu korraldamiseks peab käesoleva seaduse paragrahv 13 1. lõikes nimetatud isik avaldusele lisama:

- 1) äriühingu puhul - ärakirjad asutamislepingust või ühingulepingust ja põhikirjast (olemasolul) ning osanike või aktsionäride nimekirja;
- 2) füüsilisest isikust ettevõtja puhul - ettevõtja nime, isikukoodi, elukoha, ärinime ja tegevusala ning ettevõtte asukoha ja aadressi;

- 3) äriregistrisse kantud isiku puhul - registrikoodi;
- 4) korraldada soovitavate osavusmängude nimekirja, mängusüsteemide kirjeldused ja mängureeglid;
- 5) teabe osavusmängude korraldamise kohta eeldatava asukoha kohta;

6)-7) [Kehtetud - RT I 2002, 61, 375 - jõust. 1. 08. 2002]

(3) Tegevusloa taotlemisel õnnemängu, kihlveo või totalisaatori korraldamiseks peab käesoleva seaduse paragrahv 13 2. lõikes nimetatud isik avaldusele lisama:

- 1) ärakirjad asutamislepingust ja põhikirjast;
- 2) juhul kui aktsia- või osakapitali sissemaksed on rahalised - panga teatise aktsia- või osakapitali sissemaksmise kohta;
- 3) juhul kui aktsia- või osakapitali sissemaksed on mitterahalised - mitterahalise sissemaksena aktsiate või osa vastu äriühingule üleantud vara väärtust fikseeriva tõendi, mille on kinnitanud sõltumatu ekspert või audiitor;
- 4) juhatuse ja nõukogu liikmete valimise otsused;
- 5) osanike või aktsionäride nimekirja andmetega nende osa kohta äriühingu kapitalis;

6) juhul kui äriühingul on olnud eelnev majandustegevus - äriühingu viimase kolme majandusaasta raamatupidamise aastaaruanded koos audiitori järeldusotsustega;

7) füüsilise isiku, kelle osa ületab 5 protsenti tegevusloa taotleva äriühingu aktsia- või osakapitalist või häälte arvust, viimase kolme aasta tuludeklaratsioonide koopiad;

8) juriidilise isiku, kelle osa ületab 5 protsenti tegevusloa taotleva äriühingu aktsia- või osakapitalist või häälte arvust, põhikirja ning viimase kolme majandusaasta raamatupidamise aastaaruanded koos audiitori järeldusotsusega ja omanike nimekirjad andmetega omanike osa kohta vastava juriidilise isiku kapitalis;

9) korraldada soovitavate õnnemängude, kihlvedude või totalisaatorite nimekirja ja mängusüsteemide kirjelduse;

10) teabe õnnemängu, kihlveo või totalisaatori korraldamise koha eeldatava asukoha kohta;

11)- 12) [Kehtetud - RT I 2002, 61, 375 - jõust. 1. 08. 2002]

13) äriregistrisse kantud aktsiaseltsi või osaühingu puhul - registrikoodi.

(4) Enne avalduse esitamist osavusmängu, õnnemängu, kihlveo või totalisaatori korraldamiseks peab tegevusloa taotleja tasuma riigilõivu.

[RT I 2002, 61, 375 - jõust. 1. 08. 2002]

Paragrahv 15. Tegevusloa taotleja tausta kontrollimine ning otsuse tegemine tegevusloa andmise või sellest keeldumise kohta

(1) Tegevusloa väljaandja on kohustatud kontrollima tegevusloa taotleja maksuvõlgnevuse puudumist ja tegevusloa taotleja tausta, veendudes tegevusloa taotlemisel esitatud dokumentide õigsuses ning kogudes vajaduse korral täiendavaid andmeid, mis iseloomustavad tegevusloa taotlejat äriühinguna või füüsilisest isikust ettevõtjana.

(2) Tegevusloa väljaandja nõudel on tegevusloa taotlev isik kohustatud andma täiendavat teavet:

- 1) oma eelnevast majandustegevusest;
- 2) äriühingust tegevusloa taotleja aktsionäride, osanike ja juhatuse liikmete kohta;
- 3) äriühingust tegevusloa taotleja aktsia- või osakapitali päritolu kohta;

4) hasartmängude läbiviimise kavandatavatest tingimustest;

5) hasartmängude korraldamiseks kasutatava mänguinventari kohta.

(3) Tegevusloa taotleja tausta kontrollimisel tehtud põhjendatud kulutused tasub tegevusluba taotlev isik Vabariigi Valitsuse või tema poolt volitatud ministri kehtestatud korras.

(4) Tegevusloa väljaandja teeb otsuse tegevusloa andmise või sellest keeldumise kohta nelja kuu jooksul, arvates käesoleva seaduse §-s 14 nimetatud dokumentide esitamise päevast. Tegevusloa andmine või selle andmisest keeldumise otsus tehakse taotlejale teatavaks posti teel 10 päeva jooksul pärast otsuse tegemist.

[RT I 2002, 61, 375 - jõust. 1. 08. 2002]

Paragrahv 16. Tegevusloa kehtetuks tunnistamise alused

(1) Tegevusloa väljaandja tunnistab kehtetuks tegevusloa, kui:

1) selle taotlemisel on teadvalt esitatud tegelikkusele mittevastavaid andmeid;

2) isik, kellele on antud tegevusluba osavusmängu korraldamiseks, ei ole rohkem kui ühe aasta jooksul faktiliselt tegelnud osavusmängu korraldamisega;

3) isikul, kellele on antud tegevusluba õnnemängu, kihlveo või totalisaatori korraldamiseks, ei ole üle ühe aasta olnud ühtegi kehtivat korraldusluba või ta ei ole sama ajavahemiku vältel faktiliselt tegelnud õnnemängu, kihlveo või totalisaatori korraldamisega;

4) isik, kellele on antud tegevusluba, on avanud ilma korraldusloata mängukoha õnnemängu, kihlveo või totalisaatori korraldamiseks;

5) õnnemängu, kihlvedu või totalisaatorit korraldava aktsiaselts või osaühing ei vasta enam käesoleva seaduse paragrahv 13 2. lõikes sätestatud nõuetele;

6) hasartmängukorraldaja on teist korda viie aasta jooksul rikkunud talle käesoleva seaduse paragrahvidega 8 ja 9 pandud kohustusi;

7) [Kehtetu - RT I 2002, 61, 375 - jõust. 1. 08. 2002]

8) hasartmängukorraldaja ei ole täitnud tähtaegselt politseiametniku või hasartmängujärelevalveasutuse ametniku

ettekirjutust ning hasartmängu-korraldaja ei ole vaidlustanud ettekirjutust kohtus ja kohus ei ole ettekirjutuse täitmist peatanud.

(2) Tegevusloa väljaandjal on õigus tunnistada kehtetuks tegevusluba:

1) õnnemängu, kihlveo või totalisaatori korraldusloa kehtetuks tunnistamise otsuse alusel;

2) politsei või hasartmängujärelevalveasutuse motiveeritud esildise alusel.

(3) [Kehtetu - RT I 2002, 61, 375 - jõust. 1. 08. 2002]

[RT I 2002, 61, 375 - jõust. 1. 08. 2002]

Paragrahv 17. Otsus tegevusloa kehtetuks tunnistamise kohta

(1) Tegevusloa kehtetuks tunnistamise otsuses näidatakse ära:

1) isik, kelle tegevusluba tunnistatakse kehtetuks, tegevusloa number ja väljaandmise aeg;

2) tegevusloa väljaandja;

3) otsuse tegemise kuupäev;

4) tegevusloa kehtetuks tunnistamise tinginud asjaolud koos viitega käesoleva seaduse paragrahv 16 lõikele ja punktile, mille alusel tegevusluba tunnistatakse kehtetuks;

5) otsuse jõustumise kuupäev.

(2) Tegevusloa kehtetuks tunnistamise otsus tehakse isikule, kelle tegevusluba tunnistatakse kehtetuks, posti teel teatavaks kahe päeva jooksul otsuse tegemisest arvates. Tegevusloa kehtetuks tunnistamise otsus jõustub seitsmendal päeval pärast selle tegemist. Tegevusloa väljaandja teatab tegevusloa kehtetuks tunnistamisest viivitamata politseile. Kui hasartmängu korraldamisega seoses tuvastatakse kuriteo tunnused, edastatakse materjalid uurimisorganile.

(3) Alates tegevusloa kehtetuks tunnistamise otsuse jõustumise päevast on hasartmängukorraldaja kohustatud sulgema kõik mängukohad. Varem võidetud, kuid seni välja andmata võitude väljaandmine toimub vastavalt mängureeglitele.

[RT I 2002, 61, 375 - jõust. 1. 08. 2002]

Paragrahv 18. Õnnemängu, kihlveo või totalisaatori korraldusloa taotlemine



(1) Konkreetsetes mängukohas õnnemängu, kihlveo või totalisaatori korraldamiseks antavat korraldusluba on õigus taotleda isikul, kellele käesoleva seadusega ettenähtud korras on antud tegevusluba õnnemängu, kihlveo või totalisaatori korraldamiseks.

(2) Korraldusloa taotlemisel tuleb korraldusloa väljaandjale esitada avaldus korraldusloa saamiseks, milles on märgitud:

1) taotleja ärinimi, asukoht, aadress, registrikood ja äriregistrisse kandmise kuupäev;

2) taotlejal telefoni ja faksi olemasolul nende numbrid;

3) mängukohas korraldada soovitava õnnemängu, kihlveo või totalisaatori nimetus;

4) mängukoha aadress;

5) mängukoha eest vahetult vastutava isiku nimi ja aadress;

6) avalduse täitnud isiku nimi, ametikoht ja allkiri.

(3) Korraldusloa taotlemise avaldusele tuleb lisada:

1) tegevusloa ära kiri;

2) äriühingu osanike või aktsionäride ning juhatuse ja nõukogu (olemasolul) liikmete nimekiri;

3) mängukoha plaan ja kirjeldus;

4) dokumentide ära kirjad, mis tõendavad korraldusloa taotleja omandi- või valdamisõigust mängukohaks planeeritavale hoonele või ruumile;

5) valla- või linnavalitsuse kirjalik nõusolek mängukoha avamiseks korraldusloa taotlemise avalduses näidatud aadressil;

6) mängukohas kasutatavate mängulaudade, mänguautomaatide või kihlveo või totalisaatori korraldamiseks kasutatava inventari hulk ja tüübid;

7) korraldada soovitavate õnnemängude, kihlvedude või totalisaatorite mängureeglid;

8) planeeritav töökohtade arv ja struktuur;

9) korraldusloa taotleja viimase majandusaasta audiitorikontrolli läbinud aruanne või audiitorikontrolli läbinud kasumiaruandest, bilansist ja lisadest koosnev vahearuanne, mis on koostatud mitte varem kui kaks kuud enne

korraldusloa taotlemist, juhul kui taotlejal on olnud varem majandustegevus;

10) ära kirjad dokumentidest, mis tõendavad omandi- või valdamisõigust mängukohas kasutatavale mänguinventarile;

11) [Kehtetu - RT I 2002, 61, 375 - jõust. 1. 08. 2002]

12) mängukohas rakendatavate turvameetmete iseloomustus;

13) [Kehtetu - RT I 2002, 61, 375 - jõust. 1. 08. 2002]

(3<sup>1</sup>) Enne korraldusloa taotlemise avalduse esitamist peab korraldusluba taotlev isik tasuma riigilõivu.

(4) Korraldusloa väljaandja nõudel on korraldusluba taotlev isik kohustatud andma täiendavat teavet hasartmängu läbiviimise tingimuste ja kasutatava mänguinventari kohta.

[RT I 2002, 61, 375 - jõust. 1. 08. 2002]

Paragrahv 19. Otsuse tegemine õnnemängu, kihlveo või totalisaatori korraldusloa andmise või sellest keeldumise kohta

(1) Korraldusloa väljaandja kontrollib korraldusluba taotleva isiku maksuvõlgnevuse puudumist ning teeb otsuse õnnemängu, kihlveo või totalisaatori korraldusloa andmise või sellest keeldumise kohta kahe kuu jooksul, arvates käesoleva seaduse §-s 18 nimetatud dokumentide esitamise päevast. Korraldusloa andmine või selle andmisest keeldumine tehakse taotlejale posti teel teatavaks 10 päeva jooksul pärast otsuse tegemist.

(2) Korraldusluba ei anta, kui:

1) korraldusloa taotlemisel on esitatud tegelikkusele mittevastavaid andmeid;

2) korraldusluba taotlev isik keeldub andmast täiendavat teavet korraldusloa väljaandjale;

3) mängukoht ei vasta käesoleva seaduse paragrahvides 7 ja 8 sätestatud nõuetele;

4) esitatud mängureeglid on ilmselt kahjulikud mängijale või ei vasta käesoleva seaduse paragrahv 6 4. lõikes sätestatud Vabariigi Valitsuse või tema poolt volitatud ministri kehtestatud tingimustele;

5) mängukohas kavatakse kasutada mänguinventari, mis ei vasta Vabariigi Valitsuse

või tema poolt volitatud ministri kehtestatud nõuetele;

6) korraldusluba taotlej isik on maksuvõlglane.

[RT I 2002, 61, 375 - jõust. 1. 08. 2002]

Paragrahv 20. Korraldusloa kehtetuks tunnistamise alused

(1) Korraldusloa väljaandja tunnistab kehtetuks korraldusloa, kui:

1) selle taotlemisel on teadvalt esitatud tegelikkusele mittevastavaid andmeid;

2) valla- või linnavalitsus ei anna nõusolekut hasartmängude korraldamise tähtaja pikendamiseks;

3) hasartmängukorraldaja ei ole täitnud tähtaegselt politseiametniku või hasartmängujärelevalveasutuse ametniku konkreetset mängukohta puudutavat ettekirjutust ning hasartmängukorraldaja ei ole vaidlustanud ettekirjutust kohtus ja kohus ei ole ettekirjutuse täitmist peatanud;

4) [Kehtetu - RT I 2002, 61, 375 - jõust. 1. 08. 2002]

(2) Korraldusloa väljaandja võib kehtetuks tunnistada korraldusloa, kui:

1) mängukoht, mille kohta korraldusluba on antud, ei vasta enam käesolevas seaduses ning sellest tulenevates õigusaktides kehtestatud nõuetele;

2) hasartmängukorraldaja ei ole mängukohas täitnud talle käesoleva seaduse §-dega 8 ja 9 pandud kohustusi;

3) on tõendatud mängijate petmine mängukohas hasartmängukorraldajaga töösuhetes oleva isiku poolt;

4) mängukohas ei ole kinni peetud mängureeglitest või on kasutatud mängureegleid, mis pole kooskõlas käesoleva seaduse või teiste õigusaktidega;

5) mängukohas ei ole käesolevale seadusele ja teistele õigusaktidele vastavat raamatupidamist;

6) politsei on teinud esildise mängukoha sulgemiseks seoses korduvate avaliku korra rikkumistega mängukohas;

7) valla- või linnavalitsus on teinud esildise seoses tema poolt mängukoha lubamise otsusega

kehtestatud tingimuste vähemalt teistkordse rikkumisega;

8) mängukohas korraldatakse korraldusloa märkimata hasartmänge.

(3) [Kehtetu - RT I 2002, 61, 375 - jõust. 1. 08. 2002]

[RT I 2002, 61, 375 - jõust. 1. 08. 2002]

Paragrahv 21. Otsus korraldusloa kehtetuks tunnistamise kohta

(1) Korraldusloa kehtetuks tunnistamise otsuses näidatakse ära:

1) isik, kelle korraldusluba tunnistatakse kehtetuks, ning korraldusloa number ja väljaandmise aeg;

2) korraldusloa väljaandja nimetus;

3) otsuse tegemise kuupäev;

4) korraldusloa kehtetuks tunnistamist tinginud asjaolud koos viitega käesoleva seaduse § 20 lõikele ja punktile, mille alusel korraldusluba tunnistatakse kehtetuks;

5) otsuse jõustumise kuupäev.

(2) Korraldusloa kehtetuks tunnistamise otsus tehakse isikule, kelle korraldusluba tunnistatakse kehtetuks, posti teel teatavaks kahe päeva jooksul otsuse tegemisest arvates. Korraldusloa kehtetuks tunnistamise otsus jõustub seitsmendal päeval pärast selle tegemist. Korraldusloa väljaandja teatab korraldusloa kehtetuks tunnistamisest viivitamata politseile. Juhul kui mängukohas hasartmängu korraldamisega seoses tuvastatakse kuriteo tunnused, edastatakse materjalid uurimisorganile.

(3) Alates korraldusloa kehtetuks tunnistamise otsuse jõustumise päevast on hasartmängukorraldaja kohustatud sulgema mängukoha, mille kohta korraldusluba oli antud. Mängukohas varem võidetud, kuid seni välja andmata võitude väljaandmine toimub vastavalt mängureeglitele.

[RT I 2002, 61, 375 - jõust. 1. 08. 2002]

Paragrahv 22. Tegevusloa või korraldusloa kehtetuks tunnistamise otsuse vaidlustamine

(1) Tegevusloa või korraldusloa kehtetuks tunnistamise otsust võib isik, kellele tegevusluba või korraldusluba oli antud, vaidlustada halduskohtumenetluse korras.

(2) [Kehtetu - RT I 2002, 61, 375 - jõust. 1. 08. 2002]

[RT I 2002, 61, 375 - jõust. 1. 08. 2002]

Paragrahv 23. Osavusmängu mängukoha avamine

(1) Isik, kellel on tegevusluba osavusmängu korraldamiseks, võib korraldada osavusmängu valla- või linnavalitsuse kirjalikul nõusolekul, kus on märgitud mängukoht ja nõusoleku kehtivuse tähtaeg.

(2) Valla- või linnavalitsuse nõusoleku taotlemisel osavusmängu mängukoha avamiseks esitatakse talle:

- 1) avaldus;
- 2) tegevusloa ära kiri;
- 3) korraldada soovitava osavusmängu mängureeglid;
- 4) teave tulevase mängukoha asukohast.

(3) Valla- või linnavalitsuse nõudel on hasartmängukorraldaja kohustatud andma täiendavat teavet osavusmängude läbiviimise tingimuste ning nende läbiviimiseks kasutatava mänguinventari kohta.

3. peatükk

JÄRELEVALVE HASARTMÄNGUDE KORRALDAMISE ÜLE

Paragrahv 24. Järelevalvet teostavad ametnikud

Järelevalvet hasartmängude korraldamise üle teostavad politseiametnikud ja hasartmängujärelevalveasutuse ametnikud (edaspidi järelevalvet teostavad ametnikud).

Paragrahv 25. Ettekirjutus hasartmängukorraldajale

(1) Järelevalvet teostaval ametnikul on õigus teha hasartmängukorraldajale kohustuslikke ettekirjutusi, kui hasartmängu korraldamise kontrollimisel on avastatud käesoleva seaduse, muude õigusaktide või korraldusloa eritingimuste rikkumisi. Ettekirjutuses peab sisalduma:

- 1) ettekirjutuse koostanud ametniku nimi ja ametikoht;
- 2) ettekirjutuse tegemise kuupäev;
- 3) hasartmängukorraldaja nimi;

4) mängukoha aadress, kui ettekirjutus tehakse konkreetse mängukoha suhtes;

5) ettekirjutuse tegemist tingivad asjaolud koos viitega vastava seaduse või muu õigusakti sätetele;

6) ettekirjutuse täitmise tähtaeg;

7) ettekirjutuse täitmata jätmisel rakendatavad sanktsioonid koos viitega vastava seaduse või muu õigusakti sätetele.

(2) Ettekirjutus antakse hasartmängukorraldajale või tema esindajale kätte allkirja vastu kuupäevaliselt ja vajadusel ka kellaajaliselt või saadetakse posti teel väljastusteatega.

(3) Hasartmängukorraldajal on õigus vaidlustada ettekirjutus halduskohtus.

Paragrahv 26. Mängukoha kontrollimine

Hasartmängu korraldamise seaduslikkuse kontrollimiseks on järelevalvet teostaval ametnikul õigus kontrollida ilma eelneva hoiatuse või eriloata mängukohti:

- 1) ajal, mil on avatud mängijate sissepääs mängukohta või mängukohas viibib mängijaid;
- 2) pärast mängukoha sulgemist mängijatele kuni vahetult hasartmängu korraldamisega seotud töötajate lahkumiseni mängukohast;
- 3) käesoleva paragrahvi punktides 1 ja 2 nimetataval ajal hasartmängukorraldaja või tema esindaja juuresolekul.

Paragrahv 27. Hasartmängukorraldaja majandustegevuse dokumentide kontrollimine

(1) Hasartmängu korraldamise seaduslikkuse kontrollimiseks on järelevalvet teostaval ametnikul õigus kontrollida hasartmängukorraldaja majandustegevust kajastavaid dokumente ning teha neist väljavõtteid ja ära kirju.

(2) Järelevalvet teostav ametnik on kohustatud mängija isiku ja tema võidu või kaotuse kohta käivat teavet kasutama ainult riikliku järelevalve teostamise huvides.

Paragrahv 28. Õigus saada teavet hasartmängukorraldajalt

Ettekirjutuse alusel on hasartmängukorraldaja või tema esindaja kohustatud:

1) ilmuma politseisse või hasartmängujärelevalveasutusse selgituste andmiseks hasartmängu korraldamise kohta;

2) esitama politseile või hasartmängujärelevalveasutusele enda valduses olevaid dokumente, mis puudutavad tema poolt hasartmängu korraldamist.

Paragrahv 29. Mängukoha ajutine sulgemine

Mängukoha, mille kohta on välja antud käesoleva seadusega ettenähtud korraldusluba, kuid kus tuvastatakse käesoleva seaduse või muude hasartmängu korraldamist reguleerivate õigusaktidega kehtestatud nõuete rikkumine, mida ei ole võimalik kohe kõrvaldada ning mille tulemusena on mängijad seatud õigusaktide või mängureeglitega ettenähtust halvemasse olukorda, võib järelevalvet teostava ametniku ettekirjutuse alusel sulgeda kuni rikkumise kõrvaldamiseni.

4. peatükk

#### VASTUTUS HASARTMÄNGUSEADUSE RIKKUMISE EEST

Paragrahv 30. Hasartmängu ebaseaduslik korraldamine

Hasartmängu korraldamine on ebaseaduslik, kui korraldatakse keelatud hasartmängu, korraldatakse hasartmängu ilma käesolevas seaduses ettenähtud tegevusloa või korraldusloata või hasartmängu korraldamine on muul viisil vastuolus käesoleva seaduse või muude õigusaktidega.

Paragrahv 31. Mängukoha sulgemine

(1) Politsei või hasartmängujärelevalveasutus on kohustatud kohe sulgema mängukoha:

1) kus korraldatakse keelatud hasartmängu;

2) kus hasartmängu korraldab isik, kellel puudub kehtiv tegevusluba;

3) kui seal korraldatakse õnnemängu, kihlvedu või totalisaatorit, mille kohta puudub kehtiv korraldusluba;

4) kus korraldatakse hasartmängu, mis ei ole lubatud hasartmängukorraldajale väljaantud tegevusloaga.

(2) Mänguinventar, mida kasutati hasartmängu korraldamiseks käesoleva paragrahvi 1. lõike alusel sulgemisele kuuluvas mängukohas, kuulub erikonfiskeerimisele.

(3) Mänguinventari erikonfiskeerimise otsustab halduskohtunik.

(4) Mängukoha sulgemisel pitseerib järelevalvet teostav ametnik hoone või ruumi, milles hasartmängu korraldati, kuni mängukohas kasutatava mänguinventari erikonfiskeerimise otsuse täitmiseni.

Paragrahv 32. Juriidilisest isikust hasartmängukorraldaja vastutus

(1) Juriidilisele isikule kohaldatakse haldusvastutust järgmiste õiguserikkumiste korral:

1) keelatud hasartmängu korraldamise eest - määratakse rahatrahv 500 000 kroonist kuni 1 000 000 kroonini;

2) õnnemängu, kihlveo või totalisaatori korraldamise eest tegevusloa või korraldusloata või mängukohas, mille kohta puudub korraldusluba, - määratakse rahatrahv 500 000 kroonist kuni 1 000 000 kroonini;

3) osavusmängu korraldamise eest tegevusloata - määratakse rahatrahv 100 000 kroonist kuni 300 000 kroonini;

4) mängureeglitest mittekinnipidamise eest või hasartmängu korraldamise eest mängureeglitega, mis ei ole kooskõlas käesoleva seaduse või muude õigusaktidega, - määratakse rahatrahv 50 000 kroonist kuni 100 000 kroonini;

5) järelevalvet teostavale ametnikule mängukoha ja hasartmängukorraldaja majandustegevust kajastavate dokumentide kontrollimisel takistuste tegemise, dokumentide esitamisest keeldumise, valeandmete esitamise või pädeva ametniku ettekirjutuse täitmata jätmise eest - määratakse rahatrahv 20 000 kroonist kuni 100 000 kroonini;

6) alla 21-aastase isiku või isiku, kes alkoholi, narkootikumi või muu tugevatoimelise aine mõju all olles või muul põhjusel ei suuda ilmselt mõista oma tegude tähendust, hasartmängus osalema lubamise eest - määratakse rahatrahv 20 000 kroonist kuni 50 000 kroonini;

7) ettenähtud korras registreerimata isiku viibimise lubamise või suurema kui 5000-kroonise võidu ettenähtud korras registreerimata väljamaksmise eest mängukohas, kus hasartmängukorraldaja või temaga töösuhetes olev isik korraldab õnnemängu mängulaua, - määratakse rahatrahv 20 000 kroonist kuni 50 000 kroonini.

(2) Kui füüsiline isik, tegutsedes juriidilise isiku nimel või huvides, pani toime käesoleva paragrahvi 1. lõikes loetletud

haldusõiguserikkumisi, võib nende haldusõiguserikkumiste eest kohaldada vastutust samaaegselt nii füüsilisele isikule kui ka juriidilisele isikule. Sealjuures lähtutakse karistuse määramisel süüdlasest füüsilisele isikule (kui teda ei võeta kriminaalvastutusele) haldusõiguserikkumiste seadustiku (RT 1992, 29, 396; 1993, 7, 103; RT I 1993, 33, 539; 44, 637; 62, 891; 72/73, 1019; 76, 1129; 1994, 1, 5; 12, 202; 23, 385; 24, 391; 28, 424 ja 427; 34, 532 ja 534; 39, 620; 46, 773; 48, 789; 50, 845; 68, 1169; 74, 1324; 91, 1529; 1995, 4, 36; 5, 40; 11, 114 ja 115; 20, 297; 21, 324; 25, 352; 29, 358; 47, 739; 48, 744; 53, 844 ja 845) paragrahvis 154 ettenähtud sanktsioonidest, juriidilise isiku puhul aga käesoleva paragrahvi 1. lõikes sätestatud sanktsioonidest.

(3) Käesoleva paragrahvi 1. lõikes loetletud juriidilise isiku haldusõiguserikkumiste asju arutab halduskohus.

(4) Menetlus käesoleva paragrahvi 1. lõikes loetletud juriidilise isiku haldusõiguserikkumiste asjades, kaasa arvatud karistuse määramine ja vaidlustamine ning jõustunud halduskaristuse otsuse täitmine, toimub haldusõiguserikkumiste seadustikus ja täitemenetluse seadustikus ettenähtud korras, kui käesolev seadus ei sätesta teisiti.

#### Paragrahv 33. Protokoll koostamine

(1) Käesoleva seaduse paragrahv 32 1. lõikes loetletud juriidilise isiku haldusõiguserikkumiste kohta protokoll koostamise õigus on politseiametnikul, hasartmängujärelevalveasutuse juhil ning tema poolt selleks volitatud hasartmängujärelevalveasutuse ametnikul. Protokollis tuuakse ära selle koostamise aeg ja koht, asutuse nimetus ja aadress, kelle nimel protokoll koostatakse, protokoll koostanud isiku ametinimetus ning ees- ja perekonnanimi, haldusõiguserikkuja ärinimi ja aadress (haldusõiguserikkuja esindaja ees- ja perekonnanimi ning ametikoht), haldusõiguserikkumise koht, aeg ja kirjeldus, viide käesoleva seaduse paragrahv 32 1. lõike punktile, mis näeb ette vastutuse selle haldusõiguserikkumise eest, haldusõiguserikkuja esindaja seletus ja muud andmed, mis on vajalikud asja lahendamiseks.

(2) Protokollile kirjutavad alla selle koostanud isik ja haldusõiguserikkuja esindaja. Kui haldusõiguserikkuja esindaja keeldub protokollile alla kirjutamast, tehakse sellesse vastav kanne. Protokollile lisatakse haldusõiguserikkuja esindaja kirjalikud märkused protokollile, samuti protokollile allakirjutamisest keeldumise kohta.

#### Paragrahv 34. Füüsilise isiku vastutus

Käesoleva seaduse rikkumise eest kannab füüsiline isik tsiviil-, haldus- või kriminaalvastutust seaduses ettenähtud korras.

#### 5. peatükk

#### RAKENDUSSÄTTED

#### Paragrahv 35. Seaduse rakendamine

(1) Isik, kellel käesoleva seaduse jõustumise päeval on kehtiv riiklik tegevuslitsents hasartmängudealase tegevuse korraldamiseks, võib jätkata hasartmängude korraldamist ilma käesolevas seaduses ettenähtud tegevus- ja korraldusloata kuue kuu jooksul, arvates käesoleva seaduse jõustumisest, juhindudes käesoleva seaduse paragrahvist 1, paragrahv 2 2. lõikest, paragrahvidest 3-5, paragrahv 6 1., 4. ja 5. lõikest ning paragrahvidest 9-11.

(2) Käesoleva seaduse paragrahv 13 2. lõikes nimetatud isik, kui tal on käesoleva seaduse jõustumise päeval kehtiv riiklik tegevuslitsents hasartmängudealase tegevuse korraldamiseks, peab tegevusloa taotlemisel õnnemängu, kihlveo või totalisaatori korraldamiseks lisaks käesoleva seaduse paragrahv 14 3. lõikes loetletule esitama taotleja viimase majandusaasta audiitorkontrolli läbinud aruande või audiitorkontrolli läbinud kasumiaruandest, bilansist ja lisadest koosneva vahearuande, mis on koostatud mitte varem kui kaks kuud enne tegevusloa taotlemist.

(3) Kuue kuu möödumisel käesoleva seaduse jõustumisest võib õnnemängu, kihlvedu või totalisaatorit korraldada ainult isik, kellele on käesolevas seaduses ettenähtud korras antud vastav tegevusluba ja korraldusluba, ning osavusmängu ainult isik, kellele käesolevas seaduses ettenähtud korras on antud vastav tegevusluba ning kes on saanud linna- või vallavalitsuselt käesoleva seaduse paragrahvis 23 ettenähtud nõusoleku osavusmängu mängukoha avamiseks.

(4) [Kehtetu]

Paragrahv 36. [Käesolevast tekstist välja jäetud]

#### 5.6.2. VAT law

Value Added Tax Act

(Repealed - 13.06.2001 entered into force 01.01.2002 - RT I 2001, 64, 368)

Passed 25 August 1993

(RT<sup>1</sup> I 1993, 847, 407; consolidated text RT I 2000, 7, 41),

entered into force 1 January 1994,

amended by the following Acts:

06.06.2001 entered into force 01.09.2001 - RT I 2001, 56, 335;

18.04.2001 entered into force 01.07.2001 - RT I 2001, 43, 242;

06.03.2001 entered into force 01.04.2001 - RT I 2001, 26, 148;

20.02.2001 entered into force 01.04.2001 - RT I 2001, 23, 129;

17.01.2001 entered into force 01.03.2001 - RT I 2001, 16, 69;

17.01.2001 entered into force 16.02.2001 - RT I 2001, 16, 67;

14.11.2000 entered into force 01.01.2000 - RT I 2000, 89, 581;

14.06.2000 entered into force 01.07.2000 - RT I 2000, 51, 328.

## Chapter I

### General Provisions

#### § 1. Object of taxation

Value added tax is imposed on taxable supply provided for in § 4 of this Act. Value added tax is applied as tax on added value.

#### § 2. Definitions

In this Act, the following definitions are used:

1) "enterprise" means the independent economic activity of a person in the course of which goods or services are transferred for a charge or without charge. A notary's and a bailiff's professional activities are also deemed to be enterprise. Employment under an employment contract, public service and activities aimed at achieving the objectives specified in the articles of association of a non-profit association or foundation are deemed not to be enterprise;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823; 17.01.2001 entered into force 01.03.2001 - RT I 2001, 16, 69)

2) "goods" means movables, animals, bulk substances, liquids, gases, electric power and heat. Immovables and ships entered in the ship register, structures as movables, money and securities are deemed not to be goods;

(11.02.98 entered into force 01.07.98 - RT I 1998, 23, 321; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

3) "services" means all benefits provided through enterprise which are not included in clause 2) of this section, including transferable rights;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

4) "seller" means a person who transfers goods or services;

5) "person" means a natural or legal person, a state, rural municipality or city agency with regard to its economic activities, a branch of a foreign company, or a foreign legal person who has a permanent establishment in Estonia provided for in the Taxation Act (RT I 1994, 1, 5; 2000, 45, 279, 55, 365; 84, 533, 534);

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

6) "import" means the importation of goods into the Estonian customs territory under the customs procedure "import for free circulation", the temporary importation of leased goods subject to re-exportation and the re-importation of goods exported for outward processing, as defined in the Customs Act (RT I 1993, 62, 891; 76, 1129; 1994, 30, 466; 1995, 20, 297);

7) "export" means the exportation of goods from the Estonian customs territory or the conveyance of goods into a free zone under the customs procedure "exportation", the exportation, under the customs procedure "re-exportation", of materials added in Estonia to goods imported into Estonia for outward processing, and the export of services as defined in subsection 13 (4) of this Act.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

8) "books" means printed matter consisting of at least three pages connected to each other at one edge, except for periodicals, books of pre-printed forms and notebooks (including diaries and students' study journals). For the purposes of this Act, printed geographical, hydrographic and other such maps are also deemed to be books.

(23.09.98 entered into force 01.01.99 - RT I 1998, 86/87, 1410; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

#### § 3. Supply

(1) For the purposes of this Act, the following are deemed to be supply:

1) the sale, exchange or transfer without charge of goods or services;

2) the consumption of goods or services by a taxable person in the cases provided for in subsection (2) of this section.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(2) The consumption of goods or services by a taxable person is deemed to be supply in the following cases:

1) the provision of goods or services by an employer to an employee in lieu of remuneration, a bonus or other payment if such registered taxable person has deducted the value added tax paid upon the purchase of such goods or services from the value added tax calculated on its own supply;

2) (Repealed - 07.11.96 entered into force 08.12.96 - RT I 1996, 81, 1447)

3) the transfer by an organiser of a lottery of goods produced by the organiser of the lottery, or the provision by an organiser of a lottery of services as a lottery prize.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(3) For the purposes of this Act, operating lease is deemed to be transfer of services and financial lease of goods is deemed to be the transfer of the goods. The transfer of the right of ownership upon the purchase of goods shall be provided for in the financial lease contract; otherwise the transaction is deemed to be an operating lease.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(4) For the purposes of this Act, the following are deemed not to be supply:

1) a non-monetary contribution to the share capital of a company;

2) the transfer of the right of ownership of goods in a customs warehouse or free zone;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

3) the privatisation of state, rural municipality or city assets entered in the privatisation list, the transfer of state assets into the ownership of a rural municipality or city, the provision of goods or services for units in the course of agricultural reform, or the transfer of plantations of permanent crops which are not entered in the

land register to entitled subjects in the course of land reform;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

4) the transfer of assets to a new undertaking upon the transformation of an enterprise which is not entered in the commercial register into an undertaking provided for in the Commercial Code (RT I 1995, 26-28, 355; 1998, 91/93; 1999, 10, 155; 23, 355, 24, 360; 57, 596; 102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373)

5) sale of accounts receivable (factoring);

6) the collection of a fine for delay or penalty prescribed in a written contract, and the collection of damages;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

7) the transfer of assets to other persons upon the merger, division or transformation of a company, as defined in the Commercial Code;

8) the exchange or repair of goods, immovables or structures as movables to the holders of the goods or the possessors of the immovables or structures as movables, during the warranty period;

(07.11.96 entered into force 08.12.96 - RT I 1996, 81, 1447)

9) transactions between persons registered as a single taxable person, if, as a result of the transaction, the person who purchased goods or a service uses the goods or service in full for the purposes of the person's taxable supply;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

10) payment of an arbitration fee by the parties to a dispute as defined in the Republic of Estonia Act on the Arbitral Tribunal of the Estonian Chamber of Commerce and Industry (RT 1991, 25, 308; 1999, 18, 302) or by the parties to a dispute before another arbitral tribunal.

(10.02.99 entered into force 05.03.99 - RT I 1999, 18, 302)

#### § 4. Taxable supply

(1) For the purposes of this Act, taxable supply is the supply of goods which are produced in Estonia or imported into Estonia and are in free circulation, the supply of services provided in Estonia and the import of goods, except for supply exempt from tax provided for in § 5 of this Act.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(2) Taxable persons shall pay value added tax on taxable supply pursuant to the procedure provided for in this Act.

(3) Taxable persons and all other persons importing goods into Estonia shall pay value added tax on imports pursuant to the procedure for payment of import charges provided by the customs rules (as defined in the Customs Act).

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

#### § 5. Supply exempt from tax

(1) Value added tax shall not be imposed on the supply of the following goods and services or on the import of the following goods:

1) pre-school education, basic education, secondary education, higher education, in-service training and informal education;

2) postal payment means and state postal services;

3) medical services listed in the fee schedule of medical examinations and health services covered by health insurance and the fee schedule of medical services for which a fee is charged, approved pursuant to the Republic of Estonia Health Insurance Act (RT 1991, 23, 272; RT I 1999, 7, 113; 29, 397; 2000, 57, 374; 84; 536; 102, 675);

4) funeral items and funeral services;

5) services provided by credit institutions and financial institutions, and insurance services;

6) the organisation of gambling;

7) lottery tickets;

8) the leasing of dwellings and provision of dwelling maintenance services to owners of dwellings, and the costs relating to land tax and building insurance, which the lessor of a dwelling or the provider of maintenance services demands from the purchaser of the service;

9) medicinal products, medical supplies and devices, medical products and medical diagnostic equipment, according to the lists approved by the Minister of Social Affairs;

10) (Repealed - 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

11) (Repealed - 21.11.95 entered into force 01.01.96 - RT I 1995, 93, 1608)

12) (Repealed - 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

13) social services as defined in the Social Welfare Act (RT I 1995, 21, 323; 1996, 49, 953; 1997, 35, 538; 77, 1309; 2000, 33, 198);

14) research conducted by universities and research institutions if such research is financed from the state budget;

15) (Repealed - 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823).

The Minister of Finance shall establish the exact list of goods and services specified in clauses 2), 4), 5) and 8) of this subsection.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(1<sup>1</sup>) The export of goods and services specified in subsection (1) of this section shall be subject to value added tax.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(1<sup>2</sup>) In addition to the provisions of subsection (1) of this section, the import of the following goods and other property shall not be subject to value added tax under the conditions and pursuant to the procedure established by the Minister of Finance:

1) water craft and aircraft used only for international travel;

2) goods and other property brought into a free zone from a foreign state;

3) property which for more than six months has been in the ownership of a person who is relocating and which the person who has resided in a foreign state continuously for longer than twelve months brings into Estonia in connection with permanently settling in Estonia;

4) an estate brought to a successor who is permanently residing in Estonia;

5) goods returned to Estonia on the basis of guarantees prescribed by a contract;

6) catalogues, price lists, user manuals, brochures and other similar printed advertising matter sent to Estonia by foreign legal persons for distribution without charge, if they concern products sold or leased in Estonia or exhibited at exhibitions, fairs,



or other similar events in Estonia, or services provided in Estonia;

7) books, newspapers, journals and other data media sent from foreign states to libraries as donations or in exchange;

8) the gold carried over the Estonian customs frontier by the Bank of Estonia;

9) goods (including gifts) imported in connection with the official visits of heads of states or governments or heads of international organisations;

10) goods belonging to a foreign legal or natural person which are imported into Estonia for testing, conducting of analyses, use at international sports events which take place under the auspices of international sports organisations or conducting military exercises on the basis of the special permits of the Ministry of Defence, and which are destroyed or fully exhausted in the course of such tests or analyses or in the conduct of the aforementioned sports events or military exercises;

11) reagents, laboratory equipment and other laboratory items imported for veterinary checks and diagnoses of the safety of the environment, food, drinking water and agricultural products by the Ministry of Agriculture, the Ministry of Social Affairs, the boards and inspectorates in their area of government and the Ministry of the Environment;

12) the awards and prizes received in foreign states by permanent residents of Estonia;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

13) revenue stamps of tobacco products;

(18.04.2001 entered into force 01.07.2001 - RT I 2001, 43, 242)

14) seized counterfeit clothes and footwear specified in subsection 36<sup>3</sup> (3) of the Trade Marks Act (RT 1992, 35, 459; RT I 1998, 15, 231; 1999, 93, 834; 102, 907; 2001, 27, 151).

(06.06.2001 entered into force 01.09.2001 - RT I 2001, 56, 335)

(2) The import of goods by natural persons shall be exempt from value added tax within the cost limits and quantitative limits established by the Minister of Finance.

(3) Pursuant to the procedure established by the Minister of Finance, value added tax is not imposed on the import by foreign diplomatic

representatives, consular agents and representatives of special missions accredited to Estonia of goods for personal use and on the import by foreign diplomatic representations and consular posts and representations of international and intergovernmental organisations and co-operation programmes of goods necessary for the performance of their official functions.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(4) Under the conditions and pursuant to the procedure established by the Minister of Finance, value added tax is not imposed on the import by state, rural municipality or city agencies, or non-profit associations or foundations benefiting from income tax incentives entered in the corresponding list approved by the Government of the Republic on the basis of the Income Tax Act, or legal persons entered in the Estonian Register of Churches, Congregations and Associations of Congregations of the Republic of goods exempt from excise duties received as state foreign aid or purchased with money received as state foreign aid or allocated from foreign loans taken by the state. For the purposes of this Act, state foreign aid is deemed to be the irrecoverable aid which is provided by an international organisation, foreign government, foreign local government or foreign non-governmental organisation and applied for, received or intermediated by a state, rural municipality or city agency, or non-profit association or foundation registered in Estonia which is entered in the list approved by the Government of the Republic.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823; 15.12.1999 entered into force 01.01.2000 - RT I 1999, 101, 903)

(4<sup>1</sup>) In addition to the provisions of subsection (4) of this section, the Government of the Republic has the right to provide exemptions from value added tax as an exception to persons not specified in subsection (4) of this section upon the import of goods purchased with money received by such persons as irrecoverable foreign aid within the framework of European Union aid programmes or state foreign aid programmes of foreign states, or allocated from foreign loans taken by the state.

(11.06.97 entered into force 10.07.97 - RT I 1997, 48, 776; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(5) (Repealed - 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

Chapter II

Registration and Duties of Taxable Persons

§ 6. Taxable person

A taxable person is a person who makes a taxable supply as a result of engagement in enterprise. State, local government and city agencies are deemed to be taxable persons with regard to supply with which they compete on the market with other taxable persons.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

§ 7. Registration of taxable person

(1) A taxable person whose taxable supply, excluding imports, exceeds 250 000 kroons as calculated from the beginning of a calendar year is required to submit an application in the format established by the Minister of Finance for registration of the taxable person as a person liable to value added tax (hereinafter registration) to the local Tax Board office (hereinafter the Tax Board) of the residence or seat of the taxable person within ten calendar days after the date on which taxable supply reached the specified amount. A taxable person who is a legal person and is not entered in the commercial register shall annex the taxable person's articles of association and a copy of the registration certificate issued by the enterprise register to the application; a taxable person who is entered in the commercial register shall annex a copy of the registry card issued by the commercial register to the application. The Tax Board shall register the taxable person as of the first day of the calendar month following the month in which the taxable supply reached the amount specified in this subsection. A taxable person who submits an application during the term prescribed in this section but during the calendar month following the date on which taxable supply reached the amount specified in this subsection shall be registered by the Tax Board as of the first day of the month in which the application is submitted.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(1<sup>1</sup>) Upon filing of an application for registration, a natural person or the representative of a legal person shall also submit his or her identity document to the Tax Board. If an identity document is not submitted upon submission of an application, the Tax Board has the right to return the application to the person and register the person after the identity document has been submitted. The Tax Board has the right to return an application to a person also if the information submitted in the application is incorrect or insufficient. The Tax Board shall register such person if the person files the application with

corrected or supplemented information within ten calendar days after the date of receipt of the application returned by the Tax Board. In the cases specified in this subsection, the registration of a taxable person shall be based on the date of the first filing of the application.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(2) A taxable person who, after its taxable supply reached the amount specified in subsection (1) of this section, fails to submit an application for registration of the taxable person during the term specified in subsection (1) of this section shall be registered by the Tax Board as of the first day of the calendar month following the month in which such taxable supply is made. A taxable person who failed to submit an application for registration of the taxable person during the prescribed term when its taxable supply reached the amount provided for in the wording of this Act in force until 1 April 1995 or in the Republic of Estonia Value Added Tax Act (RT 1991, 36, 447; 1992, 34, 440; RT I 1993, 35, 548; 60, 847), if the taxable supply in such amount was created during the time the corresponding Act was in force, shall be registered retroactively by the Tax Board pursuant to the procedure in force at the time the taxable supply reached the specified amount.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383; 12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(3) On the application of the taxable person, the Tax Board shall register a taxable person whose taxable supply, excluding imports, during a calendar year has not reached the amount specified in subsection (1) of this section, including a taxable person who has not made any taxable supply yet, as of the first day of the calendar month following the month in which the application is submitted. In order to be registered as a taxable person, a taxable person shall submit an application in the format established by the Minister of Finance and the documents specified in subsections (1) and (1<sup>1</sup>) of this section to the Tax Board.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(4) (Repealed - 12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(5) A person is deemed to be a registered taxable person as of the date specified in the decision of the Tax Board, at which time the rights and duties of a registered taxable person extend to the person. The Tax Board shall notify the taxable person of the decision of the Tax Board in writing

and in the format established by the Minister of Finance within ten days after the date of receipt of the application.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383; 12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(6) If, after registration of a taxable person, the Tax Board ascertains that the taxable person submitted an application for the registration of the taxable person later than prescribed and that the rights and duties of a registered taxable person should have become applicable to the taxable person before the date specified in the decision of the Tax Board, the Tax Board shall repeal its original decision and register the taxable person retroactively by a new decision pursuant to subsection (2) of this section.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(7) (Repealed - 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

§ 8. Registration of several taxable persons as single taxable person

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(1) A parent undertaking and its subsidiaries as defined in the Commercial Code, and several taxable persons with regard to whom at least one of the following circumstances exists shall be registered by The Tax Board as a single taxable person pursuant to the procedure established by the Minister of Finance:

1) more than 50 per cent of the shares of each public limited company to be registered pursuant to this section or of the holdings in each private limited company or a general or limited partnership to be registered pursuant to this section are owned by one and the same person;

2) more than 50 per cent of the votes determined by the shares of each public limited company or private limited company to be registered pursuant to this section or by the contributions into each general or limited partnership to be registered pursuant to this section are owned by one and the same person.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(2) Before taxable persons who have not been registered as persons liable to value added tax are registered as a single taxable person, they shall be registered as separate taxable persons

pursuant to the procedure provided for in § 7 of this Act.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(3) If none of the circumstances specified in subsection (1) of this section any longer exists with regard to taxable persons registered as a single taxable person, the Tax Board shall annul the decision concerning registration as a single taxable person as of the first day of the calendar month following the month in which the circumstances ceased to exist. At the request of taxable persons registered as a single taxable person, the Tax Board shall annul the decision concerning registration as a single taxable person under the conditions and pursuant to the procedure established by the Minister of Finance.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(4) As of the date of the annulment of a decision concerning registration as a single taxable person, the taxable persons are deemed to be re-registered as separate taxable persons.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

§ 9. Duty of Tax Board upon registration of taxable persons

Upon registering a taxable person, the Tax Board is required to explain the duties of the taxable person upon payment of value added tax to the taxable person.

§ 10. Duties of registered taxable persons

Registered taxable persons are required:

1) to calculate value added tax on taxable supply made as a result of their engagement in enterprise according to the rates specified in § 13 of this Act;

2) to calculate the amount of value added tax due pursuant to the procedure provided for in § 18 of this Act;

3) to submit a value added tax return in the format established by the Minister of Finance to the Tax Board;

4) to pay value added tax on taxable supply made as a result of their engagement in enterprise, excluding imports, and on taxable supply of rights to cut standing crop, of timber, sawn timber or the transport and manufacturing services of the timber purchased from another registered taxable person, by the due date for submission of the

value added tax return, and to pay value added tax on imports by the due date for payment of import charges (as defined in the Customs Act) provided for in the customs rules. The Minister of Finance shall determine the headings and subheadings of the Estonian Nomenclature of Commodities under which the goods are deemed to be timber or sawn timber within the meaning of this Act;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823; 06.03.2001 entered into force 01.04.2001 - RT I 2001, 26, 148)

5) to issue and preserve invoices under the conditions and pursuant to the procedures provided for in §§ 24 and 25 of this Act.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383; 12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

#### § 11. Deletion of taxable person from register

(1) A person who has been registered with the Tax Board for at least two years but whose taxable supply, excluding imports, in the previous calendar year did not exceed and, according to the calculations of the taxable person, in the current calendar year will not exceed the amount specified in subsection 7 (1) of this Act may submit an application to the Tax Board for deletion of the taxable person from the register. The Tax Board may delete a taxable person from the register after auditing the economic activities of the taxable person.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383)

(2) The Tax Board has the right to delete a person from the register if the value added tax calculated by the person on taxable supply during a taxable period has, during at least three consecutive taxable periods, been less than the amount of value added tax paid by the person upon purchasing goods or services, unless this is due to supply subject to the value added tax rate of 0 per cent.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383; 12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(3) The Tax Board has the right to delete a taxable person from the register if the taxable person has failed to submit a value added tax return for six consecutive taxable periods and the term for submission of the value added tax return for the last taxable period has expired.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(4) A person is deemed to be deleted from the register as of the date specified in the decision of the Tax Board.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

#### Chapter III

#### General Principles of Taxation

#### § 12. Taxable value

(1) Except in the cases provided for in subsections (2)-(9) of this section, the taxable value of taxable supply is the selling price of goods or services to which all other amounts to be paid by the recipient of the goods or services to the seller of the goods or services, excluding the tax established by this Act, are added.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(2) For the purposes of a financial lease, the taxable value is the down payment for the asset, including interest, to be paid to the financial lessor as part of the financial lease payment during a taxable period.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(3) For the purposes of an operating lease, the taxable value is the amount due during a taxable period pursuant to the contract.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(4) For the purposes of a hire purchase, the taxable value is the selling price, excluding interest, of the goods sold on hire purchase.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(5) For the purposes of the provision of services which consists of intermediation of the sale of goods, services, immovables, structures as movables, money or securities which belong to other persons, the taxable value is the commission under the conditions and pursuant to the procedure established by the Minister of Finance.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(6) For the purposes of an exchange of goods or services, or of a transfer thereof without charge or for a price lower than the usual value, the taxable

value is the average local selling price (hereinafter market price) of the goods or services, from which the tax established by this Act is deducted. If the Tax Board finds that the reported taxable value of goods or services is lower than the market price, the Tax Board may determine that the market price is the taxable value of the taxable supply.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(7) (Repealed - 09.10.97 entered into force 06.11.97 - RT I 1997, 74, 1232)

(7<sup>1</sup>) For the purposes of the consumption of goods or services by a taxable person in the cases provided for in subsection 3 (2) of this Act, the taxable value is the market price of the goods or services.

(24.10.96 entered into force 06.11.96 - RT I 1996, 76, 1344)

(8) For the purposes of the importation of goods for free circulation or importation of leased goods subject to re-exportation, except in the cases specified in subsections (8<sup>1</sup>) and (8<sup>2</sup>) of this section, the taxable value is the customs value of the goods according to the Customs Valuation Act (RT I 1995, 20, 298; 1999, 83, 756), including all import charges but excluding value added tax.

(12.06.96 entered into force 06.07.96 - RT I 1996, 44, 845; 27.06.96 entered into force 29.07.96 - RT I 1998, 51, 968)

(8<sup>1</sup>) (Repealed - 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(8<sup>2</sup>) The minimum taxable value of imported used motor vehicles shall be determined pursuant to the procedure established by the Government of the Republic.

(27.06.96 entered into force 29.07.96 - RT I 1996, 51, 968)

(9) For the purposes of the re-importation of goods exported for outward processing, the taxable value is the value of the materials added and services provided by the processor, including the costs of loading, packing, transporting and insuring the goods to the Estonian customs frontier, and including all import charges but excluding value added tax.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(10) Upon exportation of goods from the Estonian customs territory the taxable value of the goods is determined pursuant to the principles provided for

in the Customs Valuation Act (RT I 1995, 20, 298; 1999, 83, 756), whereas the value of the goods is deemed to be the cost thereof together with loading, packing, transport and insurance expenses until the Estonian customs frontier. Upon re-exportation of goods imported into Estonia for outward processing, the taxable value is the cost of the materials added and services provided by the processor, together with the loading, packing, transport and insurance expenses of the goods until the Estonian customs frontier.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

### § 13. Tax rate

(1) The rate of value added tax shall be 18 per cent of the taxable value provided for in § 12 of this Act, unless a different tax rate is prescribed by this Act.

(23.09.98 entered into force 01.01.99 - RT I 1998, 86/87, 1410)

(1<sup>1</sup>) The rate of value added tax on the following goods and services shall be 5 per cent:

1) books, except for textbooks and workbooks specified in clause (2) 4) of this section.

2) medicinal products, medical equipment and products necessary for the provision of health services and conduct of medical examinations, technical aids for disabled persons, and disinfectants registered for professional use in the Health Protection Inspectorate, pursuant to the list approved by the Minister of Social Affairs;

(17.11.1999 entered into force 01.01.2001 - RT I 1999, 92, 823)

3) handling of hazardous waste.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(2) The rate of value added tax on the following shall be 0 per cent:

1) the export of goods and services:

2) theatre performances and concerts organised by theatres and concert organisations in the list approved by the Minister of Culture;

3) periodicals sold under a subscription;

4) basic school and upper secondary school textbooks and workbooks approved by the Ministry of Education.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(3) Goods and services sold in Estonia to legal persons and agencies specified in subsection 5 (4) for money allocated from foreign loans taken by the state or given as state foreign aid by organisations entered in the list approved by the Government of the Republic shall be subject to the value added tax rate of 0 per cent under the conditions established by the Minister of Finance.

(12.06.96 entered into force 01.01.98 - RT I 1996, 44, 845; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(3<sup>1</sup>) In addition to the provisions of subsections (2) and (3) of this section, the Government of the Republic has the right to permit, as an exception, the application of the value added tax rate of 0 per cent to the sale of goods or services to persons not specified in subsection 5 (4) of this Act for money received as irrecoverable foreign aid within the framework of European Union aid programmes or state foreign aid programmes of foreign states, or allocated from foreign loans taken by the state.

(11.06.97 entered into force 10.07.97 - RT I 1997, 48, 776; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(4) Export of services means:

1) the provision of services outside the Estonian customs territory;

2) services specified in the list established by the Minister of Finance which are provided in Estonia to a foreign legal person located outside the Estonian customs territory which does not engage in enterprise in Estonia within the meaning of this Act and does not have in Estonia a branch or a permanent establishment registered pursuant to the procedure provided for in § 11<sup>4</sup> of the Taxation Act or in the case when the provision of the services is not related to its branch or permanent establishment registered in Estonia;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

3) the provision of services to foreign missions of the Republic of Estonia;

4) services related to the international carriage of goods or passengers, according to the list established by the Minister of Finance;

5) the provision of tourism services to non-resident natural persons in Estonia on the basis of tourism service packages sold to them by non-residents outside the Estonian customs territory;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

5<sup>1</sup>) the sale of tourism services outside the Estonian customs territory for the servicing of tourists travelling from Estonia to foreign states;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

6) intermediation of transactions between sellers and purchasers of goods or services if the goods are used outside the Estonian customs territory or if the object of intermediation is the export of services.

(12.06.96 entered into force 01.01.98 - RT I 1996, 44, 845)

(5) The Minister of Economic Affairs shall establish the list of tourism services specified in clauses (4) 5) and 5<sup>1</sup>) of this section.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

§ 14. Refund of value added tax paid upon purchase of goods or services

(09.06.94 entered into force 01.07.94 - RT I 1994, 45, 721)

(1) Value added tax paid by foreign diplomatic representatives, consular agents and representatives of special missions accredited to Estonia and foreign diplomatic representations and consular posts and representations of international and intergovernmental organisations and co-operation programmes upon the purchase of certain goods or services shall be refunded.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(2) The list of goods and services specified in subsection (1) of this section and the procedure for the refund of value added tax shall be established by the Minister of Finance.

(3) Value added tax paid by legal persons and agencies specified in subsection 5 (4) of this Act in Estonia upon the purchase of goods and services with money given to them as state foreign aid shall be refunded under the conditions and pursuant to the procedure established by the Minister of Finance.

(09.06.94 entered into force 01.07.94 - RT I 1994, 45, 721; 12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845; 17.11.99 entered into force 01.01.2000 - RT I 1999, 92, 823)

(3<sup>1</sup>) In addition to the provisions of subsection (3) of this section, the Government of the Republic has the right to permit, as an exception, the refund of value added tax paid by persons not specified in subsection 5 (4) of this Act upon the purchase of goods or services with money received by such persons as irrecoverable foreign aid within the framework of European Union aid programmes or state foreign aid programmes of foreign states, or allocated from foreign loans taken by the state, in the case of transactions to which the provisions of subsection 13 (3<sup>1</sup>) of this Act cannot be applied.

(Applicable as of 01.01.1997 pursuant to 11.06.97 entered into force 10.07.97 - RT I 1997, 48, 776; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(4) (4) The value added tax which non-residents who are in their respective home countries are registered as persons liable to value added tax pay in Estonia upon purchase of goods and services relating to the activities carried out by such non-residents in Estonia shall be refunded under the conditions and pursuant to the procedure established by the Minister of Finance if, pursuant to this Act, the taxable persons registered in Estonia have the right to deduct the value added tax paid upon the purchase of such goods and services from the value added tax calculated on their taxable supply. Value added tax shall be refunded to the residents of such countries in which the value added tax paid by Estonian undertakings upon the purchase of goods and services is refunded, on the condition that such non-residents do not have a branch in Estonia or a permanent establishment registered in a local Tax Board office, or if the purchase of the corresponding goods or services is not related to the non-resident's branch or permanent establishment in Estonia.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(4<sup>1</sup>) A value added tax refund is transferred to a bank account specified in an application submitted in the format established by the Minister of Finance. If a bank account is opened in a credit institution outside the Estonian customs territory, the expenses relating to the transfer shall be covered by the person applying for the refund of value added tax.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(4<sup>2</sup>) The Minister of Finance has the right to establish a list of goods and services the value added tax paid upon the purchase of which shall not be refunded to non-residents even though the taxable persons registered in Estonia have the

right to deduct the value added tax paid upon the purchase of such goods and services from the value added tax calculated on their taxable supply.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(5) The Government of the Republic may establish incentives for the refund of value added tax paid by persons and agencies specified in subsection (1) of this section upon the purchase of goods and services, on the condition that the same incentives are guaranteed to the corresponding Estonian persons and agencies in the foreign state.

(08.10.97 entered into force 06.11.97 - RT I 1997, 74, 1231)

#### § 15. Time of supply

(1) For the purposes of this Act but excluding the provisions of subsections (2) and (3) of this section, the time of supply is deemed to be the earliest moment at which one of the following acts is performed:

1) dispatch or making available of a good to a purchaser, intermediary or broker, or provision of a service;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

2) issue of an invoice for a good or service;

3) payment for a good or service;

4) consumption of a good or service by a taxable person, in the cases provided for in subsection 3 (2) of this Act;

5) (Repealed - 09.10.97 entered into force 06.11.1997 - RT I 1997, 74, 1232)

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(2) In the case of regular or constant transfers of goods or services specified in a list established by the Minister of Finance to the same purchaser, the time of supply is deemed to be the month in which the goods are dispatched or made available to the purchaser, or the services are provided. In the case of an operating lease of immovable or movable property or financial lease of goods, the time of supply is deemed to be each month during which the goods or property are leased.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(3) If any of the acts specified in clauses (1) 1)-3) of this section are performed before the duties provided for in § 10 of this Act arise, a registered taxable person is required to calculate value added tax on the taxable value of the transaction only if the goods are dispatched or made available to the purchaser or the services are provided during the period in which such duties apply to the taxable person.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(3<sup>1</sup>) In the case of the purchase of a right to cut standing crop, of timber, sawn timber or the transport and manufacturing services of the timber from another registered taxable person, supply is deemed to take place upon the receipt of the invoice for the right to cut standing crop, the timber, sawn timber or the transport and manufacturing services of the timber.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823; 06.03.2001 entered into force 01.04.2001 - RT I 2001, 26, 148)

(4) In the case of imports, the taxable supply is deemed to take place upon the entry of the goods into the Estonian customs territory or upon the release thereof from the preliminary customs procedure if the goods are released for free circulation pursuant to the procedure provided for in the Customs Act.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(5) If the time of supply is the moment of payment for goods or services, value added tax shall be calculated pursuant to the procedure established by the Minister of Finance.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

#### § 16. Place of supply

The place of supply is Estonia if:

1) the goods are imported into Estonia, delivered or made available to the recipient in Estonia, or exported from Estonia;

2) the person providing a service engages in enterprise in Estonia or the provider of the service is an undertaking or other legal person registered in Estonia, except in the cases specified by the Minister of Finance.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

#### § 17. Taxable period and value added tax return

(1) For the purposes of the supply of goods in free circulation in Estonia and services provided in Estonia, the taxable period for value added tax shall be one calendar month. Upon the import of goods, value added tax shall be imposed pursuant to the procedure for payment of import charges provided by the customs rules.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(2) The Tax Board may establish a taxable period other than one calendar month for a taxable person.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(3) Value added tax returns shall be submitted by the twentieth day of the month following the taxable period. If a taxable period other than one calendar month is established for a taxable person pursuant to subsection (2) of this section, the due date for the submission of value added tax returns shall be specified by the Tax Board.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(4) Persons registered as a single taxable person shall submit value added tax returns separately but are solidarily liable for payment of value added tax by the due date. In the case the decision concerning registration as a single taxable person is annulled, the taxable persons shall be solidarily liable for the value added tax arrears which arose during the taxable periods in which they were registered as a single taxable person

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(5) Upon the amendment of information submitted in a value added tax return concerning a previous taxable period, a registered taxable person is required to submit a new value added tax return with amended information to the Tax Board concerning the corresponding taxable period.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

#### § 18. Calculation of amount of tax due

(1) The value added tax to be paid by a registered taxable person is the value added tax calculated on taxable supply during a taxable period according to the tax rates specified in § 13 of this Act, from which the following has been deducted:



1) value added tax paid for goods and services which are purchased from other registered taxable persons during the taxable period and which are used for the purposes of enterprise;

2) value added tax paid during the taxable period on goods imported for the purposes of enterprise.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(2) The consumption of goods or services by a taxable person in the cases specified in subsection 3 (2) of this Act is deemed to be equal to the use of goods or services for the purposes of enterprise.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(3) If a registered taxable person uses goods or services both for the purposes of enterprise or consumption equivalent thereto and for self-consumption in other cases, the value added tax paid upon the purchase of the corresponding goods or services shall be deducted pursuant to the procedure established by the Minister of Finance.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(3<sup>1</sup>) Upon the sale of a right to cut standing crop, of timber, sawn timber or the transport and manufacturing services of the timber by one registered taxable person to another registered taxable person, the value added tax specified in the invoice concerning the transaction shall be paid by the purchaser and the purchaser shall pay to the seller only the selling price without the value added tax. Upon the purchase of a right to cut standing crop, of timber, sawn timber or the transport and manufacturing services of the timber, the value added tax is deducted pursuant to the procedure provided for in this Act.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823; 06.03.2001 entered into force 01.04.2001 - RT I 2001, 26, 148)

(4) Value added tax paid by a registered taxable person shall not be deducted from value added tax calculated on taxable supply:

1) upon payment for goods or services used for the purposes of the reception of guests or provision of meals or accommodation for the employees of the registered taxable person;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

2) upon the purchase or financial lease of automobiles or upon the purchase of motor fuel used for automobiles, except in the cases provided for in subsection (4<sup>1</sup>) of this section.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(4<sup>1</sup>) Value added tax paid upon the purchase or financial lease of automobiles by a taxable person who is engaged the sale of automobiles or in the operating or financial lease of movable property and whose articles of association prescribe such area of activity, shall be deducted from the value added tax calculated on taxable supply. Value added tax shall be deducted on the condition that such taxable persons do not use automobiles which they purchase for the purposes of sale or lease for their own purposes.

(24.10.96 entered into force 01.10.96 - RT I 1996, 76, 1344; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(5) A taxable person has the right to deduct the value added tax to be paid on goods and services purchased for the construction or repair of a structure constructed for the purposes of the person's taxable supply from the value added tax calculated on the person's taxable supply, according to the proportion in which the structure is used for the purposes of taxable supply; a taxable person also has the right to deduct the value added tax to be paid on goods and services purchased for the purposes of construction or repair services subject to value added tax from the value added tax calculated on the person's taxable supply. If a building used for the purposes of taxable supply is transferred or leased on the basis of a financial lease contract within five calendar years after the year in which the permit to use the structure was received or if a construction is transferred or leased on the basis of a financial lease contract within five years after the year in which the construction was registered in the taxable person's accounts or if within five years after the year in which the right to use a building was received or after the year in which a construction was registered in the taxable person's accounts, the building or construction is taken into use for the purposes of supply exempt for tax, as a dwelling or for the performance of the functions of the state or a local government, the value added tax which was paid upon the purchase of goods or services included in the acquisition cost of the structure and which was deducted from the value added tax calculated on the taxable supply of the taxable person shall be recalculated pursuant to the procedure established by the Minister of Finance. For the purposes of this Act, structures are deemed to be buildings for which a permit for use has been granted and constructions as defined in the

Planning and Building Act (RT I 1995, 59, 1006; 1996, 36, 738; 49, 953; 1999, 27, 380; 29, 398 and 399; 95, 843; 2000, 54, 348).

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(5<sup>1</sup>) The value added tax to be paid on goods or services purchased for the construction or repair of a structure shall not be deducted if the structure is constructed for one of the purposes specified in the second sentence of subsection (5) of this section or if a structure constructed for one of the aforementioned purposes is repaired. The value added tax to be paid on goods and services purchased for the purposes of use in dwellings shall not be deducted.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(5<sup>2</sup>) The deducted value added tax provided for in subsection (5) of this section shall not be recalculated upon transfer of a structure to a credit or financial institution if the person who transfers the structure leases the structure from the credit or financial institution on the basis of a commercial lease contract during the same period of taxation when it is transferred and continues to use the structure for the purposes of the person's taxable supply within the term specified in the same subsection.

(20.02.2001 entered into force 01.04.2001 - RT I 2001, 23, 129)

(6) The deductions provided for in subsection (1) of this section shall be permitted on the basis of an original invoice which complies with the requirements provided for in § 24 of this Act, or a declaration of goods for import and a document certifying payment of value added tax upon the import of goods.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(7) Value added tax shall be deducted during the taxable period in which the goods or services and the invoice from the seller of the goods or services are received, or in which the goods or services are received and value added tax upon import is paid; advance payments made to the customs authorities are deemed not to be payment of value added tax. If the goods are received and value added tax upon import is paid during different taxable periods, the value added tax shall be deducted during the period in which both conditions are fulfilled. If, upon the purchase of goods or services in Estonia, goods or services and the invoice for such goods or services are received during different taxable periods, the value added tax shall be deducted during the

taxable period in which the goods or services are received, on the condition that the invoice for the goods or services is submitted during the term provided for in subsection 24 (7) of this Act. If, in the last case mentioned, the submission of the invoice is delayed, the value added tax shall be deducted during the taxable period in which the invoice submitted for the goods or services is received. If a taxable person receives goods or services before the rights and obligations of a registered taxable person extend to the taxable person, the value added tax is permitted to be deducted only in the case specified in § 23 of this Act, regardless of the time of submission of the invoice.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(8) Deduction of value added tax is permitted only on the basis of an original invoice. If the taxable value of goods or services purchased for money in Estonia exceeds 50 000 kroons per transaction, deduction is permitted in the case the payment for the goods or services is carried out in full through a credit institution either by a bank transfer or a cash payment made to the bank account of the seller. The value added tax paid upon importation of goods is permitted to be deducted regardless of whether the corresponding goods were paid for by a bank transfer or in cash.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(9) If import charges are paid through a customs clearing agent who holds a certificate issued by the Customs Board, the value added tax paid upon the import of goods shall be deducted from the value added tax calculated on taxable supply pursuant to the procedure established by the Minister of Finance.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(10) If a seller receives money from a purchaser but the goods or services are not transferred, the seller is permitted to cancel the calculation of value added tax on such goods or services if the seller refunds the amount received to the purchaser. If a seller submits an invoice to a purchaser but the goods or services are not transferred, the seller is permitted to make a recalculation of the value added tax with regard to the invoice if three months have passed from the issue of the invoice or if the purchaser has given written notice of renunciation of the order to purchase the goods or services.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

§ 19. Receipt of value added tax

(1) Value added tax shall be paid into the state budget.

(2) Value added tax shall be paid in full kroons.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

§ 20. Refund of value added tax to taxable person

(1) If value added tax calculated on taxable supply during a taxable period is less than the amount of value added tax paid by the registered taxable person upon the purchase of goods and services during the same period, the overpaid amount of value added tax shall be refunded to the taxable person pursuant to the procedure provided for in § 10 of the Taxation Act (RT I 1994, 1, 5; 2000, 45, 279; 55, 365; 84; 533, 534).

(2) In connection with the audit of a taxable person, the Tax Board has the right to extend the term for refund of value added tax by up to thirty days from the due date for the refund of value added tax. The Tax Board is required to notify the taxable person in writing of the extension of the term for refund of value added tax within twenty days after receipt of an application for the refund of value added tax, and shall indicate the reason for extension of the term for the refund of value added tax in the notice.

(3) Upon the refund of overpaid amounts of value added tax to taxable persons registered as a single taxable person, the overpaid amounts of value added tax shall be calculated separately for each of the taxable persons. Overpaid amounts of value added tax shall be refunded pursuant to the provisions of subsections (1) and (2) of this section on the basis of the value added tax returns submitted by such persons.

(19.11.98 entered into force 01.12.98 - RT I 1998, 103, 1702)

§ 21. Partial deduction of value added tax paid upon purchase

(1) If a registered taxable person uses goods purchased from other registered taxable persons which are produced in Estonia or imported into Estonia and are in free circulation, or uses services purchased from other registered taxable persons and provided in Estonia, or uses goods imported by the registered taxable person for the purpose of both supply subject to taxation and exempt supply, the value added tax paid upon purchase shall be partially deducted.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(2) Upon the partial deduction of value added tax, either the method of proportional deduction or the method combining direct calculation and proportional deduction shall be used during the same calendar year. With the consent of the Tax Board, a special method combining direct calculation and proportional deduction may be used, in which case, upon the purchase of goods or services necessary for certain areas of activity, the value added tax is deducted according to the proportion of the taxable supply of the registered taxable person to the supply which in such area of activity has taken place in whole Estonia. At the end of a calendar year, the proportional deduction of value added tax shall be recalculated according to the ratio of the taxable supply of the registered taxable person to the total supply of the taxable person in Estonia during the calendar year.

(07.11.96 entered into force 08.12.96 - RT I 1996, 81, 1447; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(3) The procedure for partial deduction of value added tax, recalculation of such partial deduction at the end of the calendar year and reporting thereof in a value added tax return shall be established by the Minister of Finance.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(4) With the approval of the Tax Board, a person is permitted during a year to change the ratio of supply subject to taxation and supply exempt from tax used for deduction of value added tax paid upon purchase.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(5) Amounts of value added tax paid and deducted upon the purchase of fixed assets for the purposes of enterprise by a person shall be adjusted within three years according to the actual proportion of the use of the fixed assets for the purposes of taxable supply, pursuant to the procedure established by the Minister of Finance.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

(6) (Repealed - 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

§ 22. Sale and sale by auction of used goods

(1) If used goods are sold by commission sale, the broker shall pay value added tax on the commission.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383)

(1<sup>1</sup>) If used goods and things of cultural value are bought in Estonia from a person not registered as a taxable person and resold, the reseller shall pay value added tax on the difference between the selling price net of VAT and the purchase price of the resold goods and things of cultural value. Only positive price difference upon resale is taken into account in the imposition of value added tax.

(14.11.2000 entered into force 01.01.2000 - RT I 2000, 89, 581)

(2) The provisions of subsections (1) and (1<sup>1</sup>) of this section apply only if goods specified therein are not sold in lots and they are sold separately from new goods.

(14.11.2000 entered into force 01.01.2000 - RT I 2000, 89, 581)

(3) The organiser of an auction shall pay value added tax on the supply of a sale by auction from the fee received for intermediating the goods.

§ 23. Deduction of value added tax paid on goods purchased before registration

(1) If a registered taxable person has inventory which was purchased before the date on which the rights and duties of a registered taxable person arose with regard to the taxable person, and if the registered taxable person has paid value added tax on such goods, the registered taxable person has the right, with the permission of the Tax Board, to deduct the amounts of value added tax paid on such goods from the value added tax calculated on the taxable supply of the registered taxable person, on the basis of an invoice which complies with the requirements provided for in subsection 24 (1) of this Act or on the basis of a declaration of goods for import.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383)

(2) The amounts specified in subsection (1) of this section shall be deducted during the period and pursuant to the procedure provided by the Tax Board.

§ 24. Invoices

(1) Except in the cases specified by the Minister of Finance pursuant to the provisions of subsection (2) of this section, a registered taxable person is required, upon the transfer of goods or services, to submit an invoice to the purchaser during the term specified in subsection (7) of this section, which shall set out:

1) the name, address, registration number or personal identification code and the number of registration as a person liable to value added tax of the seller;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

2) the number and date of issue of the invoice;

3) the name and address of the purchaser;

4) the name, quantity, and price in kroons of the goods or services, and the total cost of the goods or services with and without value added tax separately by different rates of value added tax;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

5) the taxable value of the goods or services if different from the price specified in clause 4) of this section;

6) the amounts of value added tax separately by different tax rates;

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

7) the date of delivery of the goods or provision of the services if different from the date of issue of the invoice;

8) (Repealed - 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(2) The Minister of Finance has the right to specify cases in which registered taxable persons are not required to submit invoices to purchasers. On the application of a purchaser, a registered taxable person is always required to issue an invoice which complies with the requirements provided for in subsection (1) of this section to the purchaser.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383; 24.10.96 entered into force 06.11.96 - RT I 1996, 76, 1344)

(3) In the case of the regular provision of services or transfer of goods, a registered taxable person has the right to issue an invoice which complies with the requirements provided for in subsection (1) of this section to the purchaser once a month. If the total cost together with value tax of the goods and services which a registered taxable person transfers during a calendar month to a regular purchaser who is a natural person and does not engage in enterprise does not exceed 250 kroons, the taxable person has the right to issue an invoice in compliance with the requirements provided for in subsection (1) of this

section to such purchaser once for a period of up to six months.

(17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(4) A person who is not a registered taxable person shall not indicate the amount of value added tax on an invoice or other document.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383)

(5) A registered taxable person shall not indicate, on an invoice submitted to a purchaser of goods or services, value added tax:

1) on goods or services the supply of which is exempt from tax pursuant to § 5 of this Act;

2) on transactions which pursuant to this Act are not objects of value added tax;

3) on objects of sale which are not goods or services as defined in this Act;

4) on goods or services subject to a value added tax rate of 0 per cent.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383)

(6) If an invoice or other document on which an amount of value added tax is indicated is issued in violation of the requirements provided for in subsection (4) or (5) of this section, the person who issues the document is required to pay the amount of value added tax indicated on the invoice or other document issued by the person concerning the sale of goods or services into the state budget by the twentieth day of the following month, regardless of whether the amount is otherwise payable. If the amount of value added tax indicated on an invoice or other document concerning the sale of goods or services is calculated according to a rate higher than the rate of value added tax established by this Act for the supply of the corresponding goods or services, the person who issues the document is required to pay the amount of value added tax indicated on the invoice or other document issued by the person concerning the sale of goods or services into the state budget by the twentieth day of the following month, regardless of whether the amount is otherwise payable.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(7) A registered taxable person is required to submit an invoice to a purchaser within seven calendar days after the date on which goods are

dispatched or made available to the purchaser or on which services are provided. If, pursuant to subsection (3) of this section, a taxable person has the right to submit an invoice to a purchaser once a month, the taxable person is required to submit the invoice not later than on the seventh day of the month following the month during which the goods are dispatched or made available to the purchaser or during which the services are provided. If, pursuant to the same subsection, a taxable person has the right to submit an invoice to a purchaser who is a natural person once for a period of up to six months, the taxable person is required to submit the invoice not later than on the seventh day of the month following the period during which the goods are dispatched or made available to the purchaser or the services are provided and for which the invoice is submitted.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

§ 25. Procedure for preservation of invoices and maintenance of records

(1) A registered taxable person is required to preserve copies of all invoices issued by the taxable person, all invoices received certifying payment of value added tax upon the purchase of goods or services, and declarations of goods for import certifying payment of value added tax on imports, in chronological order for seven years after the date of issue or receipt of the invoices.

(2) The procedure for the daily and monthly maintenance of records by registered taxable persons shall be established by the Minister of Finance.

§ 26. Termination of activities

(1) The supply of goods and services transferred upon termination of the activities of a registered taxable person, upon the merger, division or transformation of a company, or in the course of bankruptcy proceedings shall be subject to value added tax, except in the cases provided for in clauses 3 (4) 4) and 7) of this Act.

(2) If a registered taxable person who is a sole proprietor has transferred all the assets of the taxable person upon liquidation of the activities of the taxable person, the taxable person shall submit a value added tax return to the Tax Board and shall pay the prescribed value added tax. After fulfilment of the obligation to pay taxes which are due, the Tax Board shall delete the taxable person from the register.

(12.06.96 entered into force 01.09.96 - RT I 1996, 44, 845)

Chapter IV

Final Provisions

§ 27. Supply on basis of earlier contracts

Value added tax established by this Act shall also be applied to taxable supply which takes place on the basis of contracts entered into before the entry into force of this Act if the supply takes place on or after the date of entry into force of this Act.

§ 28. Implementation of Act

(1) Upon the entry into force of this Act, persons are deemed to be registered if they are registered as persons liable to value added tax pursuant to the Republic of Estonia Value Added Tax Act (RT 1991, 36, 447; 1992, 34, 440; RT I 1993, 35, 548; 60, 847) and:

1) their taxable supply, excluding imports, during the period of 1 December 1992 to 1 December 1993 exceeded 130 000 kroons;

2) they were engaged in enterprise for a shorter time than the period specified in clause 1) of this subsection but their average monthly taxable supply, excluding imports, exceeded 12 500 kroons.

(2) The duties provided for in § 10 of this Act extend to persons specified in subsection (1) of this section as of the date of entry into force of this Act.

(3) All persons registered as persons liable to value added tax pursuant to the Republic of Estonia Value Added Tax Act (RT 1991, 36, 447; 1992, 34, 440; RT I 1993, 35, 548; 60, 847) are required to submit value added tax returns for the last taxable period of 1993 by 20 January 1994 and to pay value added tax pursuant to the procedure prescribed in the Republic of Estonia Value Added Tax Act.

(4) Until 30 June 2000, the rate of value added tax on heat sold to the public, dwelling associations, apartment associations, churches and congregations, and to agencies and organisations financed from the state budget and local budgets shall be 0 per cent.

(30.06.94 entered into force 21.07.94 - RT I 1994, 50, 847; 28.06.95 entered into force. 01.07.95 - RT I 1995, 57, 975; 12.06.96 entered into force. 01.07.96 - RT I 1996, 44, 845; 15.05.97 entered into force 01.07.97 - RT I 1997, 40, 621; 10.06.98 entered into force 01.07.98 - RT I 1998, 57, 863; 27.05.1999 entered into force 01.07.1999 - RT I 1999, 52, 558)

(4<sup>1</sup>) Until 30 June 2000, the rate of value added tax on peat, briquettes, coal and fuel wood sold to the public shall be 0 per cent.

(22.02.95 entered into force 01.04.95 - RT I 1995, 31, 383; 28.06.95 entered into force. 01.07.95 - RT I 1995, 57, 975; 12.06.96 entered into force. 01.07.96 - RT I 1996, 44, 845; 15.05.97 entered into force 01.07.97 - RT I 1997, 40, 621; 10.06.98 entered into force 01.07.98 - RT I 1998, 57, 863; 27.05.1999 entered into force 01.07.1999 - RT I 1999, 52, 558)

(4<sup>2</sup>) The initial sale of goods imported for agricultural purposes by the state owned public limited company Eesti Agrovarustus out of the rehabilitation loan received from the World Bank and the rehabilitation loan received from the Export-Import Bank of Japan, on the basis of contract No. 5-8-93 of 29 December 1993, contract No. 1-11-94 of 19 September 1994 and contract No. 5-10-94 of 9 May 1994 entered into with the Ministry of Finance, shall be exempt from value added tax.

(12.06.96 entered into force 06.07.96 - RT I 1996, 44, 845)

(4<sup>3</sup>) Until 31 December 2006, the rate of value added tax on electricity generated by wind and hydro-electricity shall be 0 per cent.

(28.01.97 entered into force 01.04.97 - RT I 1997, 11, 96)

(4<sup>4</sup>) Exemptions of value added tax for imported goods and other property for the import of which an exemption from value added tax has been provided pursuant to subsection 5 (5) of this Act and the contract of purchase and sale concerning which is entered into before 1 January 2000 are applied until 30 June 2000.

(16.12.1999 entered into force 01.01.2000 - RT I 1999, 101, 906)

(5) The export of goods or services shall be certified pursuant to the procedure established by the Minister of Finance.

(12.06.96 entered into force 06.07.96 - RT I 1996, 44, 845; 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(6) (Repealed - 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(7) (Repealed - 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(8) (Repealed - 17.11.1999 entered into force 01.01.2000 - RT I 1999, 92, 823)

(9) Until 30 June 2005, the rate of value added tax on heat sold to the public, dwelling associations, apartment associations, churches and congregations, and to agencies and organisations financed from the state budget and local budgets shall be 5 per cent.

(14.06.2000 entered into force 01.07.2000 - RT I 2000, 51, 328; 17.01.2001 entered into force 16.02.2001 - RT I 2001, 16, 67)

(10) Until 30 June 2005, the rate of value added tax on peat, briquettes, coal and fuel wood sold to the public shall be 5 per cent.

(14.06.2000 entered into force 01.07.2000 - RT I 2000, 51, 328; 17.01.2001 entered into force 16.02.2001 - RT I 2001, 16, 67)

#### § 29. Repeal of earlier legislation

The Republic of Estonia Value Added Tax Act (RT 1991, 36, 447; 1992, 34, 440; RT I 1993, 35, 548; 60, 847) is repealed.

#### § 30. Entry into force of Act

This Act enters into force on 1 January 1994.

#### 5.6.3. Income tax law

##### Income Tax Act

Passed 15 December 1999

RT I 1999, 101, 903; consolidated text RT I 2001, 11, 49,

#### Chapter 1

##### General Provisions

#### § 1. Object of taxation

(1) Income tax is imposed on the income of a taxpayer from which the deductions allowed pursuant to law have been made.

(2) Income tax prescribed in § 48 is imposed on fringe benefits granted to a natural person.

(3) Income tax prescribed in §§ 49-52 is imposed on gifts, donations and costs of entertaining guests, distributed profit, and expenses and payments not related to business, made by a resident legal person.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

(4) Income tax prescribed in § 53 is imposed on fringe benefits granted by a non-resident and on gifts, donations and costs of entertaining guests, profit distributions, and expenses and payments not related to business, made by a non-resident through a permanent establishment.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

#### § 2. Taxpayer

(1) Income tax specified in subsection 1 (1) is paid by natural persons and non-resident legal persons who derive taxable income.

(2) Income tax specified in subsection 1 (2) is paid by employers who are natural persons and by resident legal persons, non-residents having a permanent establishment or operating as employers in Estonia, and Estonian state and local government authorities who grant taxable fringe benefits.

(3) Income tax specified in subsection 1 (3) is paid by resident legal persons.

(4) Income tax specified in subsection 1 (4) is paid by non-resident legal persons which have a registered permanent establishment (§ 7) in Estonia.

#### § 3. Period of taxation

(1) The period of taxation for income tax specified in subsection 1 (1) is one calendar year.

(2) The period of taxation for income tax specified in subsections 1 (2)-(4) is one calendar month.

#### § 4. Tax rates

(1) Except in the cases specified in subsections 4 (2) and 43 (4), the rate of income tax specified in subsection 1 (1) is 26 per cent.

(2) The rate of income tax for income specified in subsections 21 (2) and (3) is 10 per cent.

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

(3) The rate of income tax specified in subsections 1 (2)-(4) is 26/74.

#### § 5. Receipt of tax

(1) Income tax paid by resident natural persons is received as follows:

1) without taking into account the deductions provided for in Chapter 4, 11.4 per cent of the taxable income of a resident natural person is received by the local government of the taxpayer's residence;

2) that part of the income tax which exceeds the amount specified in clause 1), and income tax paid on pensions and gains derived from the transfer of property are received by the state.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(1<sup>1</sup>) Income tax paid by a non-resident is received by the state.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) The place of residence of a resident natural person as indicated on 1 January of a calendar year in the register of taxable persons maintained by the Tax and Customs Board is deemed to be his or her place of residence throughout the same calendar year. If the Tax and Customs Board does not have information concerning the place of residence of a resident natural person, the income tax paid by the person shall be divided between the local governments in proportion to their rated percentage according to the principle specified in subsection (1). Income tax shall be transferred to local governments and their rated percentages shall be calculated pursuant to the procedure established by a regulation of the Minister of Finance.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(3) Income tax specified in subsections 1 (2)-(4) is received by the state.

## Chapter 2

### Definitions Used in Act

#### § 6. Resident

(1) A natural person is a resident if his or her place of residence is in Estonia or if he or she stays in Estonia for at least 183 days over the course of a period of 12 consecutive calendar months. A person shall be deemed to be a resident as of the date of his or her arrival in Estonia. Estonian state public servants who are in foreign service are also residents. A resident natural person shall pay income tax on all income derived by him or her in Estonia and outside Estonia, regardless of whether the income is listed in §§ 13-22 or not.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) A legal person is a resident if it is established pursuant to Estonian law. A resident legal person shall pay income tax on the objects of taxation prescribed in §§ 48-52 and withhold income tax from payments listed in § 41.

(3) A non-resident is a natural or legal person not specified in subsections (1) or (2). A non-resident shall pay income tax pursuant to the provisions of § 29 only on income derived from Estonian sources. Unless otherwise prescribed in this Act, the income of a non-resident legal person shall be declared and income tax shall be imposed, withheld and paid pursuant to the same conditions and procedure as in the case of a non-resident natural person.

(3<sup>1</sup>) The income of foreign associations of persons or pools of assets without the status of a legal person is subject to taxation as the income of the shareholders or members of such association or pool in proportion to the sizes of their holdings. If the members or shareholders of an association or pool of assets are unknown or their residency is not proved, the income is attributed to the person who administers the assets of the association or the pool of assets or who concludes transactions in the name thereof. Income tax shall be withheld from payments made to such associations or pools of assets according to the provisions of law applicable to non-resident legal persons. If such association or pool of assets is located in a low tax rate territory (§ 10), income tax shall be withheld according to the provisions of law applicable to legal persons located in low tax rate territories.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(4) The income of branches of foreign companies entered in the Estonian commercial register and the income of other permanent establishments (§ 7) of non-resident legal persons registered with a regional tax centre of the Tax and Customs Board is subject to taxation pursuant to § 53. The provisions of subsection (3) of this section do not apply to taxation of income derived by such non-residents through their permanent establishments.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(5) If the residency prescribed on the basis of an international agreement ratified by the Riigikogu<sup>2</sup> differs from the residency prescribed pursuant to law or if the agreement prescribes more favourable conditions for taxation of the income of



non-residents than those provided by law, the provisions of the international agreement apply.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

#### § 7. Permanent establishment

(1) "permanent establishment" means the place through which the permanent economic activity of a non-resident is fully or partially carried out in Estonia.

- 1) a branch;
- 2) a centre of management, or an office, factory or workshop;
- 3) a building site, a place of construction, or an installation or assembly project;
- 4) a place where the examination or extraction of natural resources is carried out, as well as any supervisory activities related thereto;
- 5) a place for the provision of services (including management and consultation services).

(2) If a representative of a non-resident operates in Estonia and is authorised to carry out and repeatedly carries out transactions in the name of the non-resident, such non-resident is deemed to have a permanent establishment in Estonia with respect to the transactions carried out in Estonia by the representative in the name of the non-resident.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(3) When a non-resident carries on business in Estonia through a permanent establishment situated in Estonia, the income which the permanent establishment might be expected to derive if it were a distinct and separate taxpayer engaged in the same or similar activities under the same or similar conditions and dealing wholly independently of the non-resident of which it is a permanent establishment shall be attributed to the permanent establishment.

#### § 8. Associated persons

Persons are deemed to be associated if:

- 1) one person is the spouse, direct blood relative, sister or brother, descendant of a sister or brother, direct blood relative of the spouse, or a sister or brother of the spouse of the other person;

- 2) the persons are companies belonging to one group as defined in § 6 of the Commercial Code (RT I 1995, 26/28, 355; 1998, 91/93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596; 102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373; 2001, 24, 133; 34, 185; 56, 332; 336; 89, 532; 93, 565; 2002, 3, 6; 35, 214; 53, 336; 61, 375; 63, 387; 388; 96, 564; 102, 600; 110, 657; 2003, 4, 19; 13, 64; 18, 100; 78, 523; 88, 591);

- 3) one person owns more than 10 per cent of the share capital, total number of votes or rights to the profits of a legal person;

- 4) one person, together with other persons with whom the person is associated, owns more than 50 per cent of the share capital, total number of votes or rights to the profits of a legal person;

- 5) more than 50 per cent of the share capital, total number of votes or rights to the profits of legal persons belong to one and the same person;

- 6) the persons own more than 25 per cent of the share capital, total number of votes or rights to the profits of one and the same legal person;

- 7) all members of the management board or the bodies substituting for the management boards of legal persons are the same persons;

- 8) a person is an employee of another person, the employee's spouse or a direct blood relative;

- 9) a person is a member of the management or controlling body of a legal person (§ 9), or the spouse or a direct blood relative of a member of the management or controlling body.

#### § 9. Management or controlling body of legal person

- (1) A management or controlling body of a legal person is any authorised body or person who, pursuant to an Act governing the legal person, a partnership agreement, the articles of association or any other legislation regulating the activities of the legal person, has the right to participate in managing the activities of the legal person or in controlling the activities of the management body of the legal person.

- (2) Management or controlling bodies include management boards, supervisory boards, partners authorised to represent general or limited partnerships, procurators, founders until registration of the legal person, liquidators, trustees in bankruptcy, auditors, controllers and internal audit committees. Directors of branches of foreign companies and managers of permanent establishments (§ 7) registered at regional tax centres of the Tax and Customs Board are also deemed to be management bodies.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(3) The provisions of paragraphs (1) and (2) apply to both legal persons in private and public law and to resident and non-resident legal persons.

#### § 10. Low tax rate territory

(1) A low tax rate territory is a foreign state or a territory with an independent tax jurisdiction in a foreign state, which does not impose a tax on the profits earned or distributed by a legal person or where such tax is less than two-thirds of the income tax which a natural person who is an Estonian resident would, pursuant to this Act, have to pay on a similar amount of business income, without taking into account the deductions allowed under §§ 23-28. If taxes imposed on the income earned or distributed by different types of legal persons differ, a territory is deemed to be a low tax rate territory only with regard to legal persons in the case of whom the tax meets the conditions for low tax rate territories specified in the first sentence of this subsection.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

(2) A legal person is not deemed to be located in a low tax rate territory if more than 50 per cent of its annual income is derived from:

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

1) manufacturing of goods, trade in goods, and provision of transport, communications, accommodation and tourism services in the home country of the legal person, or provision of insurance services by a legal person holding an insurance activities licence;

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

2) chartering of freighting vessels.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(3) Without prejudice to the provisions of subsections (1) and (2), the Government of the Republic shall establish a list of territories which are not regarded as low tax rate territories.

#### § 11. List of non-profit associations and foundations benefiting from income tax incentives

(1) The Government of the Republic shall, by an order, approve a list of non-profit associations and foundations benefiting from income tax incentives (hereinafter the list).

(2) A legal person entered in the register of religious associations pursuant to the Churches and Congregations Act (RT I 2002, 24, 135; 61, 375) is deemed to be a non-profit association benefiting from income tax incentives without being included in the list and the provisions of subsections (3)-(7) do not apply thereto.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(3) A non-profit association (except a non-profit co-operative) or a foundation shall be entered in the list if the objective of the activities of the association or foundation is the charitable support of science, culture, education, sport, law enforcement, health care, social welfare, nature protection, or cultural autonomy of a national minority, or the support of religious associations or religious societies in the public interest, and if it meets the following requirements:

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

1) the association or foundation does not distribute its assets or income, grant material assistance or monetarily appraisable benefits to its founders, members, members of the management or controlling body (§ 9), nor to a spouse, direct blood relative, sister, brother, descendant relative of a sister or brother, direct relative of a spouse, or sister or brother of a spouse of any of the above mentioned persons;

2) upon the dissolution of the association or foundation, the assets remaining after satisfying the claims of creditors are transferred to a non-profit association or foundation pursuing similar goals or to a legal person in public law, the state or a local government;

3) the administrative expenses of the association or foundation do not exceed the rate justified by the nature of its activities and the objectives specified in its articles of association;

4) the association or foundation does not pay higher remuneration to its employees or members of the management or controlling body (§ 9) than is paid for similar work in business.

(4) The requirement prescribed in clause (3) 1) does not apply to social welfare support associations and disabled persons associations.

(5) A non-profit association or foundation is not included in the list if:

1) it is engaged in business as its principal activity or uses business income for purposes other than those specified in its articles of association;

2) it has tax arrears for which no payment schedule has been arranged;

3) it is undergoing dissolution or bankruptcy proceedings;

4) the documents submitted by the non-profit association or foundation for inclusion in the list do not meet the requirements established by legislation;

5) it has repeatedly failed to file reports or tax returns with the tax administrator during the terms and pursuant to the procedure prescribed by legislation.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(6) The Government of the Republic has the right to delete a non-profit association or foundation from the list if it becomes evident that the non-profit association or foundation does not meet the requirements prescribed in subsection (3) or if facts specified in subsection (5) appear, or

1) (Repealed - 11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

2) if the non-profit association or foundation has failed to report changes made in its articles of association to the regional tax centre of the Tax and Customs Board within thirty days after an entry concerning the change is made in the non-profit associations and foundations register, or

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

3) if the non-profit association or foundation derives income from activities not specified in its articles of association.

(7) The Government of the Republic shall establish the procedure for compiling the list, the documents to be submitted for the inclusion of a non-profit association or foundation in the list, and the procedure for inclusion of persons in and exclusion of persons from the list.

### Chapter 3

#### Taxation of Income of Resident Natural Persons

##### § 12. Income of resident natural person

(1) Income tax is charged on income derived by a resident natural person during a period of taxation from all sources of income in Estonia and outside Estonia, including:

1) income from employment (§ 13);

2) business income (§ 14);

3) gains from transfer of property (§ 15);

4) rent and royalties (§ 16);

5) interest (§ 17);

6) dividends (§ 18);

7) maintenance support, pensions, scholarships, grants, benefits, awards, lottery prizes (§19);

8) insurance indemnities and payments from pension funds (§§ 20, 20<sup>1</sup> and 21);

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

9) income of a legal person located in a low tax rate territory (§ 22).

(2) The taxable income of a natural person does not include fringe benefits, gifts and donations, dividends or other profit distributions subject to taxation pursuant to §§ 48-53.

(3) Any compensation for certified expenses incurred for the benefit of another person and any compensation for proprietary damage ordered by a court shall not be deemed to be taxable income of a natural person. The provisions of this subsection do not apply to compensation which is paid subject to separate terms, conditions and limits.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

##### § 13. Income from employment

(1) Income tax is charged on all emoluments paid to an employee or public servant, including wages and salaries, additional remuneration, additional payments, holiday pay, holiday benefit paid on the basis of § 46 of the Public Service Act (RT I 1995, 16, 228; 1999, 7, 112; 10, 155; 16, 271 and 276; 2000, 25, 144 and 145; 28, 167; 102, 672; 2001, 7, 17 and 18; 17, 78; 42, 233; 47, 260; 2002, 21, 117; 62, 377; 110, 656; 2003, 4, 22; 13, 67 and 69; 20, 116; 51, 349; 58, 387; 90, 601; 2004, 22, 148; 29, 194), compensation prescribed upon termination of the employment contract or upon release from service, compensation or fines for delay ordered

by a court or a labour dispute committee, and pay for additional holidays compensated by the state on the basis of § 26 of the Holidays Act (RT I 2001, 42, 233; 2002, 61, 375; 62, 377; 2003, 82, 549). Income tax shall be charged on compensation paid in connection with an accident at work or an occupational disease, unless such compensation is paid as insurance indemnity. For the purposes of this Act, servants specified in subsections 12 (2) and (3) of the Public Service Act are also public servants.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(1<sup>1</sup>) Income tax shall be charged on remuneration or service fees paid on the basis of a contract for services, authorisation agreement or any other contract under the law of obligations, including amounts paid to a sportsman or sportswoman under contracts specified in subsection 13 (2) of the Sport Act (RT I 1998, 61, 982; 2002, 53, 336; 90, 521).

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) Income tax is charged on all emoluments paid by a legal person to a member of a management or controlling body (§ 9) for the performance of his or her official duties.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(3) Income tax is not charged on:

1) compensation for official travel, accommodation and other expenses and daily allowances paid to a public servant, an employee or a member of the management or controlling body of a legal person under the conditions and within the limits established by the Government of the Republic, and compensation for moving expenses arising from appointment to a position located in another area;

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

1<sup>1</sup>) payments specified in clause 1) made to a person specified in clause 1) by a non-resident within the limits in force in the place where the work is performed if the work is performed in a foreign state;

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

2) compensation for service or employment related use of an automobile in the personal ownership of the taxpayer or used by the taxpayer on the basis of a leasing contract, paid

to a public servant, employee, or member of the management board or a body substituting for the management board of a legal person, in accordance with the conditions and within the limits established by the Government of the Republic;

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

3) payments made to a member of the Riigikogu on the basis of §11 of the Members of the Riigikogu Official Wages, Pension and Other Social Guarantees Act (RT 1992, 28, 381; RT I 1996, 51, 966; 1998, 107, 1765; 1999, 10, 153; 2001, 21, 117; 2003, 18, 97; 75, 497);

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

4) payments made to the President of the Republic on the basis of § 3 of the President of the Republic Official Benefits Act (RT I 1996, 51, 966; 2000, 55, 359; 2001, 43, 240);

4<sup>1</sup>) payments made to the Prime Minister and ministers on the basis of § 12<sup>1</sup> of the Salaries of State Public Servants Appointed by Riigikogu or President of the Republic Act (RT I 1996, 81, 1448; 1999, 29, 406; 2000, 55, 359; 2002, 21, 117; 64, 390);

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 55, 359)

5) (Repealed - 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

6) the cost of meals given free of charge to members of the crews of ships during voyages and to members of the crews of civil aircraft during flights, which does not exceed 90 kroons per day per person;

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

7) childbirth allowances paid by an employer to an employee or public servant, in an amount not exceeding 5/12 of the basic exemption (§ 23) granted to a resident natural person during a period of taxation;

8) technical aids which are granted by an employer to an employed person receiving benefits on the basis of the Social Benefits for Disabled Persons Act (RT I 1999, 16, 273; 2002, 39, 245; 61, 375) and the value of which does not exceed 50 per cent of the total size of payments subject to social tax made to the employee or public servant during one calendar month;

9) in-service training and re-training of employees paid for by the employer upon termination of the employment or service relationship due to redundancy;

10) expenses incurred by an employer for the treatment of damage caused to the health of an employee or public servant as a result of an accident at work or an occupational disease;

11) payments made to diplomats on the basis of § 25 of the Foreign Service Act (RT I 1995, 15, 172; 50, 764; 1996, 49, 953; 2001, 43, 240; 2002, 82, 481);

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

12) compensation for the cost of a uniform, paid on the basis of § 160 of the Defence Forces Service Act (RT I 2000, 28, 167; 2003, 31, 195; 2004, 2, 7; 49, 342) or § 26 of the Police Service Act (RT I 1998, 50, 753; 104, 1742; 2000, 10, 57; 28, 167; 2001, 7, 17; 85, 511; 2002, 53, 336; 61, 375; 2003, 20, 116; 90, 601).

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(4) If a person receives income specified in subsections (1), (1<sup>1</sup>) and (2) for working in a foreign state, income tax is not charged on such income in Estonia if all the following conditions are met:

1) the person has stayed in the foreign state for the purpose of employment for at least 183 days over the course of a period of 12 consecutive calendar months;

2) the specified income has been the taxable income of the person in the foreign state and if this is certified and the amount of income tax is indicated on the certificate (even if the amount is zero).

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

#### § 14. Business income

(1) Income tax is charged on income derived from business (business income), regardless of the time of its receipt.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) Business is a person's independent economic or professional activity (including the professional activity of a notary, a bailiff or, in the case specified in subsection 9 (3) of the Sworn Translators Act (RT I 2001, 16, 70; 2002, 61,

375; 102, 600; 2003, 18, 100; 2004, 14, 91; 30, 208), a sworn translator), the aim of which is to derive income from the production, sale or intermediation of goods, the provision of services, or other activities, including creative or scientific activity.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(3) Transfer of securities owned by a natural person does not constitute business.

(4) Types of income specified in § 16 may also be included in business income .

(5) Sole proprietors entered in the commercial register or registered with a regional tax centre of the Tax and Customs Board may make the deductions allowed under Chapter 6 from their business income.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544; 15.05.2002 entered into force 01.07.2002 - RT I 2002, 44, 284; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(5<sup>1</sup>) Upon termination of the business of a sole proprietor, deductions relating to enterprise shall be made from the business income of the period of taxation, excluding the advance payments of social tax made during the same period. The amount obtained shall be divided by 1.33 before it is multiplied by the tax rate.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(5<sup>2</sup>) In the case of business income received after the termination of engagement in business, the amount shall be divided by 1.33 before it is multiplied by the tax rate.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(6) The provisions of this Act concerning sole proprietors entered in the commercial register or registered with a regional tax centre of the Tax and Customs Board also apply to notaries, bailiffs and sworn translators, except in the case specified in subsection 9 (4) of the Sworn Translators Act.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(7) If the value of a transaction conducted between a sole proprietor and a non-resident or resident natural person associated with the sole proprietor in the course of business differs from

the value of similar transactions conducted between non-associated persons, the tax administrator may, when determining income tax, use the values of transactions applied by non-associated independent persons under similar conditions.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(8) In the case specified in subsection (7), taxable business income shall be increased or expenses to be deducted from business income shall be reduced. The methods for determining the value of transactions shall be established by a regulation of the Minister of Finance.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

#### § 15. Gains from transfer of property

(1) Income tax is charged on gains (§ 37) from the sale or exchange of any transferable and monetarily appraisable objects, including real or movable property, securities, registered shares, contributions made to a general or limited partnership or an association, units of investment funds, rights of claim, rights of pre-emption, rights of superficies, usufructs, personal rights of use, rights of commercial lessees, redemption obligations, mortgages, commercial pledges, registered securities over movables, or other restricted real rights, or the ranking thereof, or other proprietary rights (hereinafter property).

(2) In the case of a reduction in the share capital of a public limited company, private limited company or association or in the contributions of a general or limited partnership, and in the case of redemption or return of shares or contributions, income tax is charged on the amount in which the payments made to a person exceed the acquisition cost of the holding or the contribution made by the person upon acquisition of the holding (shares, contributions).

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(3) Income tax is charged on the amount in which the liquidation proceeds paid to a person upon the liquidation of a legal person exceed the acquisition cost of the holding or the contribution made by the person upon acquisition of the holding.

(4) Income tax is not charged on:

- 1) accepted succession;
- 2) property returned in the course of ownership reform;

3) expropriation payments and compensation paid upon expropriation;

4) income from the transfer of movable property in personal use;

5) income from the transfer of land returned in the course of ownership reform;

6) income derived by a person holding a public capital bond from the sale of privatisation vouchers issued to him or her on the basis of the public capital bond;

7) income derived by an entitled subject of the agricultural reform from the sale of the employment share issued in his or her name;

8) income derived by a person who is an entitled subject of the ownership reform from the sale of privatisation vouchers issued to him or her on the basis of an unlawfully expropriated property compensation order;

9) income from the exchange of a holding (shares, contributions) in the course of a merger, division or transformation of companies or non-profit co-operatives;

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

10) income from the increase or acquisition of a holding (shares, contributions) in a company by way of a non-monetary contribution;

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

11) income from the exchange of units of an investment fund of a Member State of the European Union pursuant to the procedure provided for in §§ 153 and 154 of the Investment Funds Act (RT I 2004, 36, 251).

(14.04.2004 entered into force 01.05.2004 - RT I 2004, 36, 251)

(5) Gains from the transfer of immovable property, a structure or apartment as a movable or contributions to a housing association are not subject to income tax if:

1) an essential part of the immovable or the object of apartment ownership or a right of superficies is a dwelling which was used by the taxpayer as his or her permanent or primary place of residence until transfer, or

2) an essential part of the immovable or the object of apartment ownership or a right of superficies is a dwelling, and the immovable has been transferred to the taxpayer's ownership

through restitution of unlawfully expropriated property, or

3) an essential part of the immovable or the object of apartment ownership or a right of superficies is a dwelling and such dwelling and the land adjacent thereto has been transferred to the taxpayer's ownership through privatisation with the right of pre-emption and the size of the registered immovable property does not exceed 2 hectares, or

4) the summer cottage or garden house has been in the taxpayer's ownership as a movable or an essential part of an immovable for more than two years and the size of the registered immovable does not exceed 0.25 hectares, or

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

5) the structure or apartment as a movable was used by the taxpayer as his or her permanent or primary place of residence until transfer, or if the structure or apartment as a movable has been transferred to the taxpayer's ownership through restitution of unlawfully expropriated property or through privatisation with the right of pre-emption, or

6) the summer cottage or garden house is a structure regarded as a movable and has been in the taxpayer's ownership for more than two years, or

7) an apartment in a building belonging to the housing association was used by the taxpayer as his or her permanent or primary place of residence while he or she was a member of the housing association.

(6) If the tax exemption specified in subsection (5) is based on the use of the dwelling as the taxpayer's residence and the immovable, building or apartment was also used for other purposes, the tax exemption is applied according to the proportion of the area of the rooms used as residence and the area of the rooms used for other purposes.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

#### § 16. Income from rent and royalties

(1) Income tax is charged on income derived from commercial or residential lease of immovable or movable property or a part thereof, on consideration for constituting a right of superficies, encumbering immovable property with a right of pre-emption, usufruct, personal right of use or servitude, and on consideration for

encumbering movable property or a share with a usufruct.

(2) Income tax is charged on consideration for the right to use a copyright of a literary, artistic or scientific work (including cinematographic films or videos, recordings of radio or television programmes or computer programs), and for the right to use a patent, trade mark, industrial design or utility model, plan, secret formula or process, or consideration for transfer of the right to use the above (hereinafter royalties).

(3) Income tax is charged on consideration for the right to use industrial, commercial or scientific equipment or information concerning industrial, commercial or scientific experience (know-how), or on consideration for transfer of the right to use the above (hereinafter royalties).

#### § 17. Interest receivable

(1) Income tax is charged on all interest accrued from loans, securities, leases or other debt obligations, including the amounts calculated on the basis of the debt obligations by which the initial debt obligations are increased. The amounts payable in the event of delay of the payment or other non-performance of the obligation are not deemed to be interests.

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

(2) Income tax is not charged on interest paid to a natural person by a resident credit institution, a branch of a non-resident credit institution entered in the Estonian commercial register, or the Compensation Fund.

#### § 18. Dividends receivable

(1) Income tax is charged on all dividends and other profit distributions received by a resident natural person from a foreign legal person in monetary or non-monetary form.

(1<sup>1</sup>) Income tax shall not be charged on dividends if income tax has been paid on the share of profit on the basis of which the dividends are paid or if income tax on the dividends has been withheld in a foreign state.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) A dividend is a payment which is made from the net profit or the retained profits from previous years pursuant to a resolution of a competent body of a legal person, and the basis for which is the recipient's holding in the legal person (ownership of shares, partnership in a general or limited partnership or membership in a

commercial association, or other forms of holding pursuant to the legislation of the home country of the company).

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

(3) Payments made upon a reduction in share capital or contributions, redemption of shares or liquidation of a legal person are taxed pursuant to the provisions of subsections 15 (2) and (3).

(4) If a resident natural person is a shareholder or member in an association of persons or a co-owner of a pool of assets which does not have the status of a legal person, income tax is charged on the net profit of the association or pool of assets in proportion to the holding or voting rights of the taxpayer.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

(5) The provisions of subsection (4) do not apply to any holding in a pool of assets concerning which a security, as defined in § 2 of the Securities Market Act (RT I 2001, 89, 532; 2002, 23, 131; 63, 387; 102, 600; 105, 612; 2003, 81, 544; 88, 591; 2004, 36, 251; 37, 255), has been issued.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

§ 19. Maintenance support, pensions, scholarships and grants, benefits, awards and lottery prizes

(1) Income tax is charged on maintenance support which a natural person receives on the basis of a court judgment, agreement confirmed by a court ruling, or a notarised agreement between the parties, pursuant to §§ 23, 61-64 or 69 of the Family Act (RT I 1994, 75, 1326; 1996, 40, 773; 49, 953; 1997, 28, 422; 35, 538; 2000, 50, 317; 2001, 16, 69; RT III 2001, 15, 154; RT I 2001, 53, 307; 2002, 53, 336; 2003, 78, 527; 2004, 14, 92; 22, 148).

(2) Income tax is charged on all pensions, benefits, scholarships and grants, cultural, sports and scientific awards, lottery prizes and benefits received on the basis of the Parental Benefit Act.

(10.12.2003 entered into force 01.01.2004 - RT I 2003, 82, 549)

(3) Income tax is not charged on:

1) (Repealed - 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

2) (Repealed - 12.09.2001 entered into force 01.01.2002 - RT I 2001, 79, 480)

3) scholarships and grants paid pursuant to law or from the state budget, and benefits paid pursuant to law, except for scholarships, grants and benefits which are paid in connection with business or an employment or service relationship or with membership of the management or controlling body of a legal person;

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

4) international and state cultural and scientific awards and sports awards granted by the Government of the Republic;

5) scholarships and grants not specified in clause 3) which are granted for study or research or for artistic or sports activities and which meet the conditions established by the Government of the Republic;

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

6) gifts and donations received from a natural person, a state or local government authority or a resident legal person, or from a non-resident through or on account of its permanent establishment registered in Estonia;

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

7) lottery prizes received from a lottery organised on the basis of an operating permit and winnings from gambling received from a person holding an activity licence for the organisation of gambling;

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

8) benefits paid to victims of crime pursuant to law;

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

9) conscripts' allowances paid pursuant to law and non-monetary benefits granted in connection with business pursuant to law, and state unemployment benefits.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

§ 20. Insurance indemnities

(1) Income tax is charged on benefits for temporary incapacity for work, paid on the basis of the Health Insurance Act (RT I 2002, 62, 377; 2003, 20, 116; 88, 591; 2004, 37, 253).



(2) Income tax is charged on benefits paid on the basis of the Unemployment Insurance Act (RT I 2001, 59, 359; 82, 488; 2002, 44, 284; 57, 357; 61, 375; 89, 511; 111, 663; 2003, 17, 95; 88, 591).

(3) Income tax is charged on amounts paid to a policy holder or beneficiary under a life insurance contract with an investment risk, from which the insurance premiums made by the policy holder on the basis of the same contract have been deducted. Such amounts are subject to taxation if they are paid within twelve years as of the entry into the insurance contract. If the insurance premiums paid under a life insurance contract with an investment risk have been deducted from the income of the taxpayer in the form of an insurance premium on a supplementary funded pension during one or several taxable periods, the amounts paid to the policy holder are subject to taxation pursuant to § 21.

(4) Income tax is charged on an insurance indemnity paid in a case where the insured event occurred under non-life insurance conditions if the taxpayer has deducted the insurance premiums related to such insured event, the acquisition cost of the insured assets, or the depreciation of fixed assets applied with regard to the same assets on the basis of the Income Tax Act in force before the entry into force of this Act from the taxpayer's business income. The insurance indemnities received are subject to taxation as gain from the sale of property (§ 37) and the amount of the insurance indemnity is deemed to be the sales price of the property.

(5) Income tax is not charged on sums insured and insurance indemnities not specified in subsections (1)–(4) or §§ 20<sup>1</sup> and 21, the surrender value payable upon termination of a life insurance contract, or insurance indemnities paid in the event of death on the basis of a contract specified in subsection (3).

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

#### § 20<sup>1</sup>. Mandatory funded pension

(1) Income tax is charged on payments made from a mandatory pension fund to the successor of a unit-holder and on payments made to a beneficiary pursuant to an insurance contract for a mandatory funded pension.

(2) (Repealed - 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

#### § 21. Supplementary funded pension

(1) Income tax is charged on payments made to a unit-holder or the successor of a unit-holder on

the basis of an insurance contract for a supplementary funded pension or from a voluntary pension fund, taking into account the specifications provided for in subsections (2)–(5). Income tax is charged also on negative changes in the provisions formed pursuant to the provisions of subsection 28 (1<sup>1</sup>) with a view to securing a supplementary funded pension.

(2) The rate provided for in subsection 4 (2) is applicable to the following payments made to a policyholder under an insurance contract for a supplementary funded pension which meets the conditions provided for in § 63 of the Funded Pensions Act:

(14.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 252)

1) payments made by the insurer to the policyholder after the policyholder has reached 55 years of age but not before five years have passed since the entry into the contract;

2) payments made by the insurer in the event of the total and permanent incapacity for work of the policyholder;

3) payments made in the event of liquidation of the insurer.

(3) The rate provided for in subsection 4 (2) is applicable to the following payments made to a unit-holder of a voluntary pension fund established pursuant to the procedure provided for in the Funded Pensions Act:

1) payments made after the unit-holder has reached 55 years of age but not before five years have passed since the acquisition of units which are redeemed in order to make the payments;

(14.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 252)

2) payments made in the event of the total and permanent incapacity for work of the unit-holder;

3) payments made from a voluntary pension fund in the event of liquidation of the pension fund.

(3<sup>1</sup>) If units of a voluntary pension fund are exchanged for units of another voluntary pension fund, the five-year term shall be calculated as of acquisition of the units of the voluntary pension fund which are redeemed upon the exchange.

(14.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 252)

(4) Income tax is not charged on a pension paid to a policyholder on a regular basis pursuant to an

insurance contract for a supplementary funded pension which meets the conditions of § 63 of the Funded Pensions Act after the policyholder has attained 55 years of age or after his or her total and permanent incapacity for work has been verified, on the condition that the insurance contract prescribes that corresponding payments shall be made in equal or increasing amounts at least once every three months until the death of the policyholder.

(14.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 252)

(5) Income tax is not charged on insurance indemnities paid in the event of death on the basis of an insurance contract for supplementary funded pension.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

§ 22. Taxation of income of legal persons located in low tax rate territories

(1) Income tax is charged on the income of a legal person located in a low tax rate territory (§ 10) and controlled by Estonian residents, irrespective of whether the legal person has distributed any profits to taxpayers or not.

(2) A legal person is deemed to be controlled by Estonian residents if one or several legal or natural persons who are Estonian residents own at least 50 per cent of the shares, votes or rights to the profits of the legal person directly or together with associated persons (§ 8).

(3) The income of a foreign legal person is deemed to be the taxable income of a resident if the condition prescribed in subsection (2) is fulfilled and the resident owns at least 10 per cent of the shares, votes or rights to the profits of the legal person directly or together with associated persons (§ 8).

(4) The part of the gross income of a foreign legal person specified in subsection (2) which is attributable to a resident taxpayer is deemed to be the income of the taxpayer. The part attributable to a taxpayer is a proportional part of the income of the legal person, which corresponds to the holding of the taxpayer in the share capital, total number of votes or rights to the profits of the legal person.

(5) A taxpayer has, under the conditions prescribed in Chapter 6, the right to deduct the business-related expenses made by a foreign legal person from the taxable income of the foreign legal person. In proportion to the share of a taxpayer in the income of a legal person, the taxpayer has the right to deduct the part of the

income tax withheld from the legal person on the basis of § 41 and, in accordance with § 45, the part of the home country income tax paid by the legal person from the income tax to be paid by the taxpayer.

(6) Resident natural persons shall declare the shares, votes and rights to the profits of a legal person located in a low tax rate territory which were held by them in the calendar year in their income tax returns. A resident taxpayer specified in subsection (3) shall include the part of the income of a foreign legal person attributable to the taxpayer in the taxpayer's taxable income and declare such income in the taxpayer's income tax return. The formats of income tax returns and the procedure for declaration of the income of legal persons registered in low tax rate territories shall be established by a regulation of the Minister of Finance.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(7) If a resident taxpayer has paid income tax on income specified in subsection (1), dividends (subsection 18 (2)) or other profit distributions received by the taxpayer out of the income taxed in accordance with subsection (1) shall not subsequently be subject to income tax.

#### Chapter 4

#### Deductions from Income of Resident Natural Persons

#### § 23. Basic exemption

The basic exemption deductible from the income of a resident natural person during a period of taxation is 16 800 kroons.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

§ 23<sup>1</sup>. Increased basic exemption in case of three or more children

(1) One resident parent or guardian of a child or other person maintaining a child within the meaning of §§ 60, 65, 67 or 97 of the Family Law Act, who maintains three or more minor children may deduct increased basic exemption from his or her income in the period of taxation for each child of up to 17 years of age, starting with the third child.

(2) The increased basic exemption provided for in subsection (1) is applicable for the third and each subsequent child in so far as the taxable income of the child is lower than the basic exemption for the period of taxation (§ 23).

(3) The increased basic exemption provided for in subsection (1) is applicable as of the year in which the child is born, a guardian is appointed for him or her or the maintenance obligation arises until the year in which the child specified in subsection (1) attains 17 years of age (inclusive).

(4) In the event of a dispute, the person to whom child allowance is paid pursuant to § 5 of the State Family Benefits Act (RT I 2001, 95, 587; 2002, 61, 375; 2003, 18, 103; 75, 498; 82, 549; 88, 592) is deemed to be the person maintaining the child within the meaning of subsection (1).

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

§ 23<sup>2</sup>. Increased basic exemption in event of pension

If a resident natural person receives a pension paid by the Estonian state pursuant to an Act or a mandatory funded pension provided for in the Funded Pensions Act, increased basic exemption shall be deducted from the income of the person in the amount of those pensions but not more than 36 000 kroons during a period of taxation.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

§ 23<sup>3</sup>. Increased basic exemption in event of compensation for accident at work or occupational disease

If a resident natural person receives compensation for an accident at work or an occupational disease, increased basic exemption shall be deducted from the income of the person in the amount of that compensation but not more than 12 000 kroons during a period of taxation. If compensation for an accident at work or an occupational disease is paid as insurance indemnity, increased basic exemption shall not apply.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

§ 24. Maintenance support

A resident natural person has the right to deduct support paid by him or her to a resident natural person during a period of taxation from the income which he or she receives during the period of taxation if such support is subject to taxation pursuant to subsection 19 (1).

§ 25. Housing loan interest

(1) A resident natural person has the right to deduct, from the income which he or she receives during the period of taxation, interest payments

made during a period of taxation to a resident credit or financial institution or a branch of a non-resident credit institution entered in the Estonian commercial register for a loan or finance lease taken in order to acquire a house or apartment for himself or herself or for his or her spouse, parents or children. Interest payments for a loan or lease taken in order to acquire a plot of land in order to build a house may be deducted from income under the same conditions.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) The erection, expansion and reconstruction of construction works within the meaning of the Building Act, the replacement and modification of utility systems of construction works, changing the division of space in construction works and the building and installation work related to the technical refitting of construction works on the basis of a building permit or building design documentation is also deemed to be acquisition.

(15.05.2002 entered into force 01.01.2003 - RT I 2002, 47, 297; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(3) Only the loan or finance lease interest payments made upon the acquisition of one house or apartment shall be deducted from taxable income at any one time.

(4) A parent who is raising a child alone and who has taken parental leave during a period of taxation may fully or partly deduct the interest payments specified in subsection (1) of this section made during the same taxable period from the income received during subsequent periods of taxation without taking into account the restriction provided for in § 28<sup>2</sup> of this Act.

(29.01.2003 entered into force 01.03.2003 - RT I 2003, 18, 105)

§ 26. Training expenses

(1) A resident natural person has the right to deduct the expenses incurred by him or her during a period of taxation on the training of himself or herself or a person of less than 26 years of age specified in § 60, 65 or 67 of the Family Law Act or, if no such training expenses are incurred, the training expenses of one permanent resident of Estonia of less than 26 years of age, from the income which the resident natural person receives during the period of taxation. A resident who is a parent of a person of less than 26 years of age has the right to deduct the training expenses specified in subsection (3) from his or her income provided that the parent has incurred such expenses..

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) Training expenses are certified expenses incurred for studying at a state or local government educational establishment, university in public law, private school which holds a training licence or has been positively accredited with regard to the given study programme, or foreign educational establishment of equal status with the aforementioned, or for studying on fee-charging courses organised by such educational establishments. Training expenses incurred by a person on account of a scholarship or grant which is exempt from income tax pursuant to clauses 19 (3) 3) and 5) shall not be deducted from income.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(3) Interest on study loans secured by the state is also deemed to be a training expense.

(07.08.2003 entered into force 01.09.2003 - RT I 2003, 58, 387)

(4) The procedure for deducting training expenses and student loan interest from taxable income and the requirements for documents certifying payment of training expenses shall be established by a regulation of the Minister of Finance.

§ 27. Gifts, donations and trade union entrance and membership fees

(1) A resident natural person has the right to deduct gifts and donations, except services provided as gifts or donations, of which there is documented proof and which are made during a period of taxation to persons included in the list specified in subsection 11 (1), persons specified in subsection 11 (2) or to a state or local government scientific, cultural, sports, educational or social welfare institution, a manager of a protected area, a university in public law or a political party from the income which the resident natural person receives during the period of taxation.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) A resident natural person has the right to deduct entrance and membership fees of which there is documented proof and which have been paid during a period of taxation to a trade union entered in the register of trade unions from the income which the person received during the period of taxation, in an amount not exceeding 2 per cent of the taxpayer's income during the same

period of taxation after the deductions allowed under Chapter 6 and §§ 23–26 have been made.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(3) The deduction of gifts and donations specified in subsection (1) and admission and membership fees specified in subsection (2) from the income of a period of taxation is limited to 5 per cent of the taxpayer's income of the same period of taxation, after the deductions allowed under Chapter 6 and §§ 23-26 have been made.

(4) Gifts and donations specified in subsection (1) may be made in monetary or non-monetary form. The cost of a non-monetary gift or donation is the market price of the property, and in the case of sale of the property at a preferential price, the cost of the gift or donation shall be the difference between the market price and selling price of the property.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

§ 28. Insurance premiums and acquisition of pension fund units

(1) A resident natural person has the right to deduct the following from the income which he or she receives during a period of taxation:

1) that part of the insurance premiums paid during the period of taxation under an insurance contract for a supplementary funded pension which meets the conditions of § 63 of the Funded Pensions Act, the purpose of which is to ensure payment of the insured sum as a pension;

(14.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 252)

2) amounts paid to acquire units of a voluntary pension fund established in accordance with the procedure prescribed in the Funded Pensions Act, except in the cases prescribed in §§ 56 and 65 of the Funded Pensions Act.

(12.09.2001 entered into force 01.10.2001 - RT I 2001, 79, 480; 14.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 252)

(1<sup>1</sup>) The principles of calculation of a part of an insurance premium specified in clause (1) 1) shall be established by a regulation of the Minister of Finance. A negative change which occurs in a technical provision established on the basis of an insurance contract with a view to securing a supplementary funded pension and which is due to deduction of the amounts charged for an insurance cover not specified in § 63 of the

Funded Pensions Act shall be added to the taxable income of a natural person.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662; 14.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 252)

(2) The deductions specified in subsection (1) during one period of taxation are limited to 15 per cent of the taxpayer's income of the same period of taxation, after the deductions allowed under Chapter 6 have been made.

(3) Unemployment insurance premiums withheld on the basis of the Unemployment Insurance Act shall be deducted from the income received by a resident natural person during a period of taxation.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

§ 28<sup>1</sup>. Contributions to mandatory funded pension

Contributions to a mandatory funded pension withheld pursuant to clauses 11 (1) 1) and 2) and calculated and paid pursuant to subsection 11 (2) of the Funded Pensions Act shall be deducted from the income of a resident natural person during a period of taxation.

(14.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 252)

§ 28<sup>2</sup>. Restriction on deductions from taxable income

The deductions provided for in §§ 25-27 of this Act are altogether limited to 100 000 kroons per taxpayer during a period of taxation, and to not more than 50 per cent of the taxpayer's income of the same period of taxation, after the deductions relating to enterprise have been made.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

## Chapter 5

### Taxation of Income of Non-residents

#### § 29. Non-resident's taxable income

(1) Income tax is charged on income derived by a non-resident natural person from work under an employment contract or in public service or from activities engaged in on the basis of a contract for services, an authorisation agreement or a contract entered into for the provision of any other services under the law of obligations if the non-resident performed his or her duties or provided the services in Estonia and the payment was made by an Estonian state or local government

authority or resident or a non-resident operating in Estonia as an employer, or if the payment was made through the permanent establishment (§ 7) of a non-resident legal person registered in Estonia, or if the person has stayed in Estonia for the purpose of employment for at least 183 days over the course of a period of 12 consecutive calendar months. If a non-resident who receives remuneration on the basis of such contract under the law of obligations has been entered in the commercial register in Estonia or registered as a sole proprietor with the regional tax centre of the Tax and Customs Board and such remuneration is his or her business income, the income is subject to taxation pursuant to subsection (3).

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(2) Income tax is charged on remuneration paid by a resident legal person to a non-resident member of a management or controlling body (subsection 13 (2)).

(3) Income tax is charged on business income derived by a non-resident in Estonia (§ 14). If the non-resident is a legal person located in a low tax rate territory (§ 10), income tax is charged on all income derived by the non-resident from the provision of services to Estonian residents, irrespective of where the services were provided or used.

(4) Income tax is charged on gains derived by a non-resident from a transfer of property (subsection 15 (1)) if:

1) the sold or exchanged immovable is located in Estonia, or

2) the movable subject to entry in a register was in an Estonian register prior to the transfer, or

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

3) the acquirer of the sold or exchanged movable is the Estonian state, a local government or a resident and the movable was located in Estonia prior to the sale or exchange, or

4) the transferred real right or right of claim is related to an immovable or a structure as a movable, which is located in Estonia, or

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

5) the transferred holding is a holding of at least 10 per cent in a company of whose property, according to the balance sheet as of the last day

of the preceding financial year, more than 75 per cent is made up of immovables or structures as movables, which are located in Estonia.

(5) Income tax is charged on payments specified in subsections 15 (2) and (3) which are made to a non-resident by a resident legal person.

(6) Income tax is charged on income derived by a non-resident from a commercial lease or royalties (§ 16) if:

1) the immovable subject to a commercial or residential lease or encumbered with limited real rights is located in Estonia, or

2) the movable subject to a commercial or residential lease or encumbered with limited real rights is entered or is subject to entry in an Estonian register, or

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

3) the movable subject to a commercial or residential lease is used in Estonia, or

4) the rights specified in subsection 16 (2) are exercised by the Estonian state, a local government or a resident, or by a non-resident through or on account of its permanent establishment in Estonia, or

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

5) the industrial, commercial or scientific equipment or know-how specified in subsection 16 (3) is used in Estonia.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

(7) Income tax is charged on interest received by a non-resident from the Estonian state, a local government or a resident, or from non-resident through or on account of its permanent establishment registered in Estonia, if it significantly exceeds the amount of interest payable on the similar debt obligation under the market conditions during the period of occurrence of the debt obligation and payment of the interest. In that case income tax is charged on the difference between the interest received and the interest payable according to market conditions on the similar debt obligations.

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

(8) Income tax is charged on dividends (subsection 18 (2)) and on other profit

distributions received by a non-resident legal person from a resident company. If, at the moment dividends are announced or paid, a non-resident legal person, except a legal person located in a low tax rate territory (§ 10), owns at least 20 per cent of the share capital or votes of the resident company distributing the dividends, such dividends are not subject to income tax.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544; 11.12.2002 entered into force 01.05.2004 - RT I 2002, 111, 662; 20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

(9) Income tax is charged on all pensions, scholarships and grants, cultural, sports and scientific awards, benefits, lottery prizes and benefits paid on the basis of the Parental Benefit Act (subsection 19 (2)) which are paid to a non-resident by the Estonian state, a local government or a resident. Income tax is also charged on insurance indemnities paid to a non-resident by the Estonian Health Insurance Fund, the Estonian Unemployment Fund or a resident insurance company and on payments made to a non-resident from Estonian pension funds (§§ 20, 20<sup>1</sup> and 21).

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 13.06.2001 entered into force 01.01.2002 - RT I 2001, 59, 359; 11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662; 10.12.2003 entered into force 01.01.2004 - RT I 2003, 82, 549)

(10) Income tax is charged on remuneration paid to a non-resident artist, sportsman or sportswoman in connection with his or her performance or competition in Estonia or the presentation of his or her works in Estonia. Income tax is also charged on remuneration paid to a non-resident third person in connection with the activities of a resident or non-resident artist, sportsman or sportswoman in Estonia.

§ 30. Non-residents whose income is not subject to income tax

(1) Income tax is not charged on income received for the performance of official duties in Estonia by a foreign diplomatic or consular representative, a representative of a special mission or a member of a diplomatic delegation, a member of a representation of an international or intergovernmental organisation or co-operation programme, or a person employed by such representation, who is not a citizen or permanent resident of Estonia.

(2) Persons specified in subsection (1), with the exception of members of representations of co-operation programmes, shall be registered with

the Ministry of Foreign Affairs. The procedure for registration shall be established by a regulation of the Minister of Foreign Affairs.

§ 31. Non-resident's income not subject to income tax

(1) Income tax is not charged on the following income of a non-resident:

- 1) accepted succession;
- 2) property returned in the course of ownership reform;
- 3) expropriation payments and compensation paid upon expropriation;
- 4) income from transfer of movable property in personal use;
- 5) interest paid to a natural person by a resident credit institution or a branch of a non-resident credit institution entered in the Estonian commercial register;

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

6) pensions, scholarships, grants, awards and benefits which are specified in clauses 19 (3) 3)-5);

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

7) compensation for official travel, accommodation and other expenses and daily allowances paid to a public servant, an employee or a member of the management or controlling body of a legal person under the conditions and within the limits established by the Government of the Republic, and compensation for expenses arising from appointment to a position located in another area;

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

8) compensation for service or employment related use of an automobile in the personal ownership of the taxpayer or used by the taxpayer on the basis of a leasing contract, paid to a public servant, employee, or member of the management board or a body substituting for the management board of a legal person, in accordance with the conditions and within the limits established by the Government of the Republic.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(2) (Repealed - 20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

(3) (Repealed - 20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

(4) Income tax is not charged on licence fee (§ 16) paid by a resident company or through or on account of permanent establishment of a resident company of a member state of the European Union registered in Estonia, if the condition specified in clause 1 and at least one of the conditions set in clauses (2)-(4) have been fulfilled:

1) the recipient of licence fee is a resident company of another member state of the European Union either directly or through its permanent establishment registered in another member state of the European Union;

2) The company receiving the licence fee owns at the time of payment and has owned during the period of two years or more immediately preceding the payment at least 25% of the share capital of the company paying the licence fee;

3) the company paying the licence fee owns at the time of payment and has owned during the period of two years or more immediately preceding the payment at least 25% of the share capital of the company receiving the licence fee;

4) one and the same resident company of a member state of the European Union owns at the time of payment and has owned during the period of two years or more immediately preceding the payment at least 25% of the share capital of the company paying the licence fee and the company receiving the licence fee.

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

(5) The tax exemption referred to in subsection 4 is not applied to the part of licence fee which exceeds the value of similar transactions conducted between non-associated persons.

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

Chapter 6

Deductions from Business Income

§ 32. Expenses related to business

(1) All certified expenses incurred by a taxpayer in relation to business during a period of taxation may be deducted from the taxpayer's business income.

(2) Expenses are related to business if they have been incurred for the purposes of deriving income from taxable business or are necessary or appropriate for maintaining or developing such business and the relationship of the expenses with business is clearly justified, or if the expenses arise from subsection 13 (1) of the Occupational Health and Safety Act (RT I 1999, 60, 616; 2000, 55, 362; 2001, 17, 78; 2002, 47, 297; 63, 387; 2003, 20, 120).

(3) If expenses incurred by a taxpayer are only partly related to business, only the part related to business may be deducted from business income.

(4) A resident natural person may additionally deduct up to 45 000 kroons during a period of taxation from his or her income derived from the sale of unprocessed self-produced agricultural products after the deductions prescribed in subsection (1) have been made.

(5) For the purposes of subsection (4), cleaning, sorting, cutting, drying, cooling and packaging of agricultural products are not deemed to be processing.

#### § 33. Limitations on deduction of expenses

(1) Certified expenses incurred in connection with the provision of catering, accommodation, transportation or cultural services to guests and business partners may be deducted in an amount not exceeding 2 per cent of the taxpayer's business income during a period of taxation after the deductions allowed under subsections 32 (1) and (4) have been made.

(2) Expenses incurred in granting fringe benefits may be deducted from business income only after the income tax prescribed in § 48 has been paid.

#### § 34. Expenses not deductible from business income

The following shall not be deducted from business income:

1) income tax established by this Act, except for income tax paid on the basis of § 48 of this Act;

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

2) (Repealed - 14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

3) fines and penalty payments imposed on the basis of law and interest paid on the basis of the Taxation Act (RT I 2002, 26, 150; 57, 358; 63, 387; 99, 581; 110, 660; 111, 662; 2003, 2, 17; 48, 341; 71, 472; 82, 554; 88, 591; 2004, 2, 7; 28, 188; 189; 45, 319);

(15.05.2002 entered into force 01.07.2002 - RT I 2002, 44, 284)

4) the cost of property seized from the taxpayer;

5) payments for special use of water without the relevant permit for special use of water or in amounts exceeding the permitted amount, in accordance with subsection 11<sup>1</sup> (3) of the Water Act (RT I 1994, 40, 655; 1996, 13, 241; 240; 1998, 2, 47; 61, 987; 1999, 10, 155; 54, 583; 95, 843; 2001, 7, 19; 24, 133; 42, 234; 50, 283; 94, 577; 2002, 1, 1; 61, 375; 63, 387; 2003, 13, 64; 26, 156; 51, 352; 2004, 28, 190; 38, 258);

6) the pollution charge paid at an increased rate in accordance with § 23 of the Pollution Charges Act (RT I 1999, 24, 361; 54, 583; 95, 843; 2001, 102, 667; 2002, 61, 375; 2003, 25, 153; 2004, 9, 52; 32, 228), and compensation paid for damage caused to the environment or a third party by pollution or through violation of requirements prescribed by law;

7) expenses incurred in the provision of benefits not subject to income tax pursuant to this Act;

8) the cost of gifts or donations;

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

9) any loss (§ 37) from the transfer, at a price lower than the market price, of property to a person associated with the taxpayer (§ 8), unless income tax has been paid on such loss pursuant to § 48;

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

10) any loss (§ 37) from the transfer, at a price higher than the market price, of property purchased from a person associated with the taxpayer (§ 8);

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

11) gratuities and bribes;

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)



12) contributions to a mandatory funded pension made by a sole proprietor on the basis of subsection 11 (2) of the Funded Pensions Act.

(14.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 252)

§ 35. Carrying forward of expenses exceeding business income

(1) If the total amount of the deductions allowed in subsections 32 (1)–(3) exceeds the business income derived by a taxpayer during a period of taxation, the amount by which expenses exceed business income (hereinafter expenses carried forward) may be deducted from business income during up to seven subsequent periods of taxation.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(2) If the amount of expenses carried forward exceeds business income derived during a period of taxation, the expenses carried forward are partly deducted from business income derived during the period of taxation and the remaining part of the expenses is carried forward to subsequent periods of taxation.

(3) If a taxpayer incurs expenses to be carried forward during more than one period of taxation, such expenses are recorded in accounting documents on a yearly basis in the order in which they were incurred. Expenses or parts of expenses which have been carried forward for more than seven years shall not be carried forward to subsequent periods of taxation.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

## Chapter 7

### Rules for Calculation of Taxable Income

§ 36. Calculation of taxable income

(1) Income derived by a natural person (including business income) shall be recorded for income tax purposes during the period of taxation in which such income was derived. Deductions from taxable income (including expenses related to business) shall be recorded during the period of taxation in which such expenses were paid. Income tax paid or withheld shall be recorded during the period of taxation in which the tax was paid or withheld.

(2) A taxpayer shall keep account of its income and expenses in a manner which clearly sets out the data necessary for determining the taxable

income. A taxpayer is also required to preserve the documents related to income and expenses.

(3) Business income and deductions therefrom are calculated in accordance with the rules prescribed in legislation regulating accounting, as far as this Act does not prescribe otherwise. The calculation method prescribed in subsection (1) also applies to sole proprietors who use the accrual method of accounting.

(4) If taxable income is received in a non-monetary form, the taxpayer is deemed to have received income in the amount of the market price of the object or proprietary right received.

(5) Income, deductions from income, and income tax paid or withheld in foreign currency shall be converted into Estonian kroons on the basis of the Bank of Estonia exchange rate on the date on which the income was received, the payment was made or the income tax was paid or withheld, correspondingly.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(6) Upon declaration of bankruptcy of a natural person, the income and expenses subject to income tax and income tax paid or withheld shall be recorded separately as originating in the part of the period of taxation which preceded the declaration of bankruptcy and in the part which followed.

(7) A sole proprietor entered in the commercial register or registered with the regional tax centre of the Tax and Customs Board may open one special account in a resident credit institution or a branch of a non-resident credit institution entered in the Estonian commercial register and any increase in the amount in the account during a period of taxation is deducted from the business income of the same period and any decrease in the amount in the bank account during a period of taxation is added to the business income of the same period. The increase in the amount in the special account during a period of taxation is deducted from the business income of the same period if all the following conditions are met:

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

1) the special account is opened after 1 January 2001;

2) only amounts calculated as business income and benefits received in connection with business pursuant to law are transferred to the special

account within ten working days as of their receipt;

3) the increase in the amount in the special account during a period of taxation does not exceed the business income derived by the taxpayer and the amount of benefits received in connection with business pursuant to law during the period of taxation, after the deductions relating to enterprise and permitted for in § 32 have been made.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

(8) The interest paid by a credit institution for depositing money in a special account specified in subsection (7) is deemed to be business income derived by the account holder. In the case of termination of engagement in business, the amount in the special account is added to the business income.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

§ 37. Calculation of gains and loss derived from transfer of property

(1) The gains or loss derived from the sale of property (subsection 15 (1)) is the difference between the acquisition cost and the selling price of the sold property. The gains or loss derived from the exchange of property is the difference between the acquisition cost of the property subject to exchange and the market price of the property received as a result of the exchange. A taxpayer has the right to deduct certified expenses directly related to the sale or exchange of property from the taxpayer's gain or to add such expenses to the taxpayer's loss.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) In the case of transfer of property the acquisition cost of which the taxpayer has deducted from the taxpayer's business income, the selling price of the property or the market price of the property received through exchange is deemed to be business income derived by the taxpayer.

(3) If a taxpayer has deducted the depreciation of fixed assets calculated on the basis of the Income Tax Act in force before the entry into force of this Act from the taxpayer's business income and if the fixed assets are transferred, the acquisition cost of such fixed assets is, upon calculation of the gains, reduced by the amount of the depreciation of the assets.

(4) Upon taking property specified in subsection (2) into personal use (either during engagement in business or in the case of termination of engagement in business), the market price of the property is included in the taxpayer's business income. Upon any future transfer of such property, the amount which pursuant to this subsection is added to business income is deemed to be the acquisition cost of the property.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(5) Upon taking property specified in subsection (3) into personal use (either during engagement in business or in the case of termination of engagement in business), the market price of the property minus the difference between the acquisition cost and the depreciation of fixed assets is included in the taxpayer's business income. Upon any future transfer of such property, the amount which pursuant to this subsection is added to business income is deemed to be the acquisition cost of the property.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(6) If the activities of a sole proprietor are suspended pursuant to the provisions of the Taxation Act for longer than twelve months, the assets specified in subsections (2) and (3) shall be deemed to have been taken into personal use.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(7) If the assets of a sole proprietor which belonged among the assets of an enterprise are transferred to a company in the form of a non-monetary contribution with the purpose of continuing the activities of the enterprise, the assets shall not be deemed to have been taken into personal use.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(8) Upon the transfer of the right to cut standing crop, certified expenses relating to reforestation shall also be deemed to be expenses related to the transfer and the taxpayer has the right to deduct the expenses from the income received from the transfer of the right to cut standing crop during the same period of taxation or following periods of taxation if all of the following conditions are met:

1) reforestation is carried out, as defined in the Forest Act (RT I 1998, 113/114, 1872; 1999, 54, 583; 82, 750; 95, 843; 2000, 51, 319; 102, 670; 2001, 50, 282; 2002, 61, 375; 63, 387; 2003, 88, 594; 2004, 9, 53; 38, 258);

2) the owner of the forest has submitted a forest notification concerning the reforestation works to the environmental authority of the location of the forest pursuant to the procedure provided for in the Forest Act and the environmental authority has not prohibited the planned activity.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

#### § 38. Acquisition cost

(1) Acquisition cost means all certified expenses which a taxpayer makes in order to obtain, improve or supplement property, including any commissions and fees paid.

(2) The acquisition cost of property acquired by way of a finance lease is the total amount of contractual lease payments or down payments, without interest.

(3) The acquisition cost of a self-manufactured object means the total amount of certified expenses incurred in manufacturing the object.

(4) The acquisition cost of property acquired for privatisation vouchers issued to a natural person by the state or received by succession or from his or her spouse, parent or child is deemed to be the average selling price of the privatisation vouchers as quoted on the stock exchange on the date of acquiring the property. The acquisition cost of property acquired before privatisation vouchers came to be quoted on the stock exchange is deemed to be the average local selling price of the privatisation vouchers on the date of acquiring the property.

(5) The acquisition cost of a holding (shares, contributions) acquired as a result of a merger, division or transformation of companies or non-profit co-operatives is deemed to be the acquisition cost of a holding in the company or non-profit co-operative being acquired, acquiring or being divided or transformed or contributions made to acquire such holding, to which additional contributions made during the merger, division or transformation have been added, and from which payments received have been deducted.

(5<sup>1</sup>) The acquisition cost of a holding (shares, contributions) acquired by way of a non-monetary contribution shall be equivalent to the acquisition cost of the assets which constituted the non-monetary contribution. If the acquisition cost of the thing or proprietary right which constituted a non-monetary contribution has previously been deducted from the business income of the natural person and income tax has not been charged on it as assets taken into personal use, the acquisition cost of the holding shall be deemed to be zero.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(5<sup>2</sup>) Additional contributions made shall be added to the acquisition cost determined pursuant to subsection (5<sup>1</sup>) and payments received shall be deducted therefrom. In the calculation of acquisition cost, supply of labour or other services shall not be considered to be a non-monetary contribution.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(6) The acquisition cost of securities of the same class which are acquired at different prices and different times shall be calculated by consistently applying one of the following methods:

1) FIFO – transfer takes place in the order of purchase or

2) the weighted average method – the acquisition cost of one transferred security shall be calculated by dividing the amount of the acquisition costs of securities of the same class existent at the time of transfer by the number of securities of the same class.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

(7) If, in the case of an assets sales transaction with the obligation or right to repurchase the assets in the future within a specified term and at a specified price (repo agreement), the repurchase price of the assets is higher than the sales price, the sales price of the assets sold by way of the repo agreement shall be deemed to be the acquisition cost of the repurchased assets.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(8) The acquisition cost of assets on which income tax is charged pursuant to §§ 48 and 49 shall be increased by the amount of income tax charged.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(9) The acquisition cost of the units of an investment fund which are transferred in the course of an exchange is deemed to be the acquisition cost of the units acquired upon the exchange of the units of an investment fund specified in clause 15 (4) 11) of this Act.

(14.04.2004 entered into force 01.05.2004 - RT I 2004, 36, 251)

§ 39. Calculation of loss suffered upon transfer of securities

(1) A resident natural person has the right to deduct any loss suffered upon the transfer of securities during a period of taxation from the gains derived from the transfer of securities during the same period of taxation. Any loss from the transfer, at a price lower than the market price, of securities to a person associated with the taxpayer (§ 8) or from the transfer of securities acquired from such person at a price higher than the market price shall not be deducted.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(2) The amount by which the loss suffered upon transfer of securities during a period of taxation exceeds the gains derived from transfer of securities during the same period of taxation shall not be deducted from the taxable income.

(3) If the amount of loss suffered upon transfer of securities during a period of taxation exceeds the amount of gains derived by a taxpayer from transfer of securities during the same period of taxation, the amount by which the loss exceeds the gains may be deducted from the gains derived from transfer of securities during subsequent periods of taxation.

(4) If the total amount of loss suffered during a period of taxation and carried forward from previous periods of taxation exceeds the gains derived from transfer of securities during the period of taxation, the loss is covered only to the extent of the gains from the period of taxation and the remaining amount of loss is carried forward to subsequent periods of taxation.

Chapter 8

Withholding of Income Tax

§ 40. Withholding agent for income tax

(1) A withholding agent for income tax is a resident legal person, state or local government authority, sole proprietor, employer who is a natural person, or non-resident with a permanent establishment or operating as an employer in Estonia, who makes payments subject to income tax pursuant to Chapters 3 or 5 of this Act to a natural person or non-resident.

(2) A withholding agent is required to withhold income tax on payments listed in § 41, pursuant to the rates prescribed in subsection 43 (1). Income tax is withheld upon the making of a payment. Income tax shall not be withheld on the following payments:

1) payments made to resident legal persons;

2) payments made to non-resident legal persons' permanent establishments registered in Estonia;

3) payments made to sole proprietors entered in the commercial register or registered with the regional tax centre of the Tax and Customs Board if the payments are the business income of the recipients or are related to acquisition of property from sole proprietors, including under the conditions of financial lease.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(2<sup>1</sup>) (Repealed - 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(3) An employer who is a natural person (except a sole proprietor) and a non-resident who operates as an employer in Estonia but does not have a permanent establishment (§ 7) in Estonia are required to withhold income tax only on payments specified in clauses 41 1) and 2).

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

(3<sup>1</sup>) Income tax shall not be withheld on payments specified in clause 41 (1) if the recipient of the payment performs his or her official duties outside Estonia, and:

1) the payment is made through a resident legal person's permanent establishment in a foreign country, or

2) the withholding agent has a certificate issued by the foreign tax administrator stating that the recipient of the payment is a taxable person in the foreign country with regard to that income.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(4) A withholding agent is required to transfer withheld income tax to the bank account of the Tax and Customs Board not later than by the tenth day of the month following the month during which the payment was made.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(5) A withholding agent is required to submit a tax return to the regional tax centre of the Tax and Customs Board by the due date specified in subsection (4). The format of the tax return and the procedure for completing the form shall be

established by a regulation of the Minister of Finance.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(6) At the request of a taxpayer, a withholding agent is required to issue a certificate to the taxpayer concerning payments made and the income tax withheld during a calendar year, broken down by types of income and tax rates, not later than by 1 February of the year following the withholding of the tax or, if the taxpayer leaves work, together with the final settlement. The format of the certificate and the procedure for completing the certificate shall be established by a regulation of the Minister of Finance.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(7) The income tax of employees of such authorities whose staff, consolidated data or specific duties constitute a state secret shall be calculated pursuant to the procedure established by a regulation of the Minister of Finance.

§ 41. Payments from which income tax is withheld

Income tax is withheld from:

1) salaries, wages and other remuneration subject to income tax paid to a resident natural person (subsection 13 (1)), and remuneration paid to members of the management and controlling bodies of a legal person (subsection 13 (2)), taking into account the deductions allowed under § 42;

2) salaries, wages and other remuneration paid to a non-resident (subsection 29 (1)), and remuneration paid to non-resident members of the management and controlling bodies of a legal person (subsection 29 (2));

3) remuneration or service fees paid to a natural person on the basis of a contract for services, authorisation agreement or any other contract under the law of obligations, including payments made under a contract provided for in subsection 13 (2) of the Sport Act;

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544; 11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

4) interest payment subject to income tax paid to a non-resident or to a resident natural person (subsection 17 (1) and subsection 29 (7));

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

5) dividend subject to income tax paid to a non-resident legal person (subsection 29 (8));

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

6) insurance indemnities, pensions, payments from a pension fund, scholarships, grants, lottery prizes, maintenance support, benefits paid on the basis of the Parental Benefit Act (subsections 19 (1) and (2), 20 (1)–(3), § 20<sup>1</sup> and subsections 21 (1) and 29 (9)) or other payments which are subject to income tax and paid to a non-resident or to a resident natural person, except for the payments specified in clause 12);

(10.12.2003 entered into force 01.01.2004 - RT I 2003, 82, 549)

7) rent from a commercial or residential lease or payment for encumbering a thing with limited real rights (subsection 16 (1), clauses 29 (6) 1)–3)), paid to a non-resident or to a resident natural person, and royalties paid to a resident natural person (subsections 16 (2) and (3));

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

8) royalties paid to a non-resident (clauses 29 (6) 4) and 5));

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

9) payments made to a non-resident artist, sportsman or sportswoman for activities conducted in Estonia, and payments made to a third person who is a non-resident or a natural person for activities conducted in Estonia by an artist, sportsman or sportswoman (subsection 29 (10));

10) payments to a non-resident for services provided in Estonia (subsection 29 (3));

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

11) payments to a legal person located in a low tax rate territory (§ 10) for services provided to an Estonian resident (subsection 29 (3));

12) payments listed in subsections 21 (2) and (3) which are made to a natural person.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

§ 42. Deductions upon withholding of income tax

(1) On the basis of a single written application of a taxpayer, one-twelfth of the basic exemption provided for in § 23 shall, before calculation of the income tax to be withheld, be deducted in each calendar month from the payments specified in clauses 41 1), 3), 6), 7) and 12) which have been made to the resident natural person.

(1<sup>1</sup>) In the case of a pension paid to a resident natural person by the Estonian state pursuant to an Act and a mandatory funded pension provided for in the Funded Pensions Act, increased basic exemption for pensions (§ 23<sup>2</sup>) in the amount of that pension shall, before calculation of income tax to be withheld, be deducted from the pension, although this deduction shall not exceed one-twelfth of the amount provided for in § 23<sup>2</sup> in each calendar month.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(1<sup>2</sup>) In the case of payment of compensation for an accident at work or occupational disease made to a resident natural person, increased basic exemption for compensation for accidents at work and occupational diseases (§ 23<sup>3</sup>) in the amount of that compensation shall, on the basis of a single written application from a taxpayer, be deducted from the payment before calculation of income tax to be withheld, although this deduction shall not exceed one-twelfth of the amount provided for in § 23<sup>3</sup> in each calendar month.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) If a recipient of payments receives taxable income from several withholding agents, the deduction specified in subsection (1) may only be made by one withholding agent chosen by the taxpayer.

(3) If payments subject to income tax are not made to a taxpayer in each month or if the payments made in some of the months are smaller than one-twelfth of the basic exemption provided for in § 23, 23<sup>2</sup> or 23<sup>3</sup>, the same withholding agent has the right to carry the unused part of the deduction of basic exemption specified in subsection (1), (1<sup>1</sup>) or (1<sup>2</sup>) for such months forward to the subsequent months of the same calendar year.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(4) The maintenance support in compliance with the conditions specified in § 24 which has been withheld from a payment made to a resident natural person in accordance with § 41 may be deducted from the payment before calculation of

the income tax to be withheld if income tax has been withheld from such maintenance support pursuant to clause 41 (6).

(5) The unemployment insurance premium withheld pursuant to clause 42 (1) 1) of the Unemployment Insurance Act from a payment made to a resident natural person in accordance with § 41 shall be deducted from the payment before calculation of the income tax to be withheld.

(6) The contributions to a mandatory funded pension withheld pursuant to clauses 11 (1) 1) and 2) of the Funded Pensions Act from a payment made to a resident natural person in accordance with § 41 shall be deducted from the payment before calculation of the income tax to be withheld.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662; 14.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 252)

#### § 43. Rates of withheld income tax

(1) Income tax is withheld from payments specified in § 41 according to the following rates:

1) from payments specified in clauses 1)–7) and 11) – 26 per cent;

2) from payments specified in clauses 8)–10) – 15 per cent;

3) from payments specified in clause 12) – 10 per cent.

(2) If an international agreement ratified by the Riigikogu prescribes lower rates for withholding income tax from a payment made to a non-resident than the rates specified in subsection (1), the rates prescribed by the international agreement are applied if the withholding agent submits a document certifying the recipient of income and the residency of the recipient of income to the regional tax centre of the Tax and Customs Board together with the tax return specified in subsection 40 (5). The document need not be submitted if data on the recipient of income and the residency of the recipient of income have been entered in the register of taxable persons provided for in the Taxation Act.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(3) The requirements for documents specified in subsection (2) shall be established by a regulation of the Minister of Finance.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(4) Income tax withheld in accordance with the rates specified in subsection (1) or in foreign agreements specified in subsection (2) is, for a non-resident recipient, the final income tax on income from Estonian sources as regards payments specified in § 41. This provision does not apply to a non-resident who derives income through a permanent establishment in Estonia (§ 7).

## Chapter 9

### Declaration of Income and Payment of Income Tax

#### § 44. Income tax returns

(1) A resident natural person is required to submit an income tax return to the regional tax centre of the Tax and Customs Board concerning the income of a period of taxation not later than by 31 March of the year following the period of taxation. It is possible to submit an income tax return through the e-service of the Tax and Customs Board as of 15 February of the year following the period of taxation.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(1<sup>1</sup>) The Tax and Customs Board shall complete the income tax return concerning the income of a resident natural person during a period of taxation and the deductions made therefrom on the basis of §§ 23, 23<sup>2</sup> and 23<sup>3</sup>, subsection 26 (3) and §§ 28 and 28<sup>1</sup> on the basis of the data at the disposal of the Tax and Customs Board and make the pre-completed tax return available to the taxpayer through the e-service of the Tax and Customs Board and at the regional tax centre of the Tax and Customs Board as of 15 February of the year following the period of taxation. If the taxpayer uses the pre-completed tax return, he or she is required to verify the correctness of the data contained in the tax return and submit an amended and supplemented tax return in event of incorrectness or deficiency of the data.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(1<sup>2</sup>) A natural person who has not been resident during the whole period of taxation shall submit an income tax return concerning only income

received during the period when the person was resident and may make deductions allowed under Chapter 4 for the same period of time. Deductions provided for in §§ 23, 23<sup>1</sup>, 23<sup>2</sup> and 23<sup>3</sup> may be made and the limit on deductions specified in § 28<sup>2</sup> shall be taken into account in proportion to the number of months during which the person was resident.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(1<sup>3</sup>) A resident natural person who received income which, pursuant to subsection 13 (4) or 18 (1<sup>1</sup>), is exempt from income tax in Estonia is required to declare such income.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) Resident spouses who have been married to each other during the whole period of taxation may submit a joint income tax return. A joint income tax return may be submitted also if the marriage was contracted during the period of taxation or if one of the spouses died during the period of taxation.

(3) In the case prescribed in subsection 36 (6), a natural person is required to submit an income tax return within one month after the declaration of bankruptcy.

(4) A non-resident is required to submit an income tax return concerning gains subject to taxation during the calendar year pursuant to subsections 29 (4) and (5) to the Tax and Customs Board not later than by 31 March of the following year. If a non-resident transfers an immovable or a structure or apartment as a movable, the income tax return shall be submitted within one month following the transaction. The income tax return shall be submitted to the regional tax centre of the Tax and Customs Board.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(5) A non-resident who derives business income which is subject to taxation in Estonia (subsection 29 (3)) is required to submit an income tax return concerning business income derived during the period of taxation. The income tax return shall be submitted to the regional tax centre of the Tax and Customs Board within six months following the period of taxation. If engagement in business is terminated before the end of the period of taxation, the income tax return shall be submitted within two months following the termination of activities.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(5<sup>1</sup>) A non-resident who derives income subject to taxation on the basis of subsection 29 (1), (6), (7), (9) or (10) from which income tax has not been withheld on the basis of § 41 is required to submit an income tax return concerning such income derived during the period of taxation to the Tax and Customs Board not later than by 31 March of the year following the period of taxation.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(6) The following persons are not required to submit an income tax return:

1) resident natural persons (except sole proprietors and taxpayers specified in subsection 22 (6)) who do not earn taxable income during the period of taxation or whose income does not exceed the basic exemption prescribed in § 23;

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

2) persons specified in subsection 43 (4);

3) resident natural persons (except sole proprietors and the taxpayers specified in subsection 22 (6)) whose only taxable income during a period of taxation is the income specified in subsection 13 (1), (1<sup>1</sup>) or (2), a pension paid by the Estonian state pursuant to an Act, a mandatory funded pension provided for in the Funded Pensions Act and the compensation specified in subsection 20 (1), if income tax has been withheld on such income pursuant to § 41.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(7) The formats of income tax returns and annexes thereto, and the procedure for completion thereof shall be established by a regulation of the Minister of Finance.

#### § 45. Calculation of income tax paid abroad

(1) If a resident taxpayer has derived income from abroad during a period of taxation, all income derived from abroad is included in the taxable income of the person and income tax paid or withheld on such income abroad is deducted from the income tax to be paid, in accordance with the conditions specified in subsections (2)–(6). Income tax is calculated separately for income derived in Estonia and for income derived in each foreign country. Income tax paid in a

foreign country on income which is not subject to tax in Estonia shall not be taken into account.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) If the income tax calculated in accordance with this Act on income derived in a foreign country exceeds the amount of income tax paid in the foreign country, the taxpayer is required to pay the difference between the foreign income tax and Estonian income tax as income tax to be paid in Estonia.

(3) If the income tax calculated on income derived in a foreign country is less than the income tax paid in the foreign country or if the income tax calculated according to the taxpayer's income tax return on income from all sources is less than the income tax paid in the foreign country, the overpaid amount of income tax paid in the foreign country is not refunded in Estonia.

(4) If a resident natural person has derived taxable income pursuant to subsection 18 (4) or § 22, he or she has the right to deduct a proportional share of the income tax paid or withheld abroad by a foreign legal person, association of persons or pool of assets, which corresponds to the resident's share of profit taxable as income, from the income tax to be paid by him or her.

(5) Income tax paid or withheld in a foreign country may be deducted from income tax payable in Estonia only if the taxpayer submits a certificate issued by the foreign tax administrator or withholding agent certifying the payment of income tax or another tax equivalent to income tax.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

(6) If more income tax is paid or withheld in a foreign country than prescribed by the law of the country or an international agreement, only the mandatorily payable part of the income tax of the foreign country may be deducted from income tax payable in Estonia.

(7) If the income tax on income derived in a foreign country is paid during a taxable period different from the period when the income was derived, it shall be taken into account in Estonia during the taxable period when the income taxable in a foreign country was received.

(20.05.2004 entered into force 01.01.2005 - RT I 2004, 45, 319)



(8) The income tax withheld pursuant to the procedure of article 11 of Directive 2003/48/EC of the Council of the European Union (on taxation of savings income in the form of interest payments) on the interest received by a resident natural person from a resident of Austria, Belgium or Luxembourg may be deducted from the income tax payable in Estonia on the income of the same period of taxation. The portion of the income tax which is not deducted shall be received on the basis of the income tax return of the resident natural person.

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

#### § 46. Payment and refund of income tax

(1) The regional tax centre of the Tax and Customs Board shall calculate any additional amount of tax due (additional amount due) and issue a written tax notice to this effect to the taxpayer. Spouses who submit a joint income tax return are solidarily liable for payment of any additional amount of tax due and a common tax notice is issued to them. Tax notices are not issued to non-residents.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(2) Income tax withheld or paid during a period of taxation on the basis of §§ 41 and 47 is deducted from the total income tax of the period of taxation. Income tax withheld or paid in a foreign country is also deducted to the extent specified in § 45. Income tax to be paid or refunded is calculated in whole kroons.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

(3) Except in the cases specified in subsections (4) and (5), a taxpayer is required to pay any additional amount due which is specified in the tax notice into the bank account of the Tax and Customs Board not later than by 1 July of the calendar year following the period of taxation.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(4) A resident natural person who declares business income or gains from the transfer of property is required to pay any additional amount due which is specified in the tax notice into the bank account of the Tax and Customs Board not later than by 1 October of the calendar year following the period of taxation.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(5) A non-resident who derived taxable business income or income specified in subsection 44 (5<sup>1</sup>) shall pay any additional amount of tax due into the bank account of the Tax and Customs Board within three months after the due date for submitting income tax returns specified in subsection 44 (5) or (5<sup>1</sup>). A non-resident who derived gains from the transfer of property, shall pay the amount of tax due into the bank account of the Tax and Customs Board within three months after receiving the taxable gains. If assets are paid for in instalments, the income tax shall be paid according to the receipt of gains.

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

(6) The Tax and Customs Board shall refund the amount of tax overpaid by a natural person to the bank account of the taxpayer or his or her spouse indicated in the tax return or, on the basis of a written application of the taxpayer, to the bank account of a third person, except in the cases prescribed in the Taxation Act. Overpaid amounts of tax shall be refunded not later than by the due date prescribed in subsection (3) or, in the case of taxpayers specified in subsection (4), by the due date specified in subsection (4).

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

#### § 47. Advance payments

(1) A natural person who derived business income during a previous period of taxation is required to make advance payments of income tax during the period of taxation. The size of an advance payment is one-quarter of the total amount of income tax calculated on the business income derived by the person during the previous period of taxation.

(2) Advance payments shall be made into the bank account of the Tax and Customs Board in equal amounts by the fifteenth day of the third month of each quarter, starting from the quarter following the due date for submitting the income tax return. Advance payments need not be paid if the quarterly payment does not exceed 1000 kroons.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(3) A taxpayer who derives business income is not required to make advance payments of income tax during the first period of taxation.

(4) A sole proprietor is not required to make advance payments of income tax in the following cases:

1) after having been deleted from the commercial register or having notified the regional tax centre of the Tax and Customs Board of the termination of his or her engagement in business;

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

2) the person's business activities are registered with the regional tax centre of the Tax and Customs Board as being of a temporary or seasonal nature or the person's business activities have been suspended.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(5) The Tax and Customs Board has the right to reduce the size of advance payments or exempt a taxpayer from making advance payments if the taxpayer's estimated business income during the period of taxation is considerably smaller than the income of the previous period of taxation and if the taxpayer submits a corresponding reasoned application.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

## Chapter 10

### Special Cases of Payment of Income Tax

#### § 48. Income tax on fringe benefits

(1) An employer shall pay income tax on fringe benefits granted to employees.

(2) For the purposes of subsection (1), an employer is a resident legal or natural person, a state or local government authority, or a non-resident who has a permanent establishment in Estonia (§ 7) or whose employees work in Estonia.

(3) For the purposes of subsection (1), an employee is a person employed under an employment contract, a public servant (subsection 13 (1)), a member of the management or controlling body (§ 9), or a natural person who sells goods to an employer during a period longer than six months. A natural person who works or provides services on the basis of a contract for services, authorisation agreement or any other contract under the law of obligations is also deemed to be an employee within the meaning of subsection (1).

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544; 11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(4) Fringe benefits are any goods, services, remuneration in kind or monetarily appraisable benefits which are given to a person specified in subsection (3) in connection with an employment or service relationship, membership in the management or controlling body of a legal person, or a long-term contractual relationship, regardless of the time at which the fringe benefit is granted. Fringe benefits include:

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

1) full or partial covering of housing expenses;

2) the use of a vehicle or other property of the employer free of charge or at a preferential price for activities not related to employment or service duties or to the employer's business;

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

3) payment of insurance premiums, unless such obligation is prescribed by law;

4) compensation for official travel expenses and payment of daily allowances, in so far as they exceed the limits established by the Government of the Republic (clauses 13 (3) 1) and 31 (1) 7));

5) compensation for the use of an automobile in personal ownership or used on the basis of a leasing contract, in so far as it exceeds the limits established by the Government of the Republic (clauses 13 (3) 2) and 31 (1) 8));

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

6) loans given with lower interest than the minimum rate established by the Minister of Finance;

7) transfer free of charge or sale or exchange at a price lower than the market price, of a thing, security, proprietary right or service;

8) purchase of a thing, security, proprietary right or service at a price higher than the market price;

9) waiver of a monetary claim, unless the estimated reasonable costs of collecting the monetary claim exceed the claimed amount;

10) coverage of expenses relating to formal or informal education acquired in the adult education system within the meaning of § 3 of the Adult Education Act (RT I 1993, 74, 1054; 1998, 71, 1200; 1999, 10, 150; 60, 617; 2002, 90, 521; 2003, 20, 116; 71, 473; 2004, 41, 276), except for the expenses relating to the formal education acquired within the adult education system by an official of a security authority.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(5) Fringe benefits do not include cash payments ordinarily regarded as salary, wages, additional remuneration, additional payments, remuneration of a member of a management or controlling body, or payments for goods or services. Payments made to natural persons on which income tax has been withheld on the basis of § 41 or which pursuant to §§ 13–21 or §§ 30–31 are not subject to income tax are also not classified as fringe benefits.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(5<sup>1</sup>) Expenses incurred to transport employees between their residence and their place of employment are not classified as fringe benefits if it is impossible to make the journey using public transport with a reasonable expenditure of time and money.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(6) Benefits specified in subsection (4) which an employer grants to the spouse, parent or child of a person specified in subsection (3) are also deemed to be fringe benefits.

(7) In general, the price of a fringe benefit shall be determined on the basis of the market price of the goods or services provided as a fringe benefit. The minimum rate specified in clause (4) 6) shall not be higher than twice the interest rate applicable to the main refinancing operations of the European Central Bank. The procedure for determining the price of a fringe benefit shall be established by a regulation of the Minister of Finance.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(8) The maximum price of a fringe benefit for the use of an automobile of the employer free of charge or at a preferential price for activities not related to employment or service duties or to the employer's business is 2000 kroons per month for each automobile used for the activities specified. The price of such fringe benefit shall be

determined according to the use of the automobile as a fringe benefit and on the basis of the records maintained pursuant to the procedure established by the Minister of Finance. If no records are maintained, the maximum price shall be taken as the basis for taxation.

(29.01.2003 entered into force 01.03.2003 - RT I 2003, 18, 105)

§ 49. Income tax on gifts, donations and costs of entertaining guests

(1) Resident legal persons, except persons included in the list specified in subsection 11 (1) and persons specified in subsection 11 (2), shall pay income tax on all gifts and donations on which income tax has not been withheld on the basis of § 41 or not been paid on the basis of § 48, taking into consideration the specifications provided in subsections (2) and (4). Gifts and donations made by persons included in the list specified in subsection 11 (1) and persons specified in subsection 11 (2) are subject to taxation pursuant to the procedure provided in subsection (6).

(2) Income tax is not charged on gifts and donations made to persons included in the list specified in subsection 11 (1), persons specified in subsection 11 (2), to a person who owns a hospital, to a state or local government scientific, cultural, educational, sports, law enforcement or social welfare institution, or a manager of a protected area in a total amount not exceeding one of the following limit values:

1) 3 per cent of the amount of the payments subject to social tax pursuant to clauses 2 (1) 1)-4) and 6) of the Social Tax Act (hereinafter individually registered social tax) made by the taxpayer during the same calendar year;

2) 10 per cent of the profits for the last financial year of a taxpayer dissolved as of 1 January of a calendar year, calculated pursuant to the legislation regulating accounting.

(3) The taxpayer has the right to calculate the gifts and donations specified in subsection (2) made during the calendar year in total. The taxpayer shall determine the total annual exemption for such gifts and donations, based on only one limit value of the taxpayer's choice specified in the same section.

(4) Income tax is not charged on payments by persons included in the list specified in subsection 11 (1) and persons specified in subsection 11 (2) made in connection with the provision of catering, accommodation, transportation or cultural services to guests and business partners. In the case of other resident legal persons, income tax is

not charged on such payments in the amount of up to 500 kroons per calendar month. In addition, if such legal person is making payments subject to individually registered social tax, the legal person may make, in a calendar month, payments exempt from income tax in connection with the provision of catering, accommodation, transportation or cultural services to guests and business partners in the amount of up to 2 per cent of the total amount of the payments subject to individually registered social tax made by the legal person during the same calendar month.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(5) If, during some months of a calendar year, a resident legal person has not made the payments specified in subsection (4) or has made them in an amount below the limit values for exemption provided in the same subsection, the legal person has the right to apply recalculation in total to the payments made during that month and the following months until the end of the calendar year.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(6) Persons included in the list specified in subsection 11 (1) and persons specified in subsection 11 (2) shall pay income tax on all gifts and donations on which income tax has not been withheld on the basis of § 41 or not been paid on the basis of § 48, except the following gifts and donations made in pursuance of the objectives set out in their articles of association:

1) gifts and donations made to persons included in the list specified in subsection 11 (1) and specified in subsection 11 (2), or to a person who owns a hospital;

2) gifts and donations made to a state or local government scientific, cultural, educational, sports, law enforcement or social welfare institution, or a manager of a protected area;

3) material assistance for coping provided to natural persons;

4) souvenirs presented to participants in a youth camp or project camp in the amount of up to 500 kroons per participant in camp or project;

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

5) souvenirs presented at a sports event to the participants in the event, in the amount of up to 500 kroons per participant in event.

(7) (Repealed - 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

§ 50. Income tax on dividends and other profit distributions

(1) A resident company (including a general or limited partnership) shall pay income tax on profit distributed as dividends or other profit distributions upon payment thereof in monetary or non-monetary form. Income tax is not charged on profit distributed by way of a bonus issue.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(2) Payments made upon a reduction in share capital or contributions, redemption of shares or liquidation of a legal person are subject to taxation pursuant to subsections 15 (2) and (3) and subsection 29 (5).

(3) (Repealed - 06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(4) If the value of a transaction conducted between a resident legal person and a non-resident or natural person associated with the resident legal person differs from the value of similar transactions conducted between non-associated persons, the tax administrator may, upon determining the income tax, use the values of transactions applied by non-associated independent persons under similar conditions.

(5) In the case specified in subsection (4), income tax is charged either on the income which the taxpayer would have derived or the expense which the taxpayer would not have incurred if the value of the transaction conducted with the associated person had been such as applied by non-associated independent persons under similar conditions.

(6) The methods for determining the value of transactions specified in subsection (4) shall be established by a regulation of the Minister of Finance.

§ 51. Income tax on expenses not related to business

(1) A resident company shall pay income tax on expenses not related to business unless income tax has been paid on such expenses in accordance with §§ 48 –50 of this Act.

(2) For the purposes of subsection (1), expenses not related to business are:

1) expenses or payments specified in clauses 34 3)–6) and 11);

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

2) entrance and membership fees paid to non-profit associations, unless participation in such associations is directly related to the business of the taxpayer;

3) payments concerning which the taxpayer does not have a source document in compliance with the requirements prescribed in legislation regulating accounting;

4) expenses incurred or payments made in order to purchase services not related to the business of the taxpayer;

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

5) expenses incurred or payments made in order to fulfil obligations not related to the business of the taxpayer.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(3) A resident non-profit association, foundation or religious association which is a legal person shall pay income tax on expenses and payments specified in clauses (2) 1) and 3) and in § 52 and on expenses incurred in purchasing services or property not related to the activities specified in the person's articles of association (including business permitted by the articles of association).

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(4) A resident legal person shall pay income tax on the total amount of the loans and advance payments made in a calendar month to natural persons associated with the legal person (§ 8), which exceeds 50 per cent of the total amount of the payments subject to social tax pursuant to the Social Tax Act and made by the taxpayer during the preceding calendar month. Loans and advance payments refunded during the same calendar month by natural persons associated with the resident legal person, the cost of goods and services purchased out of the aforementioned advance payments during the same calendar month, and the size of salaries or service fees paid out of such advance payments shall be deducted from the total amount of the loans and advance payments specified in the previous sentence.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(5) Expenses specified in clauses 13 (3) 6)-10) are not deemed to be expenses not related to business.

§ 52. Income tax on other payments not related to business

(1) Resident companies, except credit institutions, shall pay income tax on payments not related to business, unless income tax has been withheld on such payments on the basis of § 41 or paid pursuant to §§ 48-51.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

(2) For the purposes of subsection (1), payments not related to business are the following:

1) acquisition of property not related to business;

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

2) acquisition of securities issued by a legal person located in a low tax rate territory (§ 10) unless such securities meet the requirements specified in subsection 257 (1) of the Investment Funds Act;

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

3) acquisition of a holding in a legal person located in a low tax rate territory;

4) payment of a fine for delay or a contractual penalty, or extra-judicial compensation for damage, to a legal person located in a low tax rate territory;

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

5) grant of a loan or making of an advance payment to a legal person located in a low tax rate territory or acquisition of a right of claim against a legal person located in a low tax rate territory in any other manner.

(3) Resident credit institutions shall pay income tax on the following payments and losses unless income tax has been withheld on such payments on the basis of § 41 or paid pursuant to §§ 48-51:

1) payments specified in clauses 2 (1) and (2);

2) payments specified in clause (2) 4), unless such payments are made to a credit or financial

institution which according to the law of its home country meets the requirements for institutions equal to Estonian credit or financial institutions;

3) losses sustained by a credit institution when it transfers a right of claim or waives the collection of a right of claim (including loans granted and advance payments made) acquired against a legal person located in a low tax rate territory.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

§ 53. Taxation of permanent establishment of non-resident in Estonia

(1) A non-resident legal person who has a permanent establishment registered in Estonia (§ 7) shall pay income tax pursuant to §§ 48-52, taking into consideration the specifications provided in this section.

(2) All fringe benefits granted by a non-resident to its employees or members of the management or controlling body through or on account of its permanent establishment are subject to income tax pursuant to § 48, irrespective of whether the recipient of fringe benefits is a resident or non-resident.

(3) Gifts and donations made and costs of entertaining guests incurred by a non-resident through or on account of its permanent establishment are subject to income tax pursuant to § 49, irrespective of whether the recipient of the gifts or donations, or the guest or business partner is a resident or non-resident. Representatives of the non-resident's head office or other structural unit located outside Estonia are also deemed to be guests or business partners.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

(4) On the basis of § 50, income tax is imposed on:

1) the cost of property which is taken out of a permanent establishment, in the amount which exceeds the total amount of the cost of property of the permanent establishment located in Estonia before the entry into force of this Act and the cost of property brought into Estonia for the purposes of the permanent establishment after the entry into force of this Act, unless other property or a service is provided in return for such property;

2) payments made through or on account of a permanent establishment to the head office or other structural units of the non-resident, if no goods or services are received in return for such payments;

3) payments made to third parties through or on account of its permanent establishment, if no goods or services are received in return for such payments.

(24.10.2001 entered into force 01.01.2003 - RT I 2001, 91, 544)

(5) All expenses and other payments not related to business made through or on account of the income of a permanent establishment are subject to income tax pursuant to § 51 and § 52. Payments not related to business and made through a branch of a non-resident credit institution entered in the Estonian commercial register are subject to taxation on the basis of § 51 and subsection 52 (3).

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

§ 54. Declaration and payment of income tax

(1) A person or authority which grants fringe benefits taxable on the basis of § 48 is required to submit a tax return to the regional tax centre of the Tax and Customs Board by the tenth day of the calendar month following the period of taxation regarding the fringe benefits granted during the calendar month.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(2) Resident legal persons and non-resident legal persons specified in § 53 are required to submit a tax return regarding the expenses and payments specified in §§ 49-53 concerning the previous calendar month to the regional tax centre of the Tax and Customs Board by the tenth day of the calendar month following the period of taxation. A taxpayer who is a registered person liable to value added tax as defined in the Value Added Tax Act is required to submit a return regardless of the obligation to pay income tax during that period of taxation.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(3) The format of the tax return specified in subsections (1) and (2) and of the annexes thereto, and the procedure for completion thereof shall be established by a regulation of the Minister of Finance.

(4) A taxpayer is required to transfer the income tax payable on the basis of §§ 48-53 to the bank account of the Tax and Customs Board not later than by the tenth day of the calendar month following the period of taxation.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(5) If a resident company has received dividends from a non-resident company, the recipient of dividends may deduct the income tax withheld from such dividends abroad from the income tax payable on the basis of subsection 50 (1). If the resident company who has received dividends owns, at the time of payment of the dividends, at least 20 per cent of the shares or votes of the non-resident company which paid the dividends, the recipient of the dividends may deduct also the income tax paid on the share of profit abroad which was the basis for the dividends in addition to the income tax withheld from the dividends from the income tax payable on the basis of subsection 50 (1). The amount of income tax withheld from the income tax payable on the basis of subsection 50 (1) pursuant to this subsection shall not exceed 26/74 of the amount of dividends paid by the non-resident. The income tax of a foreign state may be deducted only in the amount which it is mandatory to pay pursuant to the law of the state or an international agreement. Income tax paid in each state shall be recorded separately.

(24.10.2001 entered into force 01.01.2003 - RT I 2001, 91, 544)

(5<sup>1</sup>) If a resident company or a non-resident through its permanent establishment registered in Estonia has received dividends from a resident company and the recipient of the dividends owns, at the time of payment of the dividends, at least 20 per cent of the shares or votes of the payer of the dividends, the recipient of the dividends may deduct an amount which equals to 26/74 of the dividends received from the resident company from the income tax payable pursuant to subsection 50 (1) or 53 (4).

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

(5<sup>2</sup>) If a non-resident has received dividends from a resident company through its permanent establishment registered in Estonia, the recipient of the dividends may, in accordance with the conditions and to extent provided for in subsection (5) of this section, deduct the income tax withheld from such dividends abroad and the income tax paid abroad on the share of profit which was the basis for the dividends from the income tax payable on the basis of subsection 53 (4).

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

(5<sup>3</sup>) If a resident company or a non-resident through its permanent establishment registered in

Estonia has received licence fee from a resident company of Greece, Spain or Portugal or from a resident company of a member state of the European Union through or on account of its permanent establishment registered in Greece, Spain or Portugal, the recipient of the licence fee may deduct the income tax withheld in these countries from the income tax payable pursuant to subsection 50 (1) or 53 (4). The income tax may be deducted if the condition specified in clause 31 (4) 1) and at least one of the conditions set in clauses 31 (4) 2)–4) have been fulfilled. The amount of income tax to be deducted pursuant to this subsection from the income tax payable according to subsection 50 (1) or 53 (4) shall not exceed 24/76 of the amount of the licence fee. The income tax of a foreign state may be deducted only in the amount which it is mandatory to pay pursuant to the law of the state or an international agreement. Income tax paid in each state shall be recorded separately.

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319; 20.05.2004 entered into force 01.01.2005 - RT I 2004, 45, 319)

(6) If a taxpayer applies the calculation in total specified in subsections 49 (3) and (5) or if circumstances which are the bases for taxation pursuant to clauses 51 (2) 3)–5) or subsections 51 (3) and (4), 52 (2) and (3) or 53 (4) cease to exist, the taxpayer has the right to recalculate the income tax and demand a refund of overpaid amounts of income tax. Such recalculations are made in the declaration specified in subsection (2). Overpaid amounts of income tax are refunded pursuant to the procedure provided for in the Taxation Act.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377; 06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667; 11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

## Chapter 11

### Notification Requirement

#### § 55. Submission of annual reports

(1) A resident company, non-profit association, foundation, legal person specified in subsection 11 (2) or legal person in public law is required to submit a signed original copy of its annual report to the regional tax centre of the Tax and Customs Board within six months following the end of the financial year. The person who is obliged to submit the annual report to the commercial register or the non-profit associations and foundations register pursuant to legislation, need not submit the report.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591; 20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

(2) A non-resident which has a permanent establishment in Estonia (§ 7) is required to submit a signed original copy of the annual report of its permanent establishment to the regional tax centre of the Tax and Customs Board within six months following the end of the financial year.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

§ 56. Notification of payments made to shareholders

(1) A resident company is required to notify the regional tax centre of the Tax and Customs Board of payments made upon reduction of the share capital or contributions, upon redemption of shares, or upon payment of liquidation distributions.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(2) A notice shall set out the name, personal identification code or registry code, and address of the recipient of a payment, the size of the payment made to the person, and the nominal value of the person's share or contribution before and after the payment is made.

(2<sup>1</sup>) A resident company is required to submit a declaration concerning the amount and recipients of dividends and other profit distributions specified in subsection 50 (1) to the regional tax centre of the Tax and Customs Board. The format of the declarations and the procedure for completing the forms shall be established by a regulation of the Minister of Finance.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(3) A notice provided for in subsection (2) and a declaration provided for in subsection (2<sup>1</sup>) shall be submitted by the tenth day of the calendar month following the making of the payment or profit distribution.

(24.10.2001 entered into force 01.01.2002 - RT I 2001, 91, 544)

§ 57. Notification of register entries

The land registries and registration departments of courts, the registrar of the national civil aircraft register and the registrar of the traffic register are required to notify the Tax and Customs Board within one month after making a register entry concerning the following:

(15.05.2002 entered into force 01.01.2004 - RT I 2002, 47, 297; 11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

1) transactions by which a foreign legal person or a foreign citizen or stateless person without a residence permit in Estonia has transferred immovable property, limited real rights or a movable entered in a register or has assigned the ranking of a limited real right;

2) transactions by which an immovable or a movable entered in a register is encumbered with a limited real right in favour of a foreign legal person or a foreign citizen or stateless person without a residence permit in Estonia.

§ 57<sup>1</sup>. Notification requirement relating to tax incentive

(1) Resident credit and financial institutions and branches of non-resident credit institutions entered in the Estonian commercial register may submit declarations to their regional tax centres of the Tax and Customs Board concerning the interest paid by natural persons during a calendar year on loans one aim of which is acquisition of housing (including construction of housing).

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(2) Resident credit or financial institutions and branches of non-resident credit institutions entered in the Estonian commercial register, and state or local government educational institutions, universities in public law and private schools holding education licences are required to submit declarations concerning training expenses specified in § 26 and paid during a calendar year by natural persons to a regional tax centre of the Tax and Customs Board.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(3) Persons included in the list specified in subsection 11 (1), political parties, universities in public law and persons operating a hospital are required to submit declarations to a regional tax centre of the Tax and Customs Board concerning the gifts and donations received during a calendar year and concerning the use of such gifts,



donations and other income. Persons entered in the register of trade unions are required to submit declarations to a regional tax centre of the Tax and Customs Board concerning the entrance and membership fees paid by natural persons during a calendar year and concerning the use of such fees.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(4) An insurer is required to submit a declaration to a regional tax centre of the Tax and Customs Board concerning the part of insurance premiums the purpose of which is to pay an insured sum as a pension and which are received from natural persons during a calendar year under insurance contracts of supplementary funded pension which meet the conditions of § 63 of the Funded Pensions Act.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591; 14.04.2004 entered into force 01.05.2004 - RT I 2004, 37, 252)

(5) A management company of a voluntary pension fund established in accordance with the procedure prescribed in the Funded Pensions Act is required to submit to a regional tax centre of the Tax and Customs Board a declaration concerning the units of voluntary pension funds acquired by natural persons during a calendar year, the amounts paid to acquire these units and the pension fund units redeemed in the course of changing pension funds.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(6) The declarations specified in subsections (1)–(5) shall be submitted by 1 February of the year following the given calendar year. The declarations concerning the use of gifts, donations and other income specified in subsection (3) shall be submitted by 1 July of the year following the given calendar year. The format of the declarations and the procedure for submission of the declarations shall be established by a regulation of the Minister of Finance.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

§ 57<sup>2</sup>. Duty to give notice of the interest(1) A resident legal person, a non-resident having a permanent establishment in Estonia, an Estonian state or local government authority or a sole proprietor (hereinafter the interest payer) who has during a calendar year paid interest referred to in subsection 17 (1) to a natural person residing in other member state of the European Union, is required to submit a declaration

(hereinafter the interest declaration) concerning the payment of interests to the Tax and Customs Board. The following information shall be set out in the interest declaration:

1) name, state of residence and address in the state of residence of the recipient of the interest;

2) number or code used to identify the recipient of the interest in the register of taxable persons of the state of residence, or in case such number or code is not indicated on the document proving the identity or residency of the person, the date and place of birth of the recipient of the interest;

3) data on the residency of the recipient, if the recipient has submitted to the interest payer a document proving his/her residency.

4) the name or title, address and personal identification code or registry code of the interest payer;

5) the number of account in an Estonian credit institution where the money, for which interest is paid, is deposited, or in case other debt obligations, the type of obligation for which interest is paid;

6) the amount of the interest paid.

(2) The interest payer shall submit the interest declaration also in the case if he/she has paid interest for the benefit of a natural person residing in another member state of the European Union to the third person established in another member state of the European Union or to an association of persons or pool of assets without the status of a legal person. In that case the name and address of the recipient of the payment and the total amount of the interest paid shall be stated in the interest declaration. The interest declarations shall not state data concerning the recipient of the payment who proves to meet at least one of the following conditions:

1) the recipient is a legal personality, except for avoin yhtiö or kommandiittiyhtiö founded in Finland and handelsbolag or kommanditbolag founded in Sweden;

2) the taxation of the recipient's profit shall be pursuant to the provisions for the taxation of profit of companies;

3) the recipient is the UCITS within the meaning of § 4 of the Investment Funds Act.

(3) For the purposes of this section, an interest payer is a person or institution who paid the interest directly to the actual beneficiary (hereinafter "the beneficiary") If the person who made the payment has a reasonable doubt that

the natural person to who receives the payment is not the actual beneficiary, the person who made the payment shall take measures to identify the actual beneficiary; If it is impossible to identify the beneficiary with a reasonable expenditure of time and money, the recipient of payment shall be considered the beneficiary.

(4) The interest payer shall verify the data referred to in subsection 1 on the basis of valid identity document issued by a foreign state and, where appropriate, on the basis of document proving the residency. If the document does not bear any information about the address of the recipient of interest in the state of residence, it will be ascertained on the basis of other data available to the interest payer. The state of residence of the recipient of interest shall be the state of issuance of the identity document or a territory with an independent tax jurisdiction in a foreign state, except in case the person presents a document proving the residency of any other state or territory.

(5) The interest declaration shall be submitted by 10 April of the year following the year of payment of the interest. The format of the declarations and the procedure for completing the forms shall be established by a regulation of the Minister of Finance.

(6) The Tax and Customs Board shall forward the information presented in the interest declarations to the tax administrator of the state of residence of the recipient of the interest by 30 June of the year following the year of payment of the interest.

(7) Subsections (1)–(6) also apply to interests paid to a natural person who is a resident of a territory with an independent tax jurisdiction in a foreign state, if Estonia has entered into an agreement for the exchange of information on interests with that territory, as well as to the interests paid to natural persons who are residents of Switzerland, Andorra, Monaco, San Marino or Liechtenstein. The agreements for the exchange of information on interests shall be published on the website of the Tax and Customs Board.

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

## Chapter 12

### Implementing Provisions

#### § 58. Taxation of income of year 1999

(1) The income of all taxpayers derived during the year 1999 shall be declared and subject to taxation, and income tax shall be paid and

refunded, pursuant to the provisions of the Income Tax Act (RT I 1993, 79, 1184; 1998, 9, 111; 28, 353 and 354; 34, 485 and 489; 40, 612; 51, 757; 61, 979; 103, 1699; 1999, 4, 51; 10, 150; 16, 270 and 273; 27, 383 and 393; 101, 902) which was in force before the entry into force of this Act.

(2) In the case of a resident legal person or a branch of a foreign company whose financial year does not coincide with the calendar year, the part of the financial year preceding the date of entry into force of this Act is deemed to be an independent period of taxation for which an income tax return shall be submitted and income tax paid pursuant to the provisions of subsection (1). The percentage rates prescribed in subsection 17 (4) and subsection 20 (1) of the Income Tax Act in force before the entry into force of this Act are applied in proportion to the number of months in the period of taxation.

(3) Income tax which is calculated on the basis of the Act in force before the entry into force of this Act and which is received by the Tax and Customs Board after the entry into force of this Act is transferred by the Tax and Customs Board to state and local budgets pursuant to § 8 of the Income Tax Act in force before the entry into force of this Act.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(4) A taxpayer who is a natural person and who owns fixed assets on which he or she has calculated depreciation on the basis of § 17 of the Income Tax Act in force before the entry into force of this Act may deduct the adjusted cost of the fixed assets from the business income of the year 2000. If the acquisition cost of the fixed assets has not been paid in full, the amount deducted from income shall not exceed the amount paid for the fixed assets. The adjusted cost of each fixed asset shall be calculated pursuant to subsection 59 (1).

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

#### § 59. Calculation of income tax upon transfer of fixed assets

(1) A taxpayer who is a natural person and owns fixed assets on which he or she has calculated depreciation on the basis of § 17 of the Income Tax Act in force before the entry into force of this Act shall calculate the gain or loss (§ 37) from the transfer of such fixed assets on the basis of the adjusted cost of the fixed assets. The adjusted cost is deemed to be the value of fixed assets carried over to the next period of taxation, as stated in the tax depreciation table of the tax

return prepared for the period of taxation which ended by the date of entry into force of this Act. In the case of fixed assets classified under Depreciation Group II, the adjusted cost of each fixed asset is calculated proportionally according to the ratio of the acquisition cost of the corresponding fixed asset to the total acquisition cost of all fixed assets classified under Depreciation Group II.

(2) If a taxpayer who is a natural person has made deductions from taxable income on the basis of subsection 18<sup>1</sup> (1) of the Income Tax Act in force before the entry into force of this Act, the provisions of subsection 18<sup>1</sup> (4) of the Income Tax Act in force before the entry into force of this Act are applied to the transfer or taking into personal use (subsections 37 (4) and (5)) of such fixed assets within two years after their acquisition, improvement or supplementation. The amount of the deductions made from taxable income is added to business income derived during the period of taxation in which the fixed assets were transferred or taken into personal use.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(3) If a taxpayer has, in addition to the acquisition cost of fixed assets, also deducted the depreciation of the fixed assets on the basis of § 17 of the Income Tax Act in force before the entry into force of this Act from the taxable income of the taxpayer, the provisions of subsections 37 (3), (4) or (5) are applied to the transfer or taking into personal use of such fixed assets in addition to the provisions of subsection (2).

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(4) If a resident legal person or a non-resident specified in subsection 6 (4) has made deductions from taxable income on the basis of subsection 18<sup>1</sup> (1) of the Income Tax Act in force before the entry into force of this Act, and if the resident legal person or non-resident transfers such fixed assets within two years after their acquisition, improvement or supplementation, the taxpayer is required to pay income tax in the amount of 26 per cent of the acquisition, improvement or supplementation costs of the transferred fixed asset, which the taxpayer had deducted from taxable income during an earlier period of taxation. If the taxpayer has deductions which can be carried forward on the basis of subsection 21 (1<sup>1</sup>) of the Income Tax Act in force before the entry into force of this Act, the taxpayer may reduce the amount subject to income tax in accordance with this subsection by the deductions to be carried forward. The balance of deductions to be carried forward on the basis of subsection 21 (1<sup>1</sup>) of the Income Tax Act in force before the

entry into force of this Act is also reduced by the total amount of the deductions specified in the previous sentence.

(5) Income tax specified in subsection (4) shall be declared in an income tax return specified in subsection 54 (2) during the calendar month in which the fixed assets were transferred. Income tax shall be paid by the due date specified in subsection 54 (4).

#### § 60. Specifications for taxation of dividends

(1) A company, the income tax paid by whom pursuant to subsection 32 (2) of the Income Tax Act in force before the entry into force of this Act has not been fully deducted on the basis of an income tax return submitted with regard to the last period of taxation which ended before the entry into force of this Act from the income tax payable on the basis of the same Act, may deduct the overpaid amount of income tax from the income tax payable on the basis of subsection 50 (1). If the overpaid amount of income tax exceeds the income tax payable during a period of taxation on the basis of subsection 50 (1), the remaining part of the overpaid amount, which has been reduced on the basis of the right of deduction transferred to another resident company pursuant to subsection (3), may be carried forward to subsequent periods of taxation.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

(2) If a resident company pays dividends from the net profit of financial years which ended during the years 1994-1999, the company may deduct the part of income tax paid during the years 1994-1999 on the part of the profit which corresponds to the dividends from income tax payable on the basis of subsection 50 (1), but not more than by the amount of income tax payable during the period of taxation on the basis of subsection 50 (1). The income tax deductible is determined such that the total amount of income tax of the company, calculated on taxable income and adjusted by incentives in the income tax returns submitted for the periods of taxation of the years 1994-1999, is divided by the total amount of the lines "net profit of the accounting year" in the balance sheets of the company's annual reports of the years 1994-1999, from which the size of bonus issues carried out in the years 1994-1999 on account of the net profit of the same years is deducted, and the resulting amount is multiplied by the amount of the dividends paid.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(3) (Repealed - 24.10.2001 entered into force 01.01.2003 - RT I 2001, 91, 544)

(4) (Repealed - 24.10.2001 entered into force 01.01.2003 - RT I 2001, 91, 544)

(5) (Repealed - 24.10.2001 entered into force 01.01.2003 - RT I 2001, 91, 544)

(6) A company to which the right to deduct income tax provided for in subsections (1) and (2) has been transferred by another resident company before 1 January 2003 may, in addition to the income tax specified in subsection (2), also deduct the transferred income tax from the income tax payable pursuant to subsection 50 (1), but the deduction is limited to the total amount of income tax payable pursuant to subsection 50 (1) during the period of taxation. The remaining amount of transferred income tax resulting from such deduction may be deducted from the income tax payable pursuant to subsection 50 (1) during subsequent periods of taxation.

(24.10.2001 entered into force 01.01. 2003 - RT I 2001, 91, 544)

(7) (Repealed - 24.10.2001 entered into force 01.01.2003 - RT I 2001, 91, 544)

(8) Income tax prescribed in subsection 50 (1) is not charged on dividends paid on a dividend account opened on the basis of subsection 32 (4) of the Income Tax in force before the entry into force of this Act.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

#### § 61. Other implementing provisions

(1) Companies whose income is fully or partly exempt from income tax on the basis of § 17 of the Republic of Estonia Corporation Tax Act (RT 1991, 36, 446; 1992, 34, 442; 1993, 6, 95; RT I 1993, 79, 1184) shall pay income tax on objects of taxation prescribed in §§ 48-52.

(2) The provisions of § 35 also apply to expenses carried forward on the basis of § 21 of the Income Tax Act in force before the entry into force of this Act. Expenses prescribed in subsection 21 (1<sup>1</sup>) of the Income Tax Act in force before the entry into force of this Act may be carried forward to up to seven subsequent periods of taxation.

(3) The loss carried forward on the basis of § 22 of the Income Tax Act in force before the entry into force of this Act may be deducted pursuant to § 39 from the gains derived from the sale of the taxpayer's property.

(4) The provisions of subsection 34 (1) also apply to income tax payable under the Income Tax Act in force before the entry into force of this Act.

(5) Employers shall withhold income tax pursuant to clause 41 (1) of this Act on medical insurance benefits payable by employers until 1 July 2000 on the basis of subsection 5 (3) of the Republic of Estonia Health Insurance Act, Republic of Estonia Employment Contracts Act, Public Service Act and State Fees Act Amendment Act (RT I 1998, 111, 1829; 113/114, 1876).

(6) Subsection 54 (5) applies to income tax withheld or paid abroad after the entry into force of this Act. Income tax withheld or paid abroad before the entry into force of this Act shall be deducted from the income tax payable by the taxpayer in Estonia, pursuant to § 30 of the Income Tax Act in force before the entry into force of this Act.

(14.06.2000 entered into force 01.01.2001 - RT I 2000, 58, 377)

(7) Amounts paid on the basis of a life insurance contract with an investment risk entered into before 1 January 2001 are subject to taxation on the basis of subsection 20 (3) if the amounts are received within five years as of the insurance contract being entered into.

(06.12.2000 entered into force 01.01.2001 - RT I 2000, 102, 667)

(8) Subsection 54 (5<sup>1</sup>) does not apply to dividends which are paid, before 1 January 2003, to resident companies and non-residents' permanent establishments registered in Estonia.

(24.10.2001 entered into force 01.01.2003 - RT I 2001, 91, 544)

(9) The income tax rate of 26% is applicable to payments made by an insurer on the basis of an insurance contract for a supplementary funded pension entered into before 1 May 2002, taking into account the specifications provided for in subsections (10)-(12).

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(10) The income tax rate of 10% is applicable to payments made by an insurer to a policy holder on the basis of an insurance contract for a supplementary funded pension entered into before 1 May 2002, after the policy holder has attained 55 years of age or becomes totally and permanently incapacitated for work or upon the liquidation of the insurer.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(11) Income tax is not charged on a pension paid to a policy holder periodically under an insurance contract for a supplementary funded pension entered into before 1 May 2002, after the policy holder has attained 55 years of age or after his or her permanent and total incapacity for work has been verified and on the condition that the insurance contract prescribes that corresponding payments are made in equal or increasing amounts at least once every three months until the death of the policy holder.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(12) The income tax rate of 26% is applicable to insurance indemnities paid in the event of death on the basis of an insurance contract for a supplementary funded pension entered into before 1 May 2002, regardless of the provisions of subsection 20 (5) and 21 (5).

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131; 11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(13) Payments made by a voluntary pension fund to a unit-holder after the unit-holder has attained 55 years of age or becomes totally and permanently incapacitated for work or upon the liquidation of the pension fund are also subject to the income tax rate of 10% before five years have passed since the initial acquisition of units if the units of the fund are initially acquired before 1 May 2002.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(14) If an insurance contract for a supplementary funded pension is entered into before 1 May 2002, a resident natural person may, in addition to that provided for in clause 28 (1) 1), deduct from his or her income received during a period of taxation such part of the insurance premiums as are paid during the period of taxation on the basis of the contract in order to ensure payment of the insured sum as an indemnity in the event of death.

(20.02.2002 entered into force 01.03.2002 - RT I 2002, 23, 131)

(15) The right to deduct specified in subsection (14) shall apply to the corresponding parts of the insurance premiums paid after 1 January 2001.

(15.05.2002 entered into force 07.06.2002 - RT I 2002, 44, 284)

(16) Subsection 28 (1<sup>1</sup>) does not apply to contracts for a supplementary funded pension entered into before 1 May 2002.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(17) The provisions of subsection 11 (2) apply to a legal person entered in the Estonian register of churches, congregations and associations of congregations until entry of the legal person in the register of religious associations or until compulsory dissolution of the person pursuant to the provisions of the Churches and Congregations Act.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(18) A taxpayer shall submit the application specified in subsection 42 (1) by 31 March 2003 unless the taxpayer has already submitted the application.

(11.12.2002 entered into force 01.01.2003 - RT I 2002, 111, 662)

(19) The tax rate specified in subsection 4 (1) applies to income tax payable for the corresponding period of taxation.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(20) Pursuant to the procedure provided for in § 25, a resident natural person has the right to deduct from his or her income any interest paid on a housing loan or lease to a financial institution which is resident in Estonia and does not belong to the same group as a credit institution if the contract is entered into before the date of Estonia's accession to the European Union. A resident natural person may also deduct from his or her income any interest on a loan or lease taken in order to acquire housing for his or her spouse, parents or children if the contract is entered into before 1 January 2005.

(17.12.2003 entered into force 01.01.2005 - RT I 2003, 88, 587)

(21) In addition to the provisions of subsection 31 (3), income tax is not charged on any interest paid to a non-resident financial institution if all the following conditions are met:

1) according to the legislation of its home country, the recipient of the interest qualifies as an institution corresponding to an Estonian financial institution;

2) the income tax rate applicable to interest in the country of residence of the recipient of the

interest is not lower than two-thirds of the Estonian income tax rate applicable to interest;

3) interest is paid on loans taken and securities issued before 1 January 2004.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(22) Persons entered in the register of trade unions shall submit first declarations to a regional tax centre of the Tax and Customs Board concerning the entrance and membership fees paid by natural persons by 1 February 2005.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587; 17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 591)

(23) Any additional amounts due determined on the basis of the income tax returns of resident natural persons submitted concerning income received in 2003 shall be received by the state and overpaid amounts of tax shall be returned out of that part of income tax which is received by the state.

(17.12.2003 entered into force 01.01.2004 - RT I 2003, 88, 587)

(24) If the contractual relationship has started before 1 January 2004, the information concerning the recipient of interest provided in subsection 57<sup>2</sup> (1) may be limited to the name, state of residence and address in the state of residence of the recipient of interest. The information is verified on the basis of data available to the interest payer.

(20.05.2004 entered into force 27.05.2004 - RT I 2004, 45, 319)

#### § 62. Entry into force of Act

This Act enters into force on 1 January 2000.

#### Chapter 13

#### Amendment of Legislation Currently in Force

#### § 63. Amendment of Local Taxes Act

Clause 5 2) and § 7 of the Local Taxes Act (RT I 1994, 68, 1169; 1996, 49, 953; 1999, 16, 269; 101, 903; 2000, 33, 196; 81, 515; 2001, 11, 49; 2002, 44, 284; 110, 654; 2003, 88, 591; 2004, 45, 319) are repealed.

#### § 64. Amendment of Accounting Act

The Accounting Act (RT I 1994, 48, 790; 1995, 26–28, 355; 92, 1604; 1996, 40, 773; 42, 811;

49, 953; 1998, 59, 941; 1999, 55, 584; 101, 903; 2001, 87, 527; 2002, 23, 131) is amended as follows:

1) subsection 2 (1) is amended and worded as follows:

“(1) Subject to the specifications prescribed in subsections (2)–(8) of this section, this Act extends to all legal persons in private law and sole proprietors registered in Estonia, to foreign legal persons who have a registered branch or other permanent establishment in Estonia and to legal persons in public law founded in Estonia (hereinafter accounting entities), with the exception of the Bank of Estonia. The procedure for accounting and reporting for taxation purposes is established by other legislation.”;

2) In subsection 2 (10), the words "branch of a foreign company" are substituted by the words "foreign legal person who is required to maintain accounting".

#### § 65. Amendment of Social Tax Act

The Social Tax Act (RT I 1998, 40, 611; 61, 982; 113/114, 1875 and 1876; 1999, 29, 397; 71, 685; 82, 749; 87, 789; 88, 806; 97, 857; 591) is amended as follows:

1) the following text is omitted from clause 2 (1) 4): "(RT I 1993, 79, 1184; 1998, 9, 111; 28, 353 and 354; 34, 485 and 489; 40, 612; 51, 757; 61, 979; 103, 1699; 1999, 4, 51; 10, 150; 16, 270 and 273)";

2) clause 2 (1) 8) is amended and worded as follows:

“8) on fringe benefits within the meaning of the Income Tax Act, expressed in monetary terms, and on income tax payable on fringe benefits;”;

3) clause 6 (1) 4) is amended and worded as follows:

“4) disabled persons employed working in a company, non-profit association or foundation included in a list established by the Minister of Social Affairs, and”;

4) in subsection 6 (2), the words “manufacturing enterprise of an association of disabled persons” are substituted by the words “company, non-profit association or foundation specified in clause (1) 4) of this section”;

5) in clauses 10 (1) 4) and 5), the words “by the fifth” are substituted by the words “by the tenth”;

6) subsection (5<sup>1</sup>) is added to § 10 worded as follows:

“(5<sup>1</sup>)The social tax of employees of such authorities whose staff, consolidated data or specific duties constitute a state secret shall be calculated pursuant to the procedure established by a regulation of the Minister of Finance.

#### § 66. Amendment of Value Added Tax Act

In subsection 5 (4) of the Value Added Tax Act (RT I 1993, 60, 847; 1996, 63, 1149; 76, 1344; 81, 1447; 1997, 11, 96; 40, 621; 42, 679; 48, 773 and 776; 72, 1187; 74, 1231 and 1232; 1998, 23, 321; 57, 863; 86/87, 1410; 103, 1702; 1999, 18, 302; 27, 392; 52, 558; 92, 823), the words "and non-profit associations and foundations registered in Estonia and included in the list approved by the Government of the Republic on the basis of clause 5 (1) 2<sup>1</sup> of the Income Tax Act (RT I 1993, 79, 1184; 1998, 9, 111; 28, 353 and 354; 34, 485 and 489; 40, 612; 51, 757; 61, 979; 103, 1699; 1999, 4, 51; 10, 150; 16, 270 and 273; 27, 383 and 393)" are substituted by the words ", or non-profit associations or foundations benefiting from income tax incentives entered in the corresponding list approved by the Government of the Republic on the basis of the Income Tax Act, or legal persons entered in the Estonian register of churches, congregations and associations of congregations".

#### § 67. Repeal of Income Tax Act

The Income Tax Act (RT I 1993, 79, 1184; 1998, 9, 111; 28, 353 and 354; 34, 485 and 489; 40, 612; 51, 757; 61, 979; 103, 1699; 1999, 4, 51; 10, 150; 16, 270 and 273; 27, 383 and 393; 101, 902) is repealed.

<sup>1</sup> RT = Riigi Teataja = State Gazette

<sup>2</sup> Riigikogu = the parliament of Estonia

## 6. Hungary

### 6.1. Law on Associations

1989. évi II. Törvény

az egyesülési jogról (módosításait ld. a nyilvántartásba vételről szóló törvényben!)

Az Országgyűlés az egyesülési szabadság érvényesülése érdekében - összhangban az Alkotmány, valamint a Polgári és Politikai Jogok Nemzetközi Egyezségokmányának rendelkezéseivel -, a következő törvényt alkotja:

## I. Fejezet

### Általános rendelkezések

#### 1. §

Az egyesülési jog mindenkit megillető alapvető szabadságjog, amelyet a Magyar Köztársaság elismer, és biztosítja annak zavartalan gyakorlását. Az egyesülési jog alapján mindenkinek joga van arra, hogy másokkal szervezeteket, illetőleg közösségeket hozzon létre vagy azok tevékenységében részt vegyen.

#### 2. §

(1) Az egyesülési jog alapján a magánszemélyek, a jogi személyek, valamint ezek jogi személyiséggel nem rendelkező szervezetei - tevékenységük célja és alapítói szándéka szerint - társadalmi szervezetet hozhatnak létre és működtethetnek.

(2) Az egyesülési jog gyakorlása nem sértheti az Alkotmány 2. §-ának (3) bekezdését, nem valósíthat meg bűncselekményt és bűncselekmény elkövetésére való felhívást, valamint nem járhat mások jogainak és szabadságának sérelmével.

(3) Társadalmi szervezet minden olyan tevékenység végzése céljából alapítható, amely összhangban áll az Alkotmánnyal és amelyet törvény nem tilt. Társadalmi szervezet elsődlegesen gazdasági-vállalkozási tevékenység végzése céljából nem alapítható. Az egyesülési jog alapján fegyveres szervezet nem

hozható létre.

(4) A társadalmi szervezet, a társadalmi szervezetek szövetsége, továbbá - ha az alapszabály így rendelkezik - a társadalmi szervezetek szervezeti egysége jogi személy. A társadalmi szervezetnek az a szervezeti egysége nyilvánítható jogi személlyé, amelynek önálló ügyintéző és képviselői szerve

van, valamint a működéséhez szükséges vagyonnal (önálló költségvetéssel) rendelkezik.

#### 3. §

(1) A társadalmi szervezet olyan önkéntesen létrehozott, önkormányzattal rendelkező szervezet, amely az alapszabályban meghatározott célra alakul, nyilvántartott tagsággal rendelkezik, és céljának elérésére szervezi tagjai tevékenységét.

(2) A tömegmozgalom tevékenységében nem nyilvántartott tagok is részt vehetnek.

(3) Pártnak és szakszervezetnek csak magánszemélyek lehetnek a tagjai.

(4) A társadalmi szervezet alapításához az szükséges, hogy legalább tíz alapító tag a szervezet megalakítását kimondja, alapszabályát megállapítsa, ügyintéző és képviseleti szerveit megválassza.

#### 4. §

(1) A társadalmi szervezet megalakulását követően kérni kell annak bírósági nyilvántartásba vételét. A társadalmi szervezet nyilvántartásba vétele nem tagadható meg, ha alapítói az e törvényben előírt feltételeknek eleget tettek. A társadalmi szervezet a nyilvántartásba vétellel jön létre.

(2) A párt munkahelyi szerveződésére, gazdálkodására (19. §), valamint megszűnésére [16. § (2) bekezdés e) pont, 20-21. §] külön törvény rendelkezései az irányadók.

#### 4/A. §

Az egyesületre (Ptk. 61-64. §) e törvény alkalmazásakor a társadalmi szervezetre vonatkozó szabályok az irányadók.

#### 5. §

Nem minősül társadalmi szervezetnek a magánszemélyeknek az egyesülési jog alapján létrehozott olyan közössége, amelynek működése nem rendszeres, vagy nincs nyilvántartott tagsága vagy e törvényben meghatározott szervezete.

### II. Fejezet

#### A társadalmi szervezet alapszabálya

#### 6. §

(1) A társadalmi szervezet alapszabálya az abban meghatározott célkitűzéseknek megfelelően biztosítja a szervezet demokratikus, önkormányzati elven alapuló működését, elősegíti a tagok jogainak és kötelességeinek érvényesülését.

(2) A társadalmi szervezet alapszabályában rendelkezni kell a szervezet nevről, céljáról és székhelyéről, valamint szervezetéről.

#### 7. §

(1) A társadalmi szervezet elnevezése és célja - az érdekelt jogi személy hozzájárulása nélkül - nem keltheti azt a látszatot, hogy a társadalmi szervezet a tevékenységét más jogi személy tevékenységéhez kapcsolódóan fejti ki.

(2) A társadalmi szervezet elnevezésének az ország területén hasonló működési körben tevékenykedő, korábban bejegyzett társadalmi szervezetek elnevezésétől különböznie kell.

### III. Fejezet

#### A tagok jogai és kötelességei

#### 8. §

(1) A társadalmi szervezet ügyintéző és képviseleti szervének magyar állampolgár, Magyarországon letelepedett, illetőleg magyarországi tartózkodási engedéllyel rendelkező nem magyar állampolgár, valamint - társadalmi szervezet nemzetközi jellege esetén - más nem magyar állampolgár is tagja lehet,

feltéve hogy nincs eltelve a közügyek gyakorlásától.

(2) Párt alapítója és tisztségviselője csak magyar állampolgár lehet. A párt magyar állampolgársággal nem rendelkező tagjai a párton belül jelöltállítási és szavazati joggal nem rendelkezhetnek.

#### 9. §

#### A társadalmi szervezet tagja

a) részt vehet a társadalmi szervezet tevékenységében és rendezvényein;

b) választhat és választható a társadalmi szervezet szerveibe;

c) köteles eleget tenni az alapszabályban meghatározott kötelességeinek.

#### 10. §

(1) A társadalmi szervezet valamely szervének törvénytörő határozatát bármely tag - a tudomására jutástól számított 30 napon belül - a bíróság előtt megtámadhatja.

(2) A határozat megtámadása a határozat végrehajtását nem gátolja, a bíróság azonban indokolt esetben a végrehajtást felfüggesztheti.

(3) A párt vonatkozásában a párt tagját az (1) bekezdésben említett jogosultság csak e törvény, valamint a pártok működéséről és gazdálkodásáról szóló törvény megsértése esetén illeti meg.

### IV. Fejezet



## A társadalmi szervezet szervezeti rendje

### 11. §

(1) A társadalmi szervezet legfelsőbb szerve a tagok összessége, vagy a tagok által - az alapszabályban meghatározottak szerint - közvetlenül vagy közvetett úton választott testület.

(2) A társadalmi szervezet legfelsőbb szervét szükség szerint, de legalább öt évenként kell összehívni. A legfelsőbb szervet össze kell hívni akkor is, ha azt a bíróság elrendeli, illetőleg ha a tagok egyharmada vagy az alapszabályban ettől eltérően meghatározott hányada - az ok és a cél

megjelölésével - kívánja.

(3) Az ügyintéző és képviseleti szerveket az alapszabály eltérő rendelkezése hiányában titkos szavazással kell megválasztani.

### 12. §

(1) A társadalmi szervezet legfelsőbb szervének hatáskörébe tartozik:

- a) az alapszabály megállapítása és módosítása;
- b) az évi költségvetés meghatározása;
- c) az ügyintéző szerv évi beszámolójának elfogadása;
- d) a társadalmi szervezet más társadalmi szervezettel való egyesülésének, úgyszintén feloszlásának kimondása;
- e) döntés mindazokban az ügyekben, amelyeket az alapszabály kizárólagos hatáskörébe utal.

(2) A társadalmi szervezet évi költségvetésének megállapítását és az ügyintéző szerv évi beszámolójának megtárgyalását az alapszabály - a legfelsőbb szerv helyett - a szervezet más szervére bízhatja.

## V. Fejezet

### A társadalmi szervezetek szövetsége

### 13. §

A társadalmi szervezetek szövetségeinek szervezetére és működésére, valamint nyilvántartásba vételére és jogképességére a társadalmi szervezetre vonatkozó szabályokat kell megfelelően alkalmazni.

## VI. Fejezet

## A társadalmi szervezet felügyelete

### 14. §

(1) A párt kivételével a társadalmi szervezet működése felett az ügyészség a reá irányadó szabályok szerint törvényességi felügyeletet gyakorol. Ha a működés törvényessége másképpen nem biztosítható, az ügyész a bírósághoz fordulhat.

(2) A párt törvénysértése esetén az ügyész keresetet indít a párt ellen.

### 15. §

(1) A társadalmi szervezetet a székhelye szerint illetékes megyei bíróság, illetőleg a Fővárosi Bíróság (a továbbiakban együtt: bíróság) veszi nyilvántartásba.

(2) A nyilvántartásba vételre irányuló kérelmet a társadalmi szervezet képviseletére jogosult személy nyújtja be. A kérelemhez csatolni kell az alapszabályt és az alakuló gyűlés jegyzőkönyvét.

(3) A bíróság a nyilvántartásba vételről nemperes eljárásban, soron kívül határoz. A bíróság a nyilvántartásba vételről szóló határozatát az ügyészségnek is kézbesíti.

(4) Ha a társadalmi szervezet neve, székhelye megváltozik, illetőleg a társadalmi szervezet képviseletére új személy lesz jogosult, azt a bíróságnak be kell jelenteni.

### 16. §

(1) A társadalmi szervezet tagja által (10. §), valamint az ügyész által [14. §] indított perek a megyei bíróság, illetőleg a Fővárosi Bíróság hatáskörébe tartoznak.

(2) A bíróság az ügyész keresete alapján

a) megsemmisítheti a társadalmi szervezet törvénysértő határozatát, és szükség szerint új határozat hozatalát rendelheti el;

b) a működés törvényességének helyreállítása céljából összehívhatja a társadalmi szervezet legfelsőbb szervét;

c) ha a társadalmi szervezet működésének törvényessége másképpen nem biztosítható, tevékenységét felfüggesztheti, ellenőrzésére felügyelőbiztost rendelhet ki;

d) feloszlítja a társadalmi szervezetet, ha annak működése a 2. § (2) bekezdésébe ütközik;

e) megállapítja a társadalmi szervezet megszűnését, ha legalább egy éve nem működik vagy tagjainak száma tartósan az e törvény által megkívánt létszám alatt van.

(3) A párt vonatkozásában a 16. § (2) bekezdésének e) pontjában említett felügyelő biztos csak a párt gazdálkodásának ellenőrzésére rendelhető ki.

#### 17. §

Ha a társadalmi szervezet olyan tevékenységet végez, amelyet jogszabály feltételhez köt vagy egyébként szabályoz, e tevékenység felett a tevékenység szerint hatáskörrel rendelkező állami szerv a hatósági ellenőrzésre vonatkozó szabályok alkalmazásával felügyeletet gyakorol.

### VII. Fejezet

#### A társadalmi szervezet gazdálkodása

#### 18. §

A társadalmi szervezet tartozásaiért saját vagyonával felel. A tagok - a tagdíj megfizetésén túl - a társadalmi szervezet tartozásaiért saját vagyonukkal nem felelnek.

#### 19. §

(1) A társadalmi szervezet vagyona elsősorban a tagok által fizetett díjakból, jogi személyek és magánszemélyek felajánlásaiból, hozzájárulásaiból képződik.

(2) A társadalmi szervezet - célja megvalósítása gazdasági feltételeinek biztosítása érdekében - gazdasági-vállalkozási tevékenységet is folytathat.

### VIII. Fejezet

#### A társadalmi szervezet megszűnése

#### 20. §

A társadalmi szervezet megszűnik feloszlással, más társadalmi szervezettel való egyesüléssel, feloszlással, illetőleg megszűnésének megállapításával.

#### 21. §

(1) A társadalmi szervezet megszűnése esetén - a hitelezők kielégítése után - vagyonáról az alapszabály előírása, vagy a legfelsőbb szervének döntése szerint kell rendelkezni. Az ezzel kapcsolatos teendők ellátása a felszámolók feladata.

(2) Ha a társadalmi szervezet feloszlással szűnt meg vagy megszűnését állapították meg, és a vagyon hova fordításáról nem történt rendelkezés, vagyona a hitelezők kielégítése után állami tulajdonba kerül, és azt közérdekű célra kell fordítani. A vagyon felhasználásának módját nyilvánosságra kell

hozni.

### IX. Fejezet

#### Záró rendelkezések

#### 22. §

Az e törvény hatálybalépésekor működő és nyilvántartásba nem vett társadalmi szervezetek 1989. december 31-ig kérhetik nyilvántartásba vételüket. Ennek elmulasztása esetén a társadalmi szervezetet megszüntnek kell tekinteni.

#### 23. §

Az e törvény hatálybalépése előtt külön jogszabály alapján létesített, illetőleg működő társadalmi szervezetek tevékenységére, szervezetére és felügyeletére e jogszabályok módosításáig vagy hatályon kívül helyezéséig a korábbi, rájuk vonatkozó jogszabályok rendelkezései az irányadóak.

#### 24. §

Felhatalmazást kap a Kormány, hogy a társadalmi szervezetek gazdálkodó tevékenységével kapcsolatos rendelkezéseket - a politikai párt kivételével - meghatározza.

#### 25. §

(1) A fegyveres erők és a fegyveres testületek tagjaira vonatkozóan az egyesülési jog gyakorlásának feltételeit és módját a szolgálati szabályzat határozza meg.

(2) A szakszervezetekre és a munkáltatói érdekképviselőkre e törvény 11. §-ának rendelkezései nem terjednek ki. 26. §

#### 27. §

#### 28. §

(2) E törvény hatálybalépésével egyidejűleg a hatályát veszti:

az egyesületekről szóló 1970. évi 35. törvényerejű rendelet, valamint az azt módosító 1981. évi 29. törvényerejű rendelet és az 1983. évi 27. törvényerejű rendelet;

a mezőgazdasági és élelmezésügyi ágazathoz tartozó egyes hatáskörök módosításáról szóló 1979. évi 3. törvényerejű rendelet 2. §-a;

az Állami Ifjúsági és Sporthivatalról szóló 1986. évi 9. törvényerejű rendelet 3. §-ának (4) bekezdése;

a Polgári Törvénykönyvről szóló 1959. évi IV. törvény 70. §-ának (2) bekezdésében a "...míg egyesületnél a felügyelő szerv hozzájárulására van szükség." szövegrész.

## 6.2. Law on Foundations

1959. évi IV. Törvény

a Polgári Törvénykönyvről (módosítását ld. a nyilvántartásba vételről szóló törvényben!)

### 8. Az egyesület

61. § Az egyesület olyan önkéntesen létrehozott, önkormányzattal rendelkező szervezet, amely az alapszabályában meghatározott célra alakul, nyilvántartott tagsággal rendelkezik, és céljának elérésére szervezi tagjai tevékenységét. Az egyesület jogi személy.

62. § (1) Az egyesület alapszabályában rendelkezni kell az egyesület nevééről, céljáról és székhelyéről, valamint szervezetéről.

(2) Az egyesület a bírósági nyilvántartásba vételével jön létre.

(3) Az egyesület a vagyonával önállóan gazdálkodik. Egyesület elsődlegesen gazdasági tevékenység folytatására nem alapítható.

(4) Az egyesület tartozásaiért saját vagyonával felel. A tagok — a tagdíj megfizetésén túl — az egyesület tartozásaiért saját vagyonukkal nem felelnek.

63. § Az egyesület megszűnik, ha

a) felosztását vagy más egyesülettel való egyesülését a legfelsőbb szerve kimondja;

b) az arra jogosult szerv feloszlatja, illetőleg megszűnését megállapítja.

64. § Az egyesülési jog alapján létrehozott társadalmi szervezetekre e törvény alkalmazásakor az egyesületre vonatkozó szabályok az irányadók. (1989. II. törvény)

### 11. Az alapítvány

#### 74/A. §

(1) Magánszemély, jogi személy és jogi személyiséggel nem rendelkező gazdasági társaság (a továbbiakban együtt: alapító) - tartós közérdekű célra - alapító okiratban alapítványt hozhat létre. Alapítvány elsődlegesen gazdasági tevékenység folytatása céljából nem alapítható. Az alapítvány javára a célja megvalósításához szükséges vagyont kell rendelni. Az alapítvány jogi személy.

(2) Az alapítvány a bírósági nyilvántartásba vételével jön létre. A nyilvántartásba vétel nem tagadható meg, ha az alapító okirat az e törvényben meghatározott feltételeknek megfelel.

(3) A nyilvántartásba vétel után az alapító az alapítványt nem vonhatja vissza.

(4) Az alapítványt annak székhelye szerint illetékes megyei bíróság, illetőleg a Fővárosi Bíróság (a továbbiakban együtt: bíróság) veszi nyilvántartásba. A nyilvántartásba vételre irányuló kérelmet a bírósághoz az alapító nyújtja be. A kérelemhez csatolni kell az alapító okiratot.

(5) A bíróság a nyilvántartásba vételről nemperes eljárásban, soron kívül határoz. A bíróság a nyilvántartásba vételről szóló határozatát az ügyészségnek is kézbesíti.

(6) Az alapítvány a nyilvántartásból való törléssel szűnik meg. A törlésre megfelelően alkalmazni kell az alapítvány nyilvántartásba vételére vonatkozó szabályokat.

#### 74/B. §

(1) Az alapító okiratban meg kell jelölni az alapítvány

a) nevét;

b) célját;

c) céljára rendelt vagyont és annak felhasználási módját;

d) székhelyét.

(2) Az alapító okiratban az alapító rendelkezhet az alapítványhoz való csatlakozás lehetőségéről és egyéb feltételekről is.

(3) Az alapító az alapító okiratban az alapítvány szervezeti egységét jogi személynek nyilváníthatja, ha a szervezeti egységnek önálló ügyintéző és képviselői szerve van, valamint, ha rendelkezik a működéséhez szükséges, az

alapítvány céljára rendelt vagyonból elkülönített vagyonnal.

(4) Ha az alapító az alapítványhoz való csatlakozást megengedi (nyílt alapítvány), az alapítványhoz - az alapító okiratban meghatározott feltételek mellett - bárki csatlakozhat. Nyílt alapítvány alapításakor az alapítvány rendelkezésére legalább olyan mértékű vagyont kell bocsátani, amely a

működése megkezdéséhez feltétlenül szükséges.

(5) Az alapító az alapító okiratot indokolt esetben - az alapítvány nevének, céljának és vagyonának sérelme nélkül - módosíthatja. A módosításra egyebekben az alapítvány nyilvántartásba vételére vonatkozó szabályokat kell megfelelően alkalmazni.

(6) Az alapítvány gazdálkodására az egyesület gazdálkodására vonatkozó szabályok [62. §

(3) bek.] az irányadók.

74/C. §

(1) Az alapító - az alapító okiratban - kijelölheti a kezelő szervet, illetőleg ilyen célra külön szervezetet is létrehozhat. A kezelő szerv (szervezet) az alapítvány képviselője.

(2) A bíróság köteles kezelő szerv (szervezet) kijelöléséről gondoskodni, ha erről az alapító nem rendelkezett, illetőleg a kezelő szerv (szervezet) a feladat ellátását nem vállalja.

(3) Nem jelölhető ki, illetve nem hozható létre olyan kezelő szerv (szervezet), amelyben az alapító - közvetlenül vagy közvetve - az alapítvány vagyonának felhasználására meghatározó befolyást gyakorolhat.

(4) Ha az alapító az alapítvány kezelésére külön szervezetet hoz létre, az alapító okiratban rendelkeznie kell annak összetételéről és meg kell jelölnie az alapítvány képviselőjére jogosult személyt, ha pedig a képviselőre többen jogosultak, úgy a képviselői jog gyakorlásának módját, illetőleg

terjedelmét is. A képviselői jog korlátozása jóhiszemű harmadik személy irányában hatálytalan.

(5) A kezelő szerv (szervezet) vagy annak tisztségviselője (tagja) által a feladatkörének ellátása során harmadik személynek okozott kárért az alapítvány felelős. A tisztségviselő (tag) az általa e minőségében az alapítványnak okozott kárért a polgári jog általános szabályai szerint felel.

(6) Ha a kezelő szerv (szervezet) tevékenységével az alapítvány célját veszélyezteti, az alapító a kijelölést visszavonhatja és kezelőként más szervet (szervezetet) jelölhet ki. Az alapító halála, megszűnése után ez a jogosultság a bíróságot illeti meg.

74/D. §

Ha az alapítvány létrehozása végrendeletben történt, arról a bíróságot értesíteni kell; ezt az alapítványt közérdekű meghagyásnak kell tekinteni, amennyiben létrehozása nem felel meg a törvényben meghatározott feltételeknek. 74/E. §

(1) A bíróság az alapítványt a nyilvántartásból törli, ha az alapító okiratban meghatározott

a) cél megvalósult;

b) idő eltelt;

c) feltétel bekövetkezett.

(2) Az alapítványt akkor is törölni kell a nyilvántartásból, ha a bíróság az alapítványt megszünteti vagy más alapítvánnyal való egyesítését rendeli el.

(3) A bíróság az ügyész keresete alapján az alapítványt megszünteti, ha céljának megvalósítása lehetetlenné vált, illetőleg ha jogszabály-változás folytán a bejegyzést meg kellene tagadnia.

(4) A bíróság az alapítványt megszüntetheti, ha a kezelő szerv (szervezet) tevékenységével az alapítvány célját veszélyezteti és az alapító - a bíróság felhívása ellenére - a kijelölést nem vonja vissza és kezelőként más szervet (szervezetet) nem jelöl ki.

(5) A megszünt alapítvány vagyonát - az alapító okirat eltérő rendelkezése hiányában - a bíróság hasonló célú alapítvány támogatására köteles fordítani.

(6) A bíróság az érdekelt alapítók közös kérelmére - új alapítvány létrehozása vagy más alapítványhoz való csatlakozás céljából - elrendelheti az alapítványok egyesítését, ha ez az érintett alapítványok céljainak megvalósításával összhangban áll. Az alapítványok egyesítésére irányuló kérelemhez az új, illetőleg a megfelelően módosított alapító okiratot is csatolni kell, egyebekben a bíróság eljárására az alapítvány nyilvántartásba vételére vonatkozó szabályokat kell alkalmazni.

74/F. §

(1) Az alapítvány működése felett az ügyészség a reá irányadó szabályok szerint törvényességi felügyeletet gyakorol.

(2) Ha az alapítvány működésének törvényessége másképp nem biztosítható, az ügyész a bírósághoz fordulhat. A bíróság határidő kitzúzésével kötelezi az alapítvány kezelőjét, hogy az alapítvány jogszabálynak megfelelő működését állítsa helyre. A határidő eredménytelen eltelte után a bíróság az alapítványt megszünteti.

74/G. §

(1) A közalapítvány olyan alapítvány, amelyet az Országgyűlés, a Kormány, valamint a helyi önkormányzat képviselő-testülete közfeladat ellátásának folyamatos biztosítása céljából hoz létre. Törvény közalapítvány létrehozását kötelezővé teheti.

(2) Az (1) bekezdés alkalmazásában közfeladatnak minősül az az állami vagy helyi önkormányzati feladat, amelynek ellátásáról - jogszabály alapján - az államnak vagy az önkormányzatnak kell gondoskodnia. A közalapítvány létrehozása nem érinti az államnak, illetve az önkormányzatnak a feladat ellátására vonatkozó kötelezettségét.

(3) Közalapítvány létrejöhet úgy is, hogy az alapítvány a teljes vagyonát - alapítójának hozzájárulásával - azonos célú közalapítvány létesítése érdekében az arra jogosult szervnek felajánlja. Ha a közalapítvány alapítására jogosult az ajánlatot elfogadja, a közalapítványt az alapítvány alapítójával közösen hozza létre. A közalapítvány létrehozásával az alapítvány megszűnik, jogutódja a közalapítvány, amelynek alapítói az alapítót megillető jogosultságokat - ha az alapító okirat eltérően nem rendelkezik - együttesen gyakorolják.

(4) Közalapítvány alapítására jogosult szerv alapítványt csak közalapítványként hozhat létre.

(5) Közalapítvány létesítése esetén az alapító okiratban a kezelő szervet is meg kell jelölni, vagy ilyen célra külön szervezet - ideértve a kezelő szerv ellenőrzésére jogosult szervet is - létrehozásáról kell gondoskodni.

(6) A közalapítvány alapító okiratát hivatalos lapban közzé kell tenni.

(7) A közalapítványhoz - ha törvény eltérően nem rendelkezik - bárki feltétel nélkül csatlakozhat, az alapító okirat azonban előírhatja, hogy a csatlakozás elfogadásához a kezelő szerv (szervezet) jóváhagyása szükséges.

(8) A kezelő szerv (szervezet) a közalapítvány működéséről köteles az alapítónak évente

beszámolni és gazdálkodásának legfontosabb adatait nyilvánosságra kell hoznia. A közalapítvány gazdálkodásának törvényességét és célszerűségét - a helyi önkormányzat képviselő-testülete által alapított közalapítvány kivételével - az Állami Számvevőszék ellenőrzi.

(9) A bíróság a közalapítványt az alapító kérelmére nemperes eljárásban megszünteti, ha a közfeladat iránti szükséglet megszűnt vagy a közfeladat ellátásának biztosítása más módon, illetőleg más szervezeti keretben hatékonyabban megvalósítható. A közalapítvány megszűnése esetén a közalapítvány vagyona - a hitelezők kielégítése után - az alapítót illeti meg, aki köteles azt a megszűnt közalapítvány céljához hasonló célra fordítani és erről a nyilvánosságot megfelelően tájékoztatni.(10) A külön nem szabályozott kérdésekben a közalapítványra az alapítványra vonatkozó rendelkezéseket kell alkalmazni.

Ptké. 91. §

A Ptk. hatálybalépésekor még fennálló alapítványokra a korábbi jogszabályokat kell alkalmazni.

### 6.3. Law on NPO

### 6.4. Law on NGO

### 6.5. Law on Other Legal Forms

Act on Public Benefit Organisations

1997. évi CLVI. Törvény

a közhasznú szervezetekről

Az Országgyűlés a nem kormányzati és nem haszonelvű szervezetek hazai hagyományainak megőrzése, társadalmi szerepük növelése, közhasznú működésük és gazdálkodásuk áttekinthetőbbé tétele, a közszolgáltatások terén végzett tevékenységük elősegítése, valamint az államháztartással való kapcsolatuk

rendezése céljából a következő törvényt alkotja:

I. Fejezet : ÁLTALÁNOS RENDELKEZÉSEK

II. Fejezet : A KÖZHASZNÚ JOGÁLLÁS MEGSZERZÉSÉNEK FELTÉTELEI, VALAMINT A KÖZHASZNÚ SZERVEZETEKET MEGILLETŐ KEDVEZMÉNYEK

III. Fejezet : A KÖZHASZNÚ SZERVEZET MŰKÖDÉSI ÉS GAZDÁLKODÁSI RENDJE

IV. Fejezet : A KÖZHASZNÚ SZERVEZETEK FELÜGYELETE, NYILVÁNTARTÁSA, VALAMINT A RÁJUK VONATKOZÓ BÍRÓSÁGI ELJÁRÁS

V. Fejezet : ZÁRÓ RENDELKEZÉSEK

I. Fejezet

ÁLTALÁNOS RENDELKEZÉSEK

A törvény célja

1. §

E törvény célja, hogy meghatározza a közhasznú szervezetek típusait, a közhasznú jogállás megszerzésének és megszűnésének feltételeit, a közhasznú szervezetek működésének és gazdálkodásának rendjét, a nyilvántartás és beszámolás szabályait, valamint a működés és a vagyonfelhasználás törvényességi

felügyeletére vonatkozó szabályokat.

A közhasznú szervezetek típusai

2. §

(1) Közhasznú szervezetté minősíthető a Magyarországon nyilvántartásba vett

a) társadalmi szervezet, kivéve a biztosító egyesületet és a politikai pártot, valamint a munkáltatói és a munkavállalói érdekképviseleti szervezetet,

b) alapítvány,

c) közalapítvány,

d) közhasznú társaság,

e) köztisztület, ha a létrehozásáról szóló törvény azt lehetővé teszi.

(2) Közhasznú szervezetté minősíthető az (1) bekezdés a)-e) pontjában meghatározott szervezet abban az esetben is, ha közhasznú szervezetté minősítését a reá irányadó szabályok szerinti nyilvántartásba vétel iránti kérelmével egyidejűleg kéri.

II. Fejezet

A KÖZHASZNÚ JOGÁLLÁS MEGSZERZÉSÉNEK FELTÉTELEI, VALAMINT A KÖZHASZNÚ SZERVEZETEKET MEGILLETŐ KEDVEZMÉNYEK

A közhasznú jogállás megszerzésének feltételei

3. §

A közhasznú szervezetté minősíthető szervezet (a továbbiakban: szervezet) közhasznú jogállását a közhasznú vagy kiemelkedően közhasznú szervezetként való nyilvántartásba vétellel szerzi meg (a továbbiakban: közhasznúsági nyilvántartásba vétel).

4. §

(1) A közhasznúsági nyilvántartásba vételhez a szervezet létesítő okiratának tartalmaznia kell, hogy a szervezet

a) milyen, e törvényben meghatározott közhasznú tevékenységet folytat, és - ha tagsággal rendelkezik - nem zárja ki, hogy tagjain kívül más is részesülhessen a közhasznú szolgáltatásaiból;

b) vállalkozási tevékenységet csak közhasznú céljainak megvalósítása érdekében, azokat nem veszélyeztetve végez;

c) gazdálkodása során elért eredményét nem osztja fel, azt a létesítő okiratában meghatározott tevékenységére fordítja;

d) közvetlen politikai tevékenységet nem folytat, szervezete pártoktól független és azoknak anyagi támogatást nem nyújt.

(2) A közhasznú szervezet létesítő okiratának az (1) bekezdésben meghatározottakon túlmenő, e törvényben előírt további követelményeknek is meg kell felelnie (7. §).

5. §

Kiemelkedően közhasznú szervezet nyilvántartásba vételéhez a szervezet létesítő okiratának a 4. §-ban írtakon felül tartalmaznia kell, hogy a szervezet

a) közhasznú tevékenysége során olyan közfeladatot lát el, amelyről törvény vagy törvény felhatalmazása alapján más jogszabály rendelkezése szerint valamely állami szervnek vagy a helyi önkormányzatnak kell gondoskodnia, továbbá

b) a létesítő okirata szerinti tevékenységének és gazdálkodásának legfontosabb adatait a helyi vagy országos sajtó útján is nyilvánosságra hozza.

A közhasznú szervezeteket, a közhasznú szervezetek támogatóit és a közhasznú szervezetek szolgáltatásai igénybevevőit megillető kedvezmények

6. §

(1) A társasági adóról és az osztalékadóról szóló 1996. évi LXXXI. törvény, a személyi jövedelemadóról szóló 1995. évi CXVII. törvény, az illetékekről szóló 1990. évi XCIII. törvény, a helyi adókról szóló 1990. évi C. törvény, a vámjogról, a vám eljárásról, valamint a vámigazgatásról szóló 1995. évi

C. törvény, továbbá az irányadó más jogszabályok szerinti mértékben és feltételek szerint

a) a közhasznú szervezetet

1. a létesítő okiratában meghatározott cél szerinti tevékenysége után társasági adómentesség,

2. vállalkozási tevékenysége után társasági adókötelezettséget érintő kedvezmény,

3. helyi adókötelezettséget érintő kedvezmény,

4. illetékkedvezmény,

5. vámkedvezmény,

6. egyéb - jogszabályban meghatározott - kedvezmény,

b) a közhasznú szervezet által - cél szerinti juttatásként - nyújtott szolgáltatás igénybevevőjét a kapott szolgáltatás után személyi jövedelemadó mentesség,

c) a közhasznú szervezet támogatóját a közhasznú szervezet - létesítő okiratban rögzített céljaira - adott támogatás (a továbbiakban: adomány) után társasági adókötelezettséget érintő kedvezmény, illetve személyi jövedelemadó kötelezettséget érintő kedvezmény,

d) tartós adományozás esetén a c) pont szerinti támogatót a támogatás második évétől külön kedvezmény illeti meg.

(2) A közhasznú szervezet a cél szerinti tevékenysége körében jogosult polgári szolgálatot teljesítő személy foglalkoztatására.

(3) Az a közhasznú szervezet, amelynek az adózás rendjéről szóló törvény szerinti köztartozása áll fenn a kedvezmények igénybevételeire nem jogosult.

III. Fejezet

A KÖZHASZNÚ SZERVEZET MŰKÖDÉSI ÉS GAZDÁLKODÁSI RENDJE

A közhasznú működéssel kapcsolatos szabályok

7. §

(1) A közhasznú szervezet létesítő okiratának tartalmaznia kell

a) a legfőbb szerv és - ha azzal nem azonos - az ügyintéző és képviseleti szerv (a továbbiakban együtt: vezető szerv)

1. ülésezésének gyakoriságára, amely az évi egy alkalomnál kevesebb nem lehet,

2. ülései összehívásának rendjére és a napirend közlésének módjára,

3. üléseinek nyilvánosságára, határozatképességére és a határozathozatal módjára,

b) a közhasznú szervezet vezető tisztségviselőinek összeférhetetlenségére,

c) ha a közhasznú szervezet működését és gazdálkodását ellenőrző, a vezető szervtől elkülönült szerv (a továbbiakban: felügyelő szerv) létrehozása vagy kijelölése kötelező, ennek létrehozására, hatáskörére és működésére, valamint

d) a közhasznú szervezet éves beszámolója jóváhagyásának módjára vonatkozó szabályokat.

(2) A közhasznú szervezet létesítő okiratának vagy - ennek felhatalmazása alapján - belső szabályzatának endelkeznie kell

a) olyan nyilvántartás vezetéséről, amelyből a vezető szerv döntésének tartalma, időpontja és hatálya, illetve a döntést támogatók és ellenzők számaránya (ha lehetséges személye) megállapítható,

b) a vezető szerv döntéseinek az érintettekkel való közlési, illetve nyilvánosságra hozatali módjáról,

c) a közhasznú szervezet működésével kapcsolatosan keletkezett iratokba való betekintés rendjéről, valamint

d) a közhasznú szervezet működésének, szolgáltatásai igénybevétele módjának, beszámoló közlésének nyilvánosságáról.

8. §

(1) A vezető szerv határozathozatalában nem vehet részt az a személy, aki vagy akinek közeli hozzátartozója [Ptk. 685. § b) pont], élettársa (a továbbiakban együtt: hozzátartozó) a határozat alapján

a) kötelezettség vagy felelősség alól mentesül, vagy

b) bármilyen más előnyben részesül, illetve a megköthető jogügyletben egyébként érdekelt. Nem minősül előnynek a közhasznú szervezet cél szerinti juttatásai keretében a bárki által megkötés nélkül igénybe vehető nem pénzbeli szolgáltatás, illetve a társadalmi szervezet által tagjának a tagsági

jogviszony alapján nyújtott, létesítő okiratnak megfelelő cél szerinti juttatás.

(2) Nem lehet a felügyelő szerv elnöke vagy tagja, illetve könyvvizsgálója az a személy, aki

a) a vezető szerv elnöke vagy tagja,

b) a közhasznú szervezettel a megbízásán kívüli más tevékenység kifejtésére irányuló munkaviszonyban vagy munkavégzésre irányuló egyéb jogviszonyban áll, ha jogszabály másképp nem rendelkezik,

c) a közhasznú szervezet cél szerinti juttatásából részesül - kivéve a bárki által megkötés nélkül igénybe vehető nem pénzbeli szolgáltatásokat, és a társadalmi szervezet által tagjának a tagsági jogviszony alapján nyújtott, létesítő okiratnak megfelelő cél szerinti juttatást -, illetve

d) az a)-c) pontban meghatározott személyek hozzátartozója.

## 9. §

(1) A közhasznú szervezet megszűntét követő két évig nem lehet más közhasznú szervezet vezető tisztségviselője az a személy, aki olyan közhasznú szervezetnél töltött be - annak megszűntét megelőző két évben legalább egy évig - vezető tisztséget, amely az adózás rendjéről szóló törvény szerinti köztartozását nem egyenlítette ki.

(2) A vezető tisztségviselő, illetve az ennek jelölt személy köteles valamennyi érintett közhasznú szervezetet előzetesen tájékoztatni arról, hogy ilyen tisztséget egyidejűleg más közhasznú szervezetnél is betölt.

## 10. §

(1) Ha a közhasznú szervezet éves bevétele meghaladja az ötmillió forintot, a vezető szervtől elkülönült felügyelő szerv létrehozása akkor is kötelező, ha ilyen kötelezettség más jogszabálynál fogva egyébként nem áll fenn.

(2) A felügyelő szerv ügyrendjét maga állapítja meg.

## 11. §

(1) A felügyelő szerv ellenőrzi a közhasznú szervezet működését és gazdálkodását. Ennek során a vezető tisztségviselőktől jelentést, a szervezet munkavállalóitól pedig tájékoztatást vagy felvilágosítást kérhet, továbbá a közhasznú szervezet könyveibe és irataiba betekinthes, azokat megvizsgálhatja.

(2) A felügyelő szerv tagja a közhasznú szervezet vezető szervének ülésén tanácskozási joggal részt vehet, illetve részt vesz, ha jogszabály vagy a létesítő okirat így rendelkezik.

(3) A felügyelő szerv köteles az intézkedésre jogosult vezető szervet tájékoztatni és annak összehívását kezdeményezni, ha arról szerez tudomást, hogy

a) a szervezet működése során olyan jogszabálysértés vagy a szervezet érdekeit egyébként súlyosan sértő esemény (mulasztás) történt, amelynek megszüntetése vagy következményeinek elhárítása, illetve enyhítése az intézkedésre jogosult vezető szerv döntését teszi szükségessé;

b) a vezető tisztségviselők felelősségét megalapozó tény merült fel.

(4) Az intézkedésre jogosult vezető szervet a felügyelő szerv indítványára - annak megtételétől számított harminc napon belül - össze kell hívni. E határidő eredménytelen eltelte esetén a vezető szerv összehívására a felügyelő szerv is jogosult.

(5) Ha az arra jogosult szerv a törvényes működés helyreállítása érdekében szükséges intézkedéseket nem teszi meg, a felügyelő szerv köteles haladéktalanul értesíteni a törvényességi felügyeletet ellátó szervet.

A közcélú adománygyűjtés szabályai

## 12. §

(1) A közhasznú szervezet nevében vagy javára történő adománygyűjtés nem járhat az adományozók, illetőleg más személyek zaklatásával, a személyhez fűződő jogok és az emberi méltóság sérelmével.

(2) A közhasznú szervezet nevében vagy javára történő adománygyűjtés csak a közhasznú szervezet írásbeli meghatalmazása alapján végezhető.

## 13. §

A közhasznú szervezet részére juttatott adományokat a könyv szerinti, ennek hiányában a szokásos piaci áron kell nyilvántartásba venni.

A gazdálkodás általános szabályai



14. §

(1) A közhasznú szervezet a gazdálkodása során elért eredményét nem oszthatja fel, azt létesítő okiratában meghatározott tevékenységére kell fordítania.

(2) A közhasznú szervezet az államháztartás alrendszereitől - a normatív támogatás kivételével - csak írásbeli szerződés alapján részesülhet támogatásban. A szerződésben meg kell határozni a támogatással való elszámolás feltételeit és módját.

(3) A (2) bekezdésben foglaltak szerint igénybe vehető támogatási lehetőségeket, azok mértékét és feltételeit a sajtó útján nyilvánosságra kell hozni. A közhasznú szervezet által nyújtott cél szerinti juttatások bárki által megismerhetők.

(4) A közhasznú szervezet a felelős személyt, a támogatót, valamint e személyek hozzátartozóját - a bárki által megkötés nélkül igénybe vehető szolgáltatások, illetve a társadalmi szervezet által tagjának a tagsági jogviszony alapján nyújtott, létesítő okiratnak megfelelő juttatások kivételével -

cél szerinti juttatásban nem részesítheti.

15. §

(1) A közhasznú szervezet bármely cél szerinti juttatását - a létesítő okiratban meghatározott szabályok szerint - pályázathoz kötheti. Ebben az esetben a pályázat nem tartalmazhat olyan feltételeket, amelyekből - az eset összes körülményeinek mérlegelésével - megállapítható, hogy a pályázatnak

előre meghatározott nyertese van (színlelt pályázat).

(2) Színlelt pályázat a cél szerinti juttatás alapjául nem szolgálhat.

16. §

(1) A közhasznú szervezet váltót, illetve más hitelviszonyt megtestesítő értékpapírt nem bocsáthat ki.

(2) A közhasznú szervezet a közhasznú társaság kivételével

a) vállalkozásának fejlesztéséhez közhasznú tevékenységét veszélyeztető mértékű hitelt nem vehet fel;

b) az államháztartás alrendszereitől kapott támogatást hitel fedezetéül, illetve hitel törlesztésére nem használhatja fel.

17. §

A befektetési tevékenységet folytató közhasznú szervezetnek befektetési szabályzatot kell készítenie, amelyet a legfőbb szerv fogad el.

A nyilvántartási szabályok

18. §

(1) A közhasznú szervezetnek a cél szerinti tevékenységéből, illetve vállalkozási tevékenységéből származó bevételeit és ráfordításait elkülönítetten kell nyilvántartani.

(2) A közhasznú szervezet bevételei:

a) az alapítótól, az államháztartás alrendszereitől vagy más adományozótól közhasznú céljára vagy működési költségei fedezésére kapott támogatás, illetve adomány;

b) a közhasznú tevékenység folytatásából származó, ahhoz közvetlenül kapcsolódó bevétel;

c) az egyéb cél szerinti tevékenység folytatásából származó, ahhoz közvetlenül kapcsolódó bevétel;

d) a szervezet eszközeinek befektetéséből származó bevétel;

e) a tagdíj;

f) egyéb, más jogszabályokban meghatározott bevétel;

g) a vállalkozási tevékenységből származó bevétel.

(3) A közhasznú szervezet költségei:

a) a közhasznú tevékenység érdekében felmerült közvetlen költségek (ráfordítások, kiadások);

b) az egyéb cél szerinti tevékenység érdekében felmerült közvetlen költségek (ráfordítások, kiadások);

c) a vállalkozási tevékenység érdekében felmerült közvetlen költségek (ráfordítások, kiadások);

d) a közhasznú és egyéb vállalkozási tevékenység érdekében felmerült közvetett költségek (ráfordítások, kiadások), amelyeket bevételarányosan kell megosztani.

(4) A közhasznú szervezet nyilvántartásaira egyebekben a reá irányadó könyvviteli szabályokat kell alkalmazni. A beszámolósi szabályok

19. §

(1) A közhasznú szervezet köteles az éves beszámoló jóváhagyásával egyidejűleg közhasznúsági jelentést készíteni.

(2) A közhasznúsági jelentés elfogadása a legfőbb szerv kizárólagos hatáskörébe tartozik.

(3) A közhasznúsági jelentés tartalmazza:

a) a számviteli beszámolót;

b) a költségvetési támogatás felhasználását;

c) a vagyon felhasználásával kapcsolatos kimutatást;

d) a cél szerinti juttatások kimutatását;

e) a központi költségvetési szervtől, az elkülönített állami pénzalaptól, a helyi önkormányzattól, a kisebbségi települési önkormányzattól, a települési önkormányzatok társulásától és mindezek szerveitől kapott támogatás mértékét;

f) a közhasznú szervezet vezető tisztségviselőinek nyújtott juttatások értékét, illetve összegét;

g) a közhasznú tevékenységről szóló rövid tartalmi beszámolót.

(4) A közhasznú szervezet éves közhasznúsági jelentésébe bárki betekinthat, illetőleg abból saját költségére másolatot készíthet.

(5) A (3) bekezdés a) pontjában foglalt rendelkezés az éves beszámoló készítésének kötelezettségére, letétbe helyezésére és közzétételére vonatkozó számviteli szabályok alkalmazását nem érinti.

## 20. §

A közhasznú szervezet közhasznú jogállásának megszűnésekor köteles esedékes köztartozásait rendezni, illetőleg közszolgáltatás ellátására irányuló szerződéséből eredő kötelezettségeit időarányosan teljesíteni.

## IV. Fejezet

### A KÖZHASZNÚ SZERVEZETEK FELÜGYELETE, NYILVÁNTARTÁSA, VALAMINT A RÁJUK VONATKOZÓ BÍRÓSÁGI ELJÁRÁS

A közhasznú szervezetek felügyelete

## 21. §

A közhasznú szervezetek feletti adóellenőrzést a közhasznú szervezet székhelye szerint illetékes adóhatóság, a költségvetési támogatás

felhasználásának ellenőrzését az Állami Számvevőszék, a törvényességi felügyeletet pedig - a közhasznú működés tekintetében - a reá irányadó szabályok szerint az ügyészség látja el.

A közhasznúsági nyilvántartásba vételre, az átsorolásra és a közhasznúsági nyilvántartásból való törlésre vonatkozó eljárás szabályai

## 22. §

(1) A közhasznúsági nyilvántartásba vétel, a közhasznúsági fokozatok közötti átsorolás, valamint a közhasznú jogállás törlése iránti kérelmet a szervezet nyilvántartásba vételére illetékes bíróságnál kell benyújtani.

(2) A közhasznúsági nyilvántartásba vétel iránti kérelemben meg kell jelölni, hogy a kérelmező melyik közhasznúsági fokozatban történő nyilvántartását kéri. A kérelemben csak egy közhasznúsági fokozat jelölhető meg.

(3) A közhasznúsági nyilvántartásba vételről, az átsorolásról és a törlésről a bíróság nemperes eljárásban, soron kívül határoz. A bíróság határozatát az ügyészségnek is megküldi.

(4) A közhasznú szervezet 60 napon belül köteles kérni a közhasznú jogállás törlését, illetőleg alacsonyabb közhasznúsági fokozatba történő átsorolását, ha a működése e törvény 4-5. §-ában foglalt feltételeknek nem felel meg.

## 23. §

Az ügyész a közhasznúsági nyilvántartásba vételre illetékes bíróságnál indítványozhatja a közhasznú jogállás törlését, illetőleg az alacsonyabb közhasznúsági fokozatba történő átsorolást, ha a közhasznú szervezet működése és vagyonfelhasználása az e törvényben, a létesítő okiratban vagy az ennek alapján készített belső szabályzatokban foglalt rendelkezéseknek nem felel meg, és ezen a szervezeten az ügyészi felhívás után sem változtat.

A közhasznú szervezetek bírósági nyilvántartása

## 24. §

(1) A közhasznúsági nyilvántartásba vétellel a szervezet nyilvántartási adatai kiegészülnek a közhasznúsági fokozatra, a közhasznú jogállás megszerzésének, módosításának és törlésének időpontjára vonatkozó adatokkal.

(2) A közhasznú szervezetekre vonatkozó bírósági nyilvántartás (1) bekezdésben említett adatai nyilvánosak.

## 25. §

Az e törvény alapján kezelt adatok statisztikai célra felhasználhatók és azokból, személyazonosításra alkalmatlan módon, statisztikai adatok szolgáltathatók.

V. Fejezet

## ZÁRÓ RENDELKEZÉSEK

Értelmező rendelkezések

26. §

E törvény alkalmazásában

a) cél szerinti juttatás: a közhasznú szervezet által cél szerinti tevékenysége keretében nyújtott pénzbeli vagy nem pénzbeli szolgáltatás;

b) cél szerinti tevékenység: minden olyan tevékenység, amely a létesítő okiratban megjelölt célkitűzés elérését közvetlenül szolgálja;

c) közhasznú tevékenység: a társadalom és az egyén közös érdekeinek kielégítésére irányuló következő - a szervezet létesítő okiratában szereplő - cél szerinti tevékenységek:

1. egészségmegőrzés, betegségmegelőzés, gyógyító, egészségügyi rehabilitációs tevékenység,

2. szociális tevékenység, családsegítés, időskorúak gondozása,

3. tudományos tevékenység, kutatás,

4. nevelés és oktatás, képességfejlesztés, ismeretterjesztés,

5. kulturális tevékenység,

6. kulturális örökség megóvása,

7. műemlékvédelem,

8. természetvédelem, állatvédelem,

9. környezetvédelem,

10. gyermek- és ifjúságvédelem, gyermek- és ifjúsági érdekképviselés,

11. hátrányos helyzetű csoportok társadalmi esélyegyenlőségének elősegítése,

12. emberi és állampolgári jogok védelme,

13. a magyarországi nemzeti és etnikai kisebbségekkel, valamint a határon túli magyarsággal kapcsolatos tevékenység,

14. sport, a munkaviszonyban és a polgári jogi jogviszony keretében megbízás alapján folytatott sporttevékenység kivételével,

15. közrend és közlekedésbiztonság védelme, önkéntes tűzoltás, mentés, katasztrófaelhárítás,

16. fogyasztóvédelem,

17. rehabilitációs foglalkoztatás,

18. munkaerőpiacon hátrányos helyzetű rétegek képzésének, foglalkoztatásának elősegítése és a kapcsolódó szolgáltatások,

19. euroatlanti integráció elősegítése,

20. közhasznú szervezetek számára biztosított - csak közhasznú szervezetek által igénybe vehető - szolgáltatások;

21. ár- és belvízvédelem ellátásához kapcsolódó tevékenység,

22. a közforgalom számára megnyitott út, híd, alagút fejlesztéséhez, fenntartásához és üzemeltetéséhez kapcsolódó tevékenység;

d) közvetlen politikai tevékenység: a pártpolitikai tevékenység, továbbá országgyűlési képviselői, megyei, fővárosi önkormányzati választáson jelölt állítása;

e) felelős személy: a szervezet létesítő okiratában és belső szabályzataiban vezető tisztségviselőként megjelölt vagy egyébként érdemi döntési jogkörrel rendelkező személy, valamint az a személy, aki a létesítő okirat felhatalmazása, a szervezet legfőbb szervének határozata vagy szerződés alapján a szervezet képviselőjére vagy bankszámlája feletti rendelkezésre jogosult;

f) legfőbb szerv: az alapítvány és a közalapítvány kezelő szerve (szervezete), a társadalmi szervezet alapszabály szerinti legfőbb szerve, valamint a közhasznú társaság taggyűlése;

g) létesítő okirat: a társadalmi szervezet alapszabálya, az alapítvány és a közalapítvány alapító okirata, a közhasznú társaság társasági szerződése, illetőleg alapító okirata;

h) nem pénzbeli támogatás: vagyoni értékkel rendelkező forgalomképes dolog, szellemi alkotás, illetőleg vagyoni értékű jog részben vagy egészében, véglegesen vagy ideiglenesen történő teljesen vagy részben ingyenes átruházása vagy átengedése, illetve szolgáltatás biztosítása;

i) pályázat: az a nyilvános vagy előre meghatározott körben közzétett felhívás, amely a pályázók összevetésére alkalmas feltételeket és a pályázattal elnyerhető cél szerinti juttatást, a

pályázat értékelésének lényeges feltételeit (beleértve a benyújtási és értékelési határidőket, valamint a pályázat elbírálására hivatottak körét) megjelöli;

j) támogatás: pénzbeli és nem pénzbeli juttatás;

k) befektetési tevékenység: a közhasznú szervezet saját eszközeiből történő értékpapír, társasági tagsági jogviszonyból eredő vagyonértékű jog, ingatlan és más egyéb hosszú távú befektetést szolgáló vagyontárgy szerzésére irányuló tevékenység;

l) vállalkozási tevékenység: a jövedelem- és vagyonszerzésre irányuló vagy azt eredményező gazdasági tevékenység, ide nem értve a bevétellel járó cél szerinti tevékenységet, valamint a közhasznú tevékenységhez nyújtott támogatást;

m) vezető tisztségviselő: az alapítvány és a közalapítvány kezelője, illetőleg kezelő szervének (szervezetének) és felügyelő szervének elnöke és tagja, továbbá - ha az alapítvány kezelő szerve (szervezete) elkülönült jogi személy, jogi személyiséggel nem rendelkező szervezet vagy állami szerv - a kezelő szerv (szervezet) egyszemélyi felelős vezetője vagy ilyen jogkörben eljáró testületének tagja; a társadalmi szervezet ügyintéző és képviselői vagy felügyelő szervének elnöke és tagja; a közhasznú társaság ügyvezetője, valamint a felügyelő bizottság elnöke és tagja, továbbá a közhasznú szervezetként nyilvántartásba vett szervezettel munkaviszonyban vagy munkavégzésre irányuló egyéb jogviszonyban álló, a létesítő okirat szerint egyszemélyi felelős vezető feladatot ellátó személy;

n) tartós adományozás: a közhasznú szervezet és támogatója által írásban kötött szerződés alapján nyújtott pénzbeli támogatás (nem magánszemély támogató esetében az értékpapír átadása is), ha a szerződésben a támogató arra vállalt kötelezettséget, hogy a támogatást a szerződéskötés (szerződésmódosítás) évében és az azt követő legalább három évben, évente legalább egy alkalommal - azonos vagy növekvő összegben - ellenszolgáltatás nélkül adja, azzal, hogy nem számít ellenszolgáltatásnak, ha a közhasznú szervezet a közhasznú szolgáltatása nyújtása keretében utal az adományozó nevére, tevékenységére.

27. §

(1) Ez a törvény 1998. január 1-jén lép hatályba. A törvény hatálybalépésekor már nyilvántartásba vett azon szervezet, amely a 26. § c) pontjában említett valamely közhasznú tevékenység folytatására jött létre, és közhasznúsági nyilvántartásba vételére kérelmét 1998. június 1-je előtt benyújtotta,

1998. január 1-jétől a 22. § (3) bekezdésében említett határozat jogerőre emelkedésének időpontjáig, illetve amíg kérelmét a bíróság el nem utasította, a kérelemben megjelölt közhasznúsági fokozat szerinti jogállásának minősül.

(2) Az 1998. január 1. után alakuló szervezet a nyilvántartásba vétel napjától jogosult a közhasznú jogálláshoz kapcsolódó adókötelezettséget érintő kedvezmények és mentességek igénybevételére, ha legkésőbb a nyilvántartásba vétel évének utolsó napján a közhasznúsági nyilvántartásba vétele is megtörtént.

(3) Az a szervezet, amelyet az államháztartás alrendszeréből származó vagyon felhasználásával alapítottak vagy a létesítő okirata szerint rendszeres költségvetési támogatásban részesül, az (1) bekezdésben megjelölt időpontig köteles a közhasznúsági nyilvántartásba vételét kérni. Ennek elmulasztása esetén támogatásának folyósítását fel kell függeszteni, és a szervezet - rá irányadó szabályok szerinti - megszüntetése is kérhető.

(4) Felhatalmazást kap a Kormány, hogy a közhasznú szervezetekkel a közbeszerzésekről szóló törvény hatálya alá tartozó szolgáltatások végzésére irányuló szerződések létrehozására vonatkozó sajátos szabályait megállapítsa.

## 6.6. Other Laws

6.6.1. Act on Corporate Rate Tax and Dividend Tax

(excerpt)

### PART ONE GENERAL PROVISIONS

#### Chapter I. Basic Principles

Parties Subject to Corporate and Dividend Taxes (...)

#### Section 2.

(1) Parties subject to corporate tax are those persons defined in Subsections (2) and (3).

(2) Of domestic persons, the following are taxpayers with domestic domicile:

a) business associations and professional associations;

b) co-operatives, with the exception of housing co-operatives,

c) state enterprises, trusts, other state economic organs, companies of certain legal entities, and subsidiaries, (...)

g) foundations, public foundations, social organizations, public bodies, churches, (including any organizational units of such organizations vested with legal personality in the statutes or deed of foundation), housing co-operatives, and voluntary mutual insurance funds. (...)

(4) The organizations listed in Schedule No. 5 are not subject to corporate tax.

Definition of Terms

Section 4.

For the purposes of this Act (...)

28/a. national interest representation organization: a union of social organizations registered by the court as a social organization, the members of which represent the interests of employees or employers on the basis of their statutes, provided that the union or its members have at least ten organizational units with legal personality in different counties; (...)

PART TWO CORPORATE TAX

Chapter II. Corporate Tax Liability

Section 5.

(...)

(7) Funds, public foundations, social organizations, civil corporations and non-profit companies may apply the provisions on non-profit organizations and priority non-profit organizations for the first time in the tax year when registered as such organization. Taxpayers may not apply the provisions on non-profit organizations and priority non-profit organizations during the tax year when being canceled from the register of non-profit organizations, with the exception of issuing verifications until the day of cancellation. Priority non-profit organizations, if transformed to the category of non-profit organizations during the tax year, may apply the provisions on non-profit organizations for the entire tax year, with the exception of issuing verifications until the day of transition. (...)

Establishment of Corporate Tax Base

Section 6.

(...)

(4) In the case of foundations, public foundations, social organizations, public bodies, churches, housing co-operatives, voluntary mutual insurance funds, target organizations, share companies engaging exclusively in joint and several suretyships, ESOP, public service companies and water management associations, the provisions of Subsections (1)-(3) shall apply, with due consideration of Sections 9-13. (...)

Legal Titles for Reductions when Establishing the Tax Base

Section 7.

(1) The following shall reduce pre-tax profit: (...)

z) any donation, with the exception of amounts granted to the Broadcasting Fund as a commitment of public interest, with due consideration of Subsections (5)-(7). (...)

(5) As an item to be subtracted from pre-tax profit,

a) the full amount of any donation and another 20 per cent of the donations granted as permanent donations as described in the Act on Non-Profit Organizations following the year of first payment, up to a combined maximum of 20 per cent of the pre-tax profit may be enforced in the case of a donation to public service organizations or a commitment of public interest,

b) one and a half times the amount of any donation and another 20 per cent of the donations granted as permanent donations as described in the Act on Non-Profit Organizations following the year of first payment, up to a combined maximum of 20 per cent of the pre-tax profit may be enforced in the case of a donation to priority public service organizations.

(6) The amount determined as per Paragraphs a) and b) of Subsection (5) may not jointly exceed 25 per cent of the pre-tax profit.

(7) A taxpayer may decrease its pre-tax profit on the basis of Paragraph z) of Subsection (1) only if it possesses a certification made out for the purpose of establishing the tax base by the public service organization, the primary public service organization or the party organizing the assumption of a public obligation, such certificate to include the name of the issuer and the

taxpayer, their registered offices and tax numbers, the amount of the donation, and the purpose supported, furthermore, in the case of a public service organization or a primary public service organization, the category of the public service and, if the classification for public service organization was decided by court, the reference number of such court resolution.

Establishment of the Tax Base of Foundations, Public Foundations, Social Organizations, Public Bodies, Churches, Housing Co-Operatives and Voluntary Mutual Insurance Funds

Section 9. (...)

(3) The pre-tax profit shall be increased by the following: (...)

c) in the case of donations received, as indicated in the certification issued by foundations, public foundations, social organizations or public bodies, entitling the taxpayer to reduce its pre-tax profit, or the private person to claim tax relief,

ca) by the full amount of such donations, if on the last day of the tax year, the foundation, public foundation, social organization or public body has outstanding public dues pursuant to the Act on the Rules of Taxation,

cb) by the portion of such donations calculated with the proportion defined in Subsection (7), if on the last day of the tax year, the foundation, public foundation, social organization or public body has no outstanding public dues pursuant to the Act on the Rules of Taxation, but its revenues from the entrepreneurial activity exceed the preferential rate. (...)

(5) Churches may also reduce the tax base by that portion of their profit realized from the entrepreneurial activity (pre-tax profit) which is used to cover those costs and expenditures on cultural, educational, instructional, higher education, social, health, child and youth protection, sports, scientific and monument protection activities, and of the maintenance of real estate for the purposes of religious life, which are in excess of revenues.

(6) The tax base of foundations, public foundations, social organizations and public bodies classified as public service organization or primary public service organization shall be the portion of the amount established on the basis of

Subsections (1)-(4) calculated with the proportion defined in Subsection [language missing?].

(7) The preferential rate of the entrepreneurial activity shall be 10 per cent of total revenues in the case of public service organizations, but an amount of 20 million HUF at the most, and 15 per cent of total revenues in the case of primary public service organizations. For the purposes of the provisions of Paragraph c) of Subsection (3) and Subsection (6), the proportion shall be calculated as the quotient (accurate to two decimal places) of the revenues from the entrepreneurial activity realized in excess of the preferential rate of the entrepreneurial activity, and the total revenues from the entrepreneurial activity.

(8) National interest representation organizations and churches shall establish their tax base according to Subsections (1)-(7), applying the provisions on public service organizations correspondingly.

## ESTABLISHMENT OF TAX

### Chapter III. Tax Exemption

#### Section 20.

(1) The following parties need not pay the tax:

a) foundations, public foundations, social organizations, with the exception of national interest representation organizations, and public bodies not qualifying as public service companies or primary public service companies, as well as housing co-operatives, if the revenues realized from their entrepreneurial activity, recorded pursuant to the regulations of separate legal provisions applicable to their activity and the provisions of Schedule No. 6, are not more than 10 million HUF, but do not exceed 10 per cent of total revenues realized in the tax year,

b) non-profit companies and water management associations, for the portion of the tax base, which, as a part of total revenues, represents revenues realized from preferential activities as established pursuant to Chapter C) of Schedule No. 6 for non-profit companies, and revenues realized from activities conducted as public duties for waterworks associations, such tax base being reduced by the amount accounted by virtue of Paragraphs b), c) and d) of Subsection (1) of Section 13, the book value of assets transferred without compensation, for intangible assets and tangible assets the calculated registered value thereof, as well as by the donations received and accounted for in such, (...)

Schedule No. 4 to Act LXXXI of 1996 -- Preferential Activities Carried out at Foundations, Public Foundations, Social Organizations, Public Bodies, Housing Co-operatives and Public Service Companies

A) Preferential Activities Carried Out at Foundations, Public Foundations, Social Organizations and Public Bodies

For the purposes of this Act, the following shall not qualify as entrepreneurial activity from among the economic activities aimed at or resulting in the acquisition of income or property, as defined in Subsection (1) of Section 1:

1. the interest received from a financial institution or the issuer of a security, on placing or investing available liquid assets in deposits or securities, as well as the yield of securities issued by the state;

2. the sale of intangible assets, tangible assets or inventories serving solely the purposes of foundations or public foundations, or activities required by the purpose of the social organization or public body; (...)

5. activities of foundations, public foundations, social organizations and public bodies serving their purposes, irrespective of whether such activities are included in Paragraphs 3 and 4 or not.

Schedule No. 5 to Act LXXXI of 1996 -- Organizations not Qualifying as Subject to Corporate Tax (...)

9. political parties.

Schedule No. 6 to Act LXXXI of 1996 -- Preferential Activities Carried Out by Foundations, Public Foundations, Social Organizations, Public Bodies, Housing Co-operatives and Public Service Companies

A) Preferential Activities Carried Out by Foundations, Public Foundations, Social Organizations and Public Bodies

For the purposes of this Act, the following shall not qualify as entrepreneurial activity from among the economic activities of foundations, public foundations, social organizations and public bodies aimed at or resulting in the acquisition of income or property, as defined in Subsection (1) of Section 1:

1. the public service activity or, if not qualifying as a public service organization or primary public service organization, the activity entailed by the objective named in the deed of foundation or statutes, including in both cases any support,

allowance or membership fee received in connection with such activity;

2. the consideration of or revenues from the sale of intangible assets, tangible assets or inventories serving solely the public service activity or, if not qualifying as a public service organization or primary public service organization, the activity entailed by the purpose of the foundation, public foundation, social organization or public body;

3. that portion of the interest received from a credit institution or the issuer of a security, on placing or investing available liquid assets in deposits or securities, and of the yield of securities issued by the state, which is represented by the revenues from the public service activity or, if not qualifying as a public service organization or primary public service organization, from the activity entailed by the purpose of the foundation, public foundation, social organization or public body, in the total revenues, whereby revenues shall be accounted for without such interest or yield in either cases. (...)

6.6.2. Act on the Public Application of a Certain Portion of Personal Income Tax upon the Taxpayer's Order

The 1995 Act No. CXVII on personal income taxation (hereinafter referred to as APIT) enables private persons to make a dispositive statement in which they may order a certain - specified in the APIT- portion of their taxes paid to be applied for public purposes in favour of beneficiaries that are determined in a statute. The Parliament shall pass the following Act on the process through which this right is exercised and on the circle of potential beneficiaries.

§1. Taking the provision of paragraph (1) § 45 of the APIT into account, this Act shall consider an amount as tax paid which is indicated on the tax return of the private persons or on the employer's account which substitutes the tax return, after subtracting all allowances, provided that the private person has remitted the amount, he or she has not been granted a respite or the facility deferred payment for over 30 days prior to the day specified in paragraph (1) §6, and one per cent of this tax amount is at least 100 Hungarian forints.

§2. (1) If a private person has disposed of the portion of his or her income tax which is specified in the APIT, and this order has been fulfilled, the amount shall not be later changed on account of tax authority revision or self-revision.

(2) If the self-revision or the tax authority revision of a tax return finds that the amount arrived at following the calculation indicated in §1

is less than the amount claimed, the tax authority shall order the private person to remit one per cent of the difference provided it exceeds 100 Hungarian forints.

§3. (1) Taxpayers shall make the dispositive statement for the total of the one per cent of the amount calculated as per §1 and in favour of a single beneficiary.

(2) The Tax and Financial Revision Authority (hereinafter referred to as TFRA) shall transfer one per cent of the amount calculated as per §1 in favour of the beneficiary based on the taxpayer's dispositive statement and the relevant information on the tax return (the employer's account substituting the tax return).

§4 (1) The following entities shall qualify as beneficiaries under this Act:

a) public purpose activities listed under b) and religious instruction provided by churches under the 1990 Act No. IV on the freedom of conscience and religion. and churches, religious denominations, religious communities (hereinafter referred to as churches), if the church was registered by a court at least three years before the first day of the year in which the private person made the dispositive statement; the church in question is entitled to allocate the amount for a particular public purpose activity to its entities (institutions, etc.) providing the given activities; in the absence of a tax number, the churches that would like to qualify as beneficiaries shall request a technical tax number from the Tax and Financial Revision Authority, with the proviso that the technical tax number shall qualify as tax number under this Act;

b) civil organizations under the 1989 Act No. II on the right of association (except for political parties, associations of employers and employees), public foundations which were registered by the court at least three years before the first day of the year in which the private person made the dispositive statement, and have been, according to their constitution or rules of operation, actually involved in the following activities for at least one year before the first day of the year prior to the date of the above dispositive statement: health, social, cultural, educational, scientific and research activities, assistance to children, youth, the elderly, the disabled and the disadvantaged, support to the national and ethnic minorities in Hungary and the ethnic Hungarians abroad, environment protection, national heritage protection, nature protection, child and youth protection, traffic safety, the protection of civic rights, public order, public security, sports for children, young people and the disabled, amateur sports activities; while

taking into account the provisions in paragraph (2);

c) public foundations if they are, under their deed, active in the fields specified under b);

d) the following national collections and other cultural institutions:

1. Museum of Military History
2. Museum of Applied Arts
3. Museum of Trade and Catering
4. Museum of Contemporary Arts
5. Transport Museum
6. Hungarian State Opera
7. Hungarian National Museum
8. Hungarian National Gallery
9. Hungarian Science Museum
10. Museum of Agriculture
11. National Theatre
12. Museum of Ethnography
13. National Technical Museum
14. National Szechenyi Library
15. National Archives
16. National Technical Information Centre and Library
17. Petofi Sandor Literary Museum
18. Semmelweis Medical Museum, Library and Archives
19. Open-Air Ethnographic Museum
20. Museum of Fine Arts
21. Museum of Physical Education and Sports

e) the Hungarian Academy of Sciences;

f) the Central Programme for Technical Development;

g) the National Programme for Scientific Research;



h) the Children and Youth Programme;  
i) the Programme for the Development of Higher Education,

j) the separated state funds;

k) theatres, public collections, institutions of public education which have received an annual grant from the local government in any of the three years before the first day of the year of the dispositive statement.

(2) Out of the entities listed under b) and c) of paragraph (1), organisations shall only qualify as beneficiaries if:

a) their premises are in Hungary, and

b) they Operate in favour of residents in Hungary and ethnic Hungarians abroad, and

c) they state that they are independent of political parties, do not receive any support from them, did not send or support a candidate at the last parliamentary elections prior to the year of the dispositive statement, and include this provision in their constitution, and

(d) they do not have any public debts due recorded at the TFRA, possess a certificate of the local government's tax division and the customs authority made out not earlier than 30 days which proves that they do not have any public debts due recorded at the given organisation, and make a statement to the effect that

1. they have effected all payments related to social security,

2. they have actually performed their activity under the rules of operation or the deed - as specified under b), paragraph (1) §4 for one year before the year of the dispositive statement(s) without interruption, thus satisfying all relevant regulations.

§5 (1) Private persons shall make the dispositive statement on an A/6 size paper put in a sealed envelope, indicating their name, address and tax identification number on it, which they place in their tax return package, or - in the case of an employer's account - hand over directly to their employer before 25th March after the tax year. The dispositive statement put in the envelope shall only contain the tax number of the beneficiary, while the indication of the name of the beneficiary shall be optional.

(2) Employers shall not learn the contents of the dispositive statement, the intact envelopes shall

be sent together with the employer's account in a sealed parcel to the relevant tax authority, indicating its existence on the summary sheet.

(3) The data on the envelope and in the dispositive statement shall qualify as tax secret, and are eligible for the corresponding protection, with the deviation that the tax authority shall

a) allow inspection to authorised persons who act in legal disputes referred to in paragraph (4);

b) provide information to private persons about their own data and the contents of the dispositive statement;

c) provide information to the beneficiaries about the amounts to be transferred in their favour.

(4) On opening the envelopes, the tax authority shall mark the envelope and the relevant dispositive statement with an identical code, and process, check and store them separately so that the same person(s) shall not have access to them simultaneously. Otherwise, the tax authority shall allow the linking of the data coded for persons authorised to act in legal disputes arising in relation to dispositive statements.

(5) The storage obligation of the tax authority referred to in paragraph (4) shall exist until each of the potential legal disputes which are commenced before the end of year five after the year of transfer to the beneficiaries are closed with a final verdict. After, this day the envelopes and the dispositive statements shall be destroyed as ordered by the President of the TFRA.

(6) Based on the dispositive statements' attached to tax returns and employer's accounts the tax authority shall call the beneficiaries to prove the fulfillment of the conditions specified in paragraph (4) within thirty days until the first day of September each year. This deadline shall be under pain of loss of right.

§6 (1) The TFRA shall transfer the amount specified in §3 within thirty days of the receipt of the statements and certificates mentioned in §4 but no later than 31st October of the year, except if the tax return, the employer's account or the dispositive statement, based on the examination which also considers the provision of paragraph (4) §5, is unsuitable for data processing necessary for effecting the transfer. In this case the transfer shall be effected when it becomes possible within one year after the submission or correction of the particular documents. The tax authority shall effect payment at a later date only on verdicts passed in disputes referred to tinder paragraph (4) §5.

(2) In the absence of conditions specified in §1 and §3 the dispositive statement shall be invalid.

(3) Beneficiaries shall publish the figures about the purposive application of the amount transferred in accordance with this Act in a press release until 31 October of the year following the year of transfer. The rules of storage of tax documents shall apply to an original copy of the press release to prove its publication.

§7 (1) If a beneficiary does not prove the fulfillment of conditions in §4 in tile procedure specified in §5, the disposition shall be invalid. An incorrect or illegible tax number in the dispositive statement shall make it invalid. All amounts that are related to invalid statements shall constitute a part of the personal income tax revenue of the central budget.

(2) The amounts transferred to beneficiaries under this Act - with the exception of those mentioned under a) paragraph (1) §4 - shall be considered such a budgetary grant the purposive application of which the TFRA is entitled to examine under the Act on Tax Administration. If the tax authority finds an application towards activities which do not serve a public purpose, it shall pass a resolution, and accordingly make the beneficiary to repay this amount within the period of prescription specified in Act on Tax Administration.

(3) If a beneficiary proves the fulfillment of conditions in §4 in the procedure specified in §5 unsuccessfully, the TFRA shall pass a resolution to this effect, which, upon the request of the beneficiary, may be changed by the court where it was registered or, in the absence of that, the court with jurisdiction according to the address of the beneficiary within 15 days if it finds the fulfillment of the conditions in an extrajudicial procedure.

§8 (1) This Act shall come into force on the fifth day after its announcement, and the dispositive statements shall be made for the first time about the tax payable after the income in 1996, as specified in § 1.

(2) In the disposition about the tax after the income in 1996, the personal identification number shall be used instead of the tax identification number referred in §5.

#### 6.6.3. Act XVI of 1991 on Concessions

One possible way of efficiently operating the property exclusively owned by the state or the local governments or the associations of local governments, and of the exercise of the activities referred to the exclusive competence of the state or the local government is the assignment of all

these by way of a contract of concession. In order to create this legal institution, Parliament passes the following Act:

#### General Provisions

##### Section 1

(1) This act sets forth the basic rules of assignment within the scope of the concession contract of the following:

a) national public roads and their engineering works and structures, national public railway lines under exclusive state ownership, local public railway lines of local governments, canals, the international commercial airport (Budapest Ferihegy International Airport), and the regional public utility systems,

b)

c)

d) local public roads and their engineering structures as part of the primary assets of a local government and the operation of the local public utilities, and

e) mining research and exploitation, and related secondary mining activities,

f) transport and storage of products by pipeline,

g) production and sale of fissile and radiating materials,

h)

i) activities with the objective of organizing and operating gambling,

j)

k)

l) carriage of passengers by rail,

m) the carriage of passengers at specified intervals along specified routes by road,

n) drafting and operating an electronic public procurement system.

The sectoral Acts defining the manner and the detailed conditions in which the individual activities may be pursued (hereinafter: sectoral Act) may dispose only within the framework of this Act.

(2) A sectoral Act may allow the pursuit of certain types of activities within the scope of the activities

as collective terms listed above under subsection (1) without inviting for tenders or concluding a contract of concession (liberalized activities).

## Section 2

(1) The conditions for pursuing the activities listed in Section 1 are that

a) the state or the local government or the association of the local governments (hereinafter the latter two together: local government), considering the provisions of Section 14, have a majority ownership interest, voting right or, in the case of permanent minority ownership interest of the state, priority voting shares in an economic organisation, pursuing the activity [paragraph c) of Section 685 of the Civil Code], or set up an institution financed by the central budget or by the local government, or

b) the state or the local government assigns the right to pursue the activity on a temporary basis by a contract of concession.

(2) In the case of permanent ownership interest of the state, the act on the branch may determine the decisions which require the agreement of the holder of priority voting shares as defined in paragraph a) of subsection (1).

## Section 3

(1) The state or the local government may conclude a contract of concession, determined under Section 2, paragraph b), with domestic or foreign natural persons or legal entities, and with the unincorporated associations thereof.

(2) Foreign natural persons and legal entities, and unincorporated legal associations thereof, qualifying as foreigners according to the foreign exchange regulations, may conclude a contract of concession with the same terms and chances as domestic persons.

## Section 3/A.

Where any public works concession that is governed by the Act on Public Procurement Procedures (PPA) also falls under the scope of this Act, this Act shall apply subject to the exceptions laid down in the PPA.

## The Tender for Concession

### Section 4

(1) The state or the local government shall invite tenders, with the exception of the aforesaid under Section 12, subsection (2), for the conclusion of a contract of concession. Tenders, except when national defence or security reasons necessitate a

closed tender, are open to the public. In this case Law-Decree No. 19 of 1987 on Tenders need not be applied.

(2) Where national defence or security interests necessitate the invitation for a closed tender, the competent Minister shall make the decision after having consulted with the competent parliamentary committees.

### Section 5

(1) The sectoral Minister, competent as to the nature of the activity, has the authority to invite and evaluate the tenders, and to conclude the contract of concession on behalf of the state.

(2) Where the nature of the activity defined in the invitation for tenders is directed to the assignment of entitlement to the exercise of an activity, which directly affects the local government's performance of its obligations prescribed by the law, the consent of the local government concerned is required for the invitation for tenders. Where the invitation for tenders affects the local government in exercising the rights otherwise due to it or performing its other tasks, the opinion of the local government concerned shall be asked prior to the announcement of the invitation for tenders.

### Section 6

The body of representatives is entitled to invite for and evaluate the tenders on behalf of the local government. It cannot transfer this sphere of authority. The mayor is entitled to sign the contract of concession on behalf of the local government.

### Section 7

The person and body defined under Sections 5 and 6 shall coordinate the conditions upon which the necessary licence may be issued with regard to the pursuit of the activity defined under Section 1, subsection (1) (hereinafter: activity subject to concession) with the competent administrative organ prior to the invitation for tenders.

### Section 7/A

Prior to the invitation for tenders pertaining to assignment by a contract of concession, the opinion of the competent chamber of economy shall also be requested as to the right to pursue activities subject to concession, defined under Section 1, subsection (1), paragraphs a), c), d), f) and j) to m).

### Section 8

(1) Invitations for open tenders shall be published in at least two dailies of nationwide circulation, and, in the case of local government, in the local daily paper at least 30 days prior to the first day of the period for submitting applications. In the case of a closed tender, the invitees shall be invited to tender concurrently and directly.

(2) The invitation for tenders shall contain the aspects of evaluation thereof and, as to the activity subject to concession, it shall

- a) list any other related activities,
- b) define the period of concession to be granted,
- c) define the geographical-administrative unit in which the activity is to be pursued,
- d) define the legal and financial conditions upon which the activity is to be pursued,
- e) define the conditions of premature termination of the contract of concession,
- f) contain information as to the rights of the state (local government) concerning the supervising of the terms of concession,
- g) contain information as to who has the right to pursue the activity subject to concession in the area affected by the tender, at the time of inviting for tenders, and whether the invitor intends to grant the right of pursuing the activity subject to concession to other economic organizations during the term of concession.

(3) If necessary, the tender shall also contain:

- a) professional conditions pertaining to the pursuit of the activity, which exceed or depart from, those described by legal rules or standards (e.g., environmental protection, health protection),
- b)
- c) the minimum amount of the concession fee,
- d) rules and collaterals with regard to the delivery and return of the property owned exclusively by the government (primary assets of the local government) provided the pursuit of the activity subject to concession requires the assignment of the possession of this property,
- e) information as to whether the sectoral Act prescribes parliamentary approval for the conclusion of a contract of concession,
- f) the rules of price calculation of the licensed activity, including the methods and principles of defining and changing the price and charge,

g) any other information that the invitor deems necessary.

#### Section 9

The period for submitting tenders shall not be shorter than 60 days. The person, or organ acting on behalf of the state or the local government shall evaluate the tenders within 90 days, unless the sectoral Act prescribes a shorter period, of the deadline for submitting that.

#### Section 9/A

(1) The decision-maker shall draw up a memorandum regarding the evaluation of the tenders. The memorandum shall contain the following constituents, which are essential in evaluating the tenders:

- a) summary of the information contained in the tenders submitted;
- b) detailed justification for choosing the best offer;
- c) assessment of the required securities;
- d) the amount and the terms of payment of the concession fee, if the applicable Act prescribes payment of a concession fee as a consideration;
- e) data and calculations regarding the financial positions (avoided expenditures, acquired rights) of the state and local governments that were offset by concession fees or by other means provided by the concessionaire, and information about and a description of the concessionaires position in the market affected by the concession;
- f) a declaration from the winning bidder (or, if the winner is a company, from a person holding a direct or indirect share) in which he describes his ownership interest in the area affected by the concession.

(2) In addition to the items stipulated in Subsection (1) above, the memorandum shall contain all the information and data that are prescribed by the applicable Act and deemed necessary by either party to the concession contract.

(3) The memorandum shall be attached to the documents connected to the tender within 30 days of signing the concession contract.

(4) The contents of the memorandum on open tenders shall be deemed public information. This memorandum shall be available for the perusal of any party concerned, and it may be copied upon request for a fee.

#### Section 10

The sectoral Act may stipulate additional rules pertaining to the manner in which the tender is to be transacted.

#### The Contract of Concession

#### Section 11

The person or organ acting on behalf of the state or the local government may conclude a contract of concession only with the winning applicant. All things considered, the applicant offering the most favourable terms for the state or the local government shall be declared the winner.

#### Section 12

(1) A contract of concession may be concluded for a definite period, the longest term of which is 35 years.

(2) The sectoral Act may allow the extension of the concession period once without inviting a separate tender; the second period, however, may not be longer than half of the original period.

(3) The contract of concession may be terminated by notice before the expiration thereof only in cases defined under Section 17, subsection (2), under Section 20, subsection (1), and Section 21, subsection (3) of this Act, and upon the realization of conditions stipulated in the contract in advance.

#### Section 13

(1) The parties may provide for the assignment of the activity subject to concession in an onerous contract.

(2) Where the sectoral Act prescribes the payment of concession fee as consideration, only the minimum amount thereof may be defined. The contract of concession shall provide for the manner and rate of the payment of the concession fee.

(3) The concession fee obtained from the contract of concession concluded by the state shall be separately registered; Parliament shall decide on the utilization thereof in the course of passing the annual Budget Act.

#### Section 14

The state or the local government may change the entitled person's position of money worth (exclusiveness), compensated by the concession fee or by any other means to the prejudice, and without the consent thereof within the geographical-administrative unit defined in the

contract during the period it is in effect only if the parties have agreed thereon in the contract of concession.

#### Section 15

(1) Where the activity subject to concession is related to an exclusive state ownership or to an asset forming part of the primary assets of the local government, the conclusion of the contract shall not result in change in the ownership thereof. The sectoral Act may provide otherwise for the ownership of the natural resources exploited in the framework of the contract of mining concession.

(2) An asset qualified as exclusive state property or as part of the primary assets of the local government, established with regard to an activity subject to concession, shall form part of the state's or the local government's property on the day of its commissioning, in accordance with the conditions stipulated in the contract of concession.

#### Section 16

(1) The law court having general competence and jurisdiction is entitled to decide on legal disputes emanating from the contract of concession unless an international agreement or in the case defined under subsection (2), the contract of concession stipulates otherwise.

(2) Legal disputes emanating from contracts of concession concluded with persons qualified as foreigners according to the foreign exchange regulations may be decided upon by an international arbitral tribunal provided the parties have so agreed.

#### Section 17

(1) The winner awarded the pursuit of the activity subject to concession shall undertake in the contract of concession the obligation to assert the requirements stipulated in the contract of concession on the basis of the invitation for tenders in the deed of foundation of the economic association, founded by him.

(2) Failing to fulfil this obligation, the contract of concession may be terminated by notice with immediate effect.

#### Section 18

The sectoral Act may prescribe parliamentary approval for the conclusion of individual contracts of concession to be signed by the state. In the case of lack of parliamentary approval within 90 days of the signing of the contract, the concessionaire shall be exempt from his binding declaration.

#### Section 19

(1) Unless this Act provides otherwise, the provisions of the Civil Code shall apply to a contract of concession.

(2) Those sections of a concession contract that were part of the open invitation to tender shall be deemed public information.

(3) In connection with the conclusion and fulfillment of concession contracts, any information that is declared by specific other legislation to be information of public interest or public information and as such is rendered subject to disclosure may not be withheld on the grounds of being treated as a business secret.

#### The Concession Company

#### Section 20

(1) Unless the sectoral Act provides otherwise, the person signing the contract of concession shall set up a resident economic association (hereinafter: concession company) with his own participation within 90 days from the signing of the contract for the pursuit of the activity subject to concession. Failing to meet the time-limit, the state or the local government may terminate by notice the contract of concession.

(2) Where the sectoral Act prescribes parliamentary approval to conclude a contract of concession, the period stipulated under subsection (1) shall commence on the day of the approval.

#### Section 21

(1) Where a separate legal rule prescribes a licence for an activity subject to concession, the concession company may pursue its activity only in possession of this licence. The condition stipulated in the contract of concession, according to which the person or organ acting on behalf of the state or the local government undertakes prior obligation to issue a licence, is null and void.

(2) The repeal of the authority's licence, or the decision by the competent administrative body prohibiting the pursuit of the activity subject to concession until the termination of illicit conditions, shall not invalidate the contract of concession.

(3) The person or organ acting on behalf of the state or the local government may terminate by notice the contract of concession if the concession company does not become entitled to pursue its activity within 6 months of the conclusion of the contract of concession, or of the announcement of the decision as to the repeal of the licence or the prohibition of the pursuit of the activity.

#### Section 22

Besides the activity subject to concession, the concession company is entitled to pursue exclusively such activities which are functionally connected with the activity subject to concession determined by the sectoral Act or by the decision of the local government.

#### Section 23

(1) The concession company is entitled to possess and utilize individual assets forming part exclusively of the state property or of the primary assets of the local government, and to collect any profit deriving from such assets.

(2) The concession company may not alienate its right of use relating to the asset forming part exclusively of the state property, or of the primary assets of the local government; and, may not contribute this asset to another economic association as a contribution in kind.

#### Section 24

Unless the contract of concession provides otherwise, assets (establishments), which promote the proper utilization of an asset qualified as the exclusive property of the state, or as part of the primary assets of the local government in connection with the activity subject to concession, shall become the property of the concession company following their preparation (commissioning).

#### Section 25

The concession company may not assign the right of pursuing an activity subject to concession to another party, and may not contribute it to another economic association as a contribution in kind without the consent of the state or the local government.

#### Section 26

(1) Upon the expiration of the period defined by the contract of concession, or upon the termination thereof for some other reason [Section 12, subsection (3)], the members (shareholders) of the concession company are liable to prepare a final account within 30 days of the communication of the non-appealable court decision announcing the termination.

(2) In case the members (shareholders) of the concession company fail to meet the provisions of subsection (1), the registration court shall enforce the legal consequences emanating from the termination without legal successor.

(3) In the case of termination of a concession company, the remaining assets due to the members (shareholders) may be handed out (paid) to them provided the organ acting on behalf of the state, or the local government has verified the delivery of the assets forming part of the property of the state or the local government in appropriate condition, except for the case if the asset, forming part of the exclusive property of the state, or of the primary assets of the local government, was not put into operation to that date.

#### Section 27

(1) The liquidation of a concession company due to its insolvency, except for the case defined under subsection (2), shall also bring about the termination of the contract of concession.

(2) In the contract of concession, the parties may agree on the establishment of a new concession company, too, for the remaining period of the term fixed in the contract.

#### Section 28

Where the concession company is terminated by court during a process of liquidation, the assets taken over by the company from the state or the local government may not serve as cover for the claims of the creditors; the liquidators shall return these assets to the state, or the local government. During the sale of the assets under liquidation, the state, or the local government has the right of pre-emption pertaining to the assets defined by Section 24.

#### Section 29

(1) This Act comes into force on the day of its promulgation.

(2)

(3)

(4) Section 26, subsection (1) of Act VI of 1977 on State-Owned Companies, as amended several times, shall be replaced by the following provision:

"(1) The company's scope of activity, with the exception of the activities subject to concession, may be amended in the case defined under Section 26/A after having obtained the special right or the authority's licence".

(5) Section 8 of Act XIII of 1989 on the Transformation of Economic Organizations and Associations shall be complemented by the following subsection (3):

"(3) The new economic association is entitled to continue the activities of the transforming economic organization established by the state or the local government provided the state, or the local government possesses the majority share. In the transition period, during which the conditions of invitation for tenders are being defined, the Minister of Industry and Trade may allow deviation from these terms in the sphere of mining research and exploitation".

(6) Persons or organizations, pursuing a concession activity or any activity showing the characteristics of concession licensed prior to the coming into force of this Act, may continue their activity, unless the sectoral Act provides otherwise, under unchanged conditions.

#### 6.6.4. Act XXXIV of 1991 on the Organization of Gambling

In the interest of defining the responsibilities related to the exercise of the gambling monopoly by the state, meeting the demand for organizing gambling activities, preventing gambling activities pursued without licence, and/or those in conflict with good morals, controlling gambling organization activities, as well as using a part of revenues derived from gambling activities for public purposes, Parliament passes the following Act:

#### GENERAL PROVISIONS

##### Title 1

##### Basic Provisions

##### Section 1

(1) Gambling activities comprise all games in which players become entitled to a cash prize or other prize of pecuniary value in return for paying cash or providing pecuniary value, in case definite conditions exist or occur. Winning or losing exclusively, or mostly, depends on luck.

(2) For the purposes of this Act, betting and the operation of money winning machines shall also qualify as gambling. This Act shall also apply, in cases regulated separately in the Act, to gambling machines and gift draws.

(3) The following shall qualify as activities aiming at the organization of gambling activities defined in Section 1, subsection (1), paragraph i) of Act XVI of 1991 on Concession (hereinafter: CA):

a) organization of drawing games,

b) operation of money-winning machines,

c) foundation and operation of an organization (hereinafter: casino) to arrange gambling activities,

d) activities aiming at the organization of horse-race bets and other gambling activities not coming under paragraphs a) to c), but defined in this Act (hereinafter collectively: gambling organization activity).

(4) Any services involving gambling and betting activities from the territory of the Republic of Hungary through communication equipment and networks must be conducted under the provisions of this Act.

(5) Any publication of announcement for soliciting participants for any game of chance through communications equipment and networks is subject to authorization by the Gambling Commission (hereinafter referred to as "Commission").

## Section 2

(1) From among the activities defined in Section 1, subsection (3), paragraph a), the activity defined in Section 16, as well as the activity defined in Section 1, subsection (3), paragraph b) shall be liberalized activities. The activity referred to in Paragraph b) of Subsection (3) of Section 1 may be performed only if the operator is able to produce verification of registration in the proper chamber.

(2) The licence of the Commission is required for pursuing gambling organization activities, with the exception defined in this Act.

(3) GS shall issue the licence to whom the personal, material and economic conditions required for the safe and proper running of gambling activities are available.

(4) No licence may be issued if

a) the activity intended to be pursued hurt sensibility, public safety, public morals, and/or children or youth policy interests,

b) the applicant or his senior officer has a criminal record, or committed crimes against public faith (Chapter XVI, title III of the Criminal Code), economic crimes (Chapter XVII of the Criminal Code), or crimes against property (Chapter XVIII of the Criminal Code), furthermore, the crime of organization of prohibited gambling activities within three years prior to submitting the application, and/or committed an offence against property, committed a financial offence, or the offence of violating the rules applicable to the operation of game and money-winning machines, or participation in prohibited gambling activities

within two years prior to submitting the application,

c)

d) the applicant, and/or his senior officer pursued gambling organization activities without licence within five years prior to submitting the application,

e)

f)

g) the activity applied for fails to meet the conditions stipulated in legal rules,

h) the applicant fails to undertake the conditions stipulated in legal rules,

i)

(5) The GS shall reject the license application if the tax authority has imposed by final order a tax penalty in excess of one million HUF or a default penalty in excess of 100,000 HUF against the applicant, or its executive officer, during the five-year period preceding the submission of the application, or if the applicant, or its executive officer, had public debts in excess of one million HUF during the one-year period preceding the submission of the application, or a tax debt at the time of submission.

(6) For the authorization of gambling activities conducted through communication equipment and networks the operator must comply with the requirements set forth in Subsections (3)-(5), and shall verify

a) of having provided sufficient information to the participants via communication equipment and networks concerning the risk factors involved,

b) of providing adequate protection of the participants' personal data and other civil rights,

c) that the requirement of random selection is ensured by way of auditing the electronic gaming systems.

(7) No sales, organization and mediation activity may be pursued in Hungary in connection with gambling activities organized abroad, or advertising or sales promotion activities connected to foreign gambling activities.

## Section 3

(1) The organization of non-liberalized gambling



a) may be performed by a business association that is exclusively controlled by an economic organization exclusively owned by the state (hereinafter referred to as "state game organizer") or by an economic organization under the majority control of the state, and/or

b) the right of exercising this activity may be temporarily transferred by the state to another party in a concession contract.

(2) The Minister of Finance shall supervise the professional aspects of gambling and shall represent the state in respect of Paragraph b) of Subsection (1).

(3) The state game organizer shall have exclusive rights to organize lottery and oddsmaking with the exception of horse race betting and bookmaking.

Court Resolution 1994. 698 Organization of draw is not activity which may only be pursued by an economic organization with exclusive state participation [Section 3, subsections (1) and (3) of Act XXXIV of 1991.]

#### Section 4

(1) The public tender for concluding concession contracts, as referred to in Section 5, subsection (1) of CA, shall be invited by the Minister of Finance. The agreement of the concerned local government is required for the operation of casinos and games rooms, as well as for pursuing the activities defined in Section 1, subsection (3), paragraph d), furthermore, for inviting a tender for operating bingo rooms.

(2) The results of the tender shall be published in the same national daily newspapers where the invitation to tender had been published.

(3) Without inviting a separate tender, the Minister of Finance may extend the concession contract on one occasion, by not more than half its original period of validity.

(4) In addition to the contents of Section 8 of CA, the invitations to tender shall contain the following:

a) economic requirements, as well as legal, personal and material conditions required for practising gambling organization activities,

b) list of activities connected with gambling organization activities, which may be practised in addition to the gambling organization activity,

c) deadline and place of submitting the tender.

(5) If necessary, the invitation to tender shall contain special provisions applicable to the economic association founded in order to pursue gambling organization activities (e.g. limited negotiability of shares issued, and/or of business quotas).

#### Section 5

(1) The Minister of Finance may conclude the concession contract with the winner of the tender.

(2) The concession contract may be concluded for a definite period of time specified in the special provisions of this Act.

(3) The amount of the concession fee, the manner of its payment, and/or the compensation shall be provided for in the concession contract.

#### Section 6

(1) In order to pursue activities requiring concession, the signatory of the concession contract shall found an economic association defined in the special provisions of this Act, in which he possesses the majority of shares, business quotas, and/or votes upon the foundation of the company and during its activities as well, and shall undertake that the economic association will enforce in its deed of foundation the requirements defined in the concession contract.

(2)

#### Title 2

##### State Supervision of Gambling Organization

#### Section 7

(1) The state supervision of legality of gambling organization shall be performed by GS.

(2) GS shall operate under the supervision of the minister designated by the Government. Its director shall be appointed by the Government. The supervising minister shall

a) file a motion to the Government in respect of the director of GS,

b) approve the organizational, operational and supervisory regulations of GS.

(3) GS is a state administrative organ with nationwide competence. It shall act in accordance with Act I of 1981 on the General Rules of State Administrative Procedure in the matters coming under its jurisdiction. No appeal may be lodged against decisions of GS in state administrative

procedure, with the exception of decisions imposing a fine.

(4) The responsibility of the Commission is to issue and keep records of licenses on the basis of the applications submitted for gambling operations and to oversee compliance with the content of the license and the provisions of this Act and the Act on the Prevention of Money Laundering. Accordingly, the Commission shall be entitled to inspect any public area and any other building or premises that are open to the public to ascertain whether any activities violating the provisions of this Act and the Act on the Prevention of Money Laundering are being pursued.

(5) GS shall establish the general conditions of games in connection with the organization of certain games, and detailed rules in connection with control.

(6) In order to judge the application, GS may prescribe the provision of further details or complementation in connection with certain details of the application.

(7) GS shall take measures for the judgment of the application within 90 days reckoned from the arrival of the application at GS.

#### Section 8

(1) Employees of GS may not take part in gambling, with the exception of draws.

(2) GS may not pursue gambling organization activity.

(3) The head of GS, as well as its employees defined in the organizational and operational regulations may not establish legal relationship aiming at performing work with gambling organizers, and may not be senior officers, or members of the Supervisory Board.

(4) The parties listed in subsection (3) may not take part in judging a case in which they or their close relatives (Section 685, paragraph b) of the Civil Code) are interested.

(5) The parties listed in subsection (3) may not pursue gambling organization activity for 2 years following the termination of their employment with GS.

#### Section 9

(1) Gambling may only be organized on the basis of an approved game plan. The organizer of gambling shall provide for the publicity of all information connected with gambling (manner of

organizing gambling, chances for winning, manner and conditions of dividing prizes, etc.) for players.

(2) A licence shall apply exclusively to the gambling organizer, or to the one consisting of the members defined therein, furthermore, to the period specified therein, under the conditions and the approved game plan contained therein, and in the case of casinos, game rooms and bingo games, to the building and premises specified in the licence. The licence may not be assigned to others. The parties may only depart from the game plan with the permission of GS. The departure may not violate the interests of players or the rights of others obtained in good faith.

(3) Gambling organizers shall notify GS of the changes in any facts or circumstances in the sphere of the activity of gambling organization and taken into account upon the issue of the licence, within thirty days.

#### Section 10

(1) For the purpose of securing sufficient funding for gambling prizes, the GS may prescribe collateral or bank guarantee to be deposited at a financial institution or an investment broker in the form of cash or securities (hereinafter jointly referred to as "collateral"). Failing to deposit the collateral, or to fulfil the contents of subsection (2) shall involve the withdrawal of the licence.

(2) In case the collateral is used, the gambling organizer shall provide for its replacement within eight days.

(3) The form and value of collateral shall be established by GS, taking into account the special provisions of this Act, with special regard to the nature and organization of the game, its security rules, as well as the amount of stakes. The parties may only dispose over the collateral with the permission of GS. The yield of the collateral shall be due to the gambling organizer.

(4) In the case of the expiry of the period of time contained in the licence of the organization of permitted gambling, and of the withdrawal of the licence, the collateral shall be returned to the gambling organizer.

#### Section 11

(1) An administrative service fee shall be payable for licensing and controlling the organization of gambling. The rate thereof is contained in the Schedule to this Act.

(2) The fees paid to GS shall be used to cover the costs of the announcement and evaluation of concession tenders.

(3) The organizer shall declare the amount of prizes due to players, but not claimed under the title of game tax, and shall pay it to the central budget by the 20th day of the month following the expiry of the period of 30 days after the expiry of the deadline open for claiming the prizes. In case of non-cash prize draws, the organizer shall pay the market value of the non-cash prize.

(4) In cases, when, on the basis of a legal rule, or the licence, the organizer shall use the prizes not claimed for the purpose of prizes in the course of arranging gambling, the contents of subsection (3) shall apply to not claimed prizes existing when the game is terminated.

#### Section 12

(1) GS may oblige the gambling organizer, and/or the head or senior officer of an organization pursuing such activity to pay the fine referred to in subsections (2) and (3).

(2) In the case of the violation of the rules contained in Section 6, subsection (1), the amount of fine may be as follows

a) from 200 thousand forints to 4 million forints against organizers of bets,

b) from 1 million forints to 10 million forints against operators of casinos.

(3) The fine may extend

a) from 20 thousand forints to 50 thousand forints in the case of activities or negligence violating Section 16, subsection (2), Section 17, subsections (1) and (2), Section 18, subsection (1) and, against the organizers of gift draws, Section 23,

b) from 20 thousand forints to 100 thousand forints in the case of activities or negligence violating Section 9, subsection (3), Section 11, subsection (3), Section 17, subsections (3) to (4), Section 26, subsections (2) and (7), Section 29, subsection (7) and Section 36, subsection (3),

c) from 20 thousand forints to 250 thousand forints in the case of activities or negligence violating Section 26, subsection (12) and Section 27, subsection (9),

d) between HUF 20,000 and HUF 500,000 for any violation of Subsection (1) of Section 9, Subsection (1) of Section 19 or Subsection (2) of Section 28 or any violation of the provisions of the Act on the Prevention of Money Laundering,

e) from 100 thousand forints to 1 million forints in the case of activities or negligence violating Section 9, subsection (2), Section 11, subsection

(1), Section 13, subsection (1), paragraph f), Section 18, subsection (2), Section 28, subsection (1) and Section 30, subsection (4),

f) between 200,000 HUF and 4 million HUF for any violation of the provisions of Subsections (2) and (7) of Section 2, Subsection (3) of Section 26, Subsection (3) of Section 30 and of Section 39.

(4) At least 50% of the amount of fine shall be used to fulfil the responsibilities related to the control of gambling activities.

(5) No fine may be imposed beyond six months reckoned from the date when the negligence or the violation of obligation came to the knowledge of GS, and/or beyond two years reckoned from the date of committing thereof.

(6) The amount of fine shall be established with consideration to the severity of the negligence and the violation of obligation.

(7) The fine may be imposed collectively and even in addition to the measures contained in Subsections (1)-(3) of Section 13.

#### Section 13

(1) The licence of gambling organizers who pursue activities requiring concession may be suspended by GS for a definite period of time, or until the obstacles have been removed, if gambling organizers

a) depart from the contents of the licence, or depart from the approved game plan,

b) jeopardize the cleanness of the organization of gambling,

c) fail to fulfil their obligations towards the state,

d) fail to meet the rules of keeping records and books prescribed for them, or indicate false data,

e) violate the contents of rules of law repeatedly or seriously,

f) any data or circumstances arise following the issue of the licence, owing to which the issue of the licence should have been refused.

(2) The provisions defined in subsection (1) shall apply to organizers of draws [Section 1, subsection (3), paragraph a)], as well as to operators of money-winning machines, with the proviso that GS may definitively forbid the organizer, the head or senior officers of gambling to pursue gambling activities.

(3) The Commission may sanction the operator of a casino for any violation of the provisions of the Act on the Prevention of Money Laundering according to the measures set out in this Section.

(4) The licence may be withdrawn if a gambling organizer fails to commence operation within six months reckoned from the date of issue of the licence, furthermore, if he suspends it without permission.

(5) GS shall make a decision in the case of any dispute on the issue whether a game shall be considered gambling, or not. The opinion of GS shall also govern when the types of gambling (Section 14) are defined.

## SPECIAL PROVISIONS

### Chapter I

#### Types and Licensing of Gambling Activities

##### Section 14

Types of gambling activities:

- a) draws,
- b) games which are not draws,
- c) operation of money-winning machine,
- d) bets.

##### Title 1

##### Draws

##### Section 15

(1) A draw is a gambling activity in which the gambling organizer holds out the prospect of pecuniary consideration to players in return for paying cash, if

- a) a definite number, series of numbers, sign, figure (hereinafter: number) is guessed correctly, or
- b) a valid payment voucher, coupon, ticket, certificate (hereinafter: draw ticket) entitling to winning is drawn. Winning or losing exclusively depends on the result of the public drawing of the number, or any other method suitable for identifying the draw ticket (hereinafter: draw).

(2) The Minister of Finance shall separately regulate the organization, control and authentic verification of draws, the provisions applicable to prizes, as well as the system of final accounting.

(3) Game plan, regulations of participation, budget and the documents prescribed by legal rules shall be attached to the application for the organization of draws.

(4) The licence may be issued for not more than 5 years in the case of continuously organized draws. The rules applicable to licensing shall apply to the extension of the licence.

##### Section 16

(1) The licence of GS shall not be required for not continuously organized draws, if draw tickets are exclusively sold among those present at the spot of drawing, and

a) the number of draw tickets issued is not in excess of 1000 and their total value is not in excess of HUF 50,000 and

b) the total value of prizes calculated at consumer price, or the amount of cash to be drawn, exceeds 80% of the total value of the draw tickets issued.

(2) Gambling organizers shall also report draws not requiring licence to GS, indicating the number and the value of the draw tickets, at least 10 days prior to organizing the game. GS may control the organization of the game.

##### Section 17

(1) Gambling organizers shall provide the same publicity to drawing, the winning lottery tickets and prizes, as that provided when advertising the game.

(2) Upon the request of a winner, the gambling organizer shall be obliged to issue a certification of the prize verifying its legal title and fornt value. The certification shall contain the joint amount of the value of the prize and the amount of the personal income tax deducted by the gambling organizer after the prize.

(3) The takeover of prizes drawn shall be provided for within the period of time specified in the licence, but not later than within 90 days following the drawing day. Gambling organizers shall provide opportunity for taking over prizes in a suitable manner.

(4) In the case of continuously organized draws, gambling organizers shall use the prizes drawn, but not taken over for the purpose of prizes.

##### Section 18

(1) GS shall control the organization of draws in accordance with the game plan. If it is not otherwise provided by GS in the licence, the presence of a notary public shall be compulsory in

the course of the draw. Gambling organizers shall provide for the presence of a notary public.

(2) If the draw is not organized in accordance with the game plan, an agent of GS shall suspend the continuation of the draw, and shall initiate with GS the application of sanctions contained in Section 12, and/or Section 13, subsections (1) and (2). The gambling organizer shall provide for indemnifying the players.

#### Section 19

(1) In the case of not continuously organized draws, the gambling organizer shall be obliged to provide final accounting within 30 days following the date specified in Section 17, subsection (3), and shall send it to GS.

(2) The rate of collateral of not continuously organized draws shall be at least 50% of the total value of prizes to be drawn.

#### Section 20

##### Types of draws

- a) draw (Section 21)
- b) lottery (Section 22)
- c)
- d) other draws (Section 24)

#### Section 21

Drawing game is defined as a game of chance for which consecutively numbered tickets are issued and sold, and which offers a specific monetary value to winners selected during a publicly held random selection process at a predetermined place and time to the holder of such ticket, or a game of chance that is played with tickets with the amount of winning, if any, imprinted and where the prize is awarded instantly upon purchasing the ticket. Drawing games are not authorized to be offered through communication equipment and networks.

#### Section 22

A lottery is a programme within the framework of which the gambling organizer shall be obliged to give the holder of a ticket purchased for a fixed amount of cash a prize defined in advance, if one or more numbers marked in the series of numbers of the ticket is/are identical with the number drawn in the course of public drawing.

#### Section 23

(1) Those who perform the sale of goods and services in their own name on a regular basis, may organize and run gift drawing events in conjunction with purchase or the use of a service (hereinafter: gift draw), without licence, in the course of which customers shall be given prizes in the form of goods or services in case their tickets received when purchasing goods, or using a service of definite value, quantity or type are drawn in public.

(2) In the course of running gift draws, Section 15, subsection (2), Section 16, subsection (2) and Sections 17 to 19 shall appropriately apply with the difference that the drawing of cash prizes is not possible.

#### Section 24

(1) Draws not regulated in Sections 21 to 23 (hereinafter: other draws) may be organized with the application of the provisions of the Act stipulated with regard to draws, and with licence of GS.

(2) Bingo game is a lottery continuously organized in bingo rooms in which the on-the-spot correct guessing by a player of the variations of numbers or series of numbers built up by using the numbers indicated on the ticket bought by the player on the spot entitles the player to a prize.

(3) Keno is a lottery in which, in the case of winning, the player becomes entitled to the prize whose amount is determined in the game plan.

(4) Joker is defined as a progressive lottery game where the winners are selected by the drawing of lots and where the prize is either a specific amount or a specific part of the pool as determined in the game plan. Joker may also be offered in conjunction with other contests of chance, if authorized by the Commission. In this case, participation in the joker game may be tied to participation in the other game.

#### Title 2

Games which are not Draws. Operation of Money-winning Machines

Games which are not Draws

#### Section 25

(1) For the purposes of this Act, gambling which takes place with the inclusion of a money collector, and represents a pecuniary value to an amount higher than HUF 2, shall qualify as a game which is not a draw.

(2)

Section 26

(1) Any mechanically or electronically controlled equipment which is suitable for the purposes of games in return for the payment of a stake, shall qualify as money-winning machine if, in the case of winning, the player may become entitled to any prize representing pecuniary value. GS shall decide whether an equipment shall qualify as money-winning machine or not.

(2) In the licence, GS shall classify money-winning machines into the I<sup>st</sup> or II<sup>nd</sup> categories:

a) Equipment qualified as money-winning machine coming under category I shall be as follows:

1. issues at least 80 per cent of the total stake as prize per 100,000 games,

2. may be authenticated on the basis of the aspects prescribed for this category in a legal rule,

3. guarantees that the winning does not exceed the stake two hundred times, for one stake, on one occasion, with the exception of money-winning machines placed in casinos;

b) Equipment qualified as money-winning machine coming under category II shall be as follows:

1. limit the maximum amount of wager to be played at any game location to 200 HUF,

2. the winning which can be obtained may not exceed the stake by more than twenty-five times the stake, and

3. the conditions of authentication prescribed for this category in legal rules exist.

No licence may be issued with regard to money-winning machines which do not meet the conditions contained in paragraphs a) or b) of this subsection.

(3) Money-winning machines may only be operated in casinos, or game rooms by economic associations exclusively established for this purpose. Exclusively one economic association may operate money-winning machines in one casino unit or in one game room.

(4) The prior consent of the notary of the municipal local government at the place of the game room, in the territory of the capital, the consent of the notary of the district local government, is required for the operation of a game room.

(5) Game rooms are classified by GS into categories I or II in the licence. Exclusively two money-winning machines coming under category

II can be operated in game rooms coming under category II.

(6)

(7) A building which has own entrance from the public area, or an architecturally closed room with a separate entrance, which are suitable for the placement of at least 10 money-winning machines, taking into consideration at least 2 square metres per machine, shall qualify as game rooms coming under category I. Catering units defined in a separate legal rule may qualify as game rooms coming under category II.

(8) GS shall define in the licence

a) the place of the game room, as well as the rules related to its operation and control;

b) the conditions required for the operation of the game room;

c) the number of money-winning machines which can be operated by one economic association in one room;

d) the rules related to emptying money-winning machines and to the control device;

e) the amount of the highest stake and prize per money-winning machine;

f) the facts and circumstances prescribed in the legal rule related to the operation of money-winning machines and game rooms.

(9) Licences to operate money-winning machines may only be issued to economic associations which

a) can ensure the conditions of operation of the money-winning machines and the game room, as well as the requirements prescribed in the legal rule in connection with the staff and the permanent control of the game room, furthermore,

b) prior to issuing the licence, pay, upon request, the licensing fee, whose amount is determined in a separate legal rule.

The casinos shall not be obliged to pay the amount mentioned in paragraph b).

(10) No licence of operation may be issued in respect of money-winning machines which

a) are not provided with the original mark (production number, date of manufacturing, etc.) suitable for identification and standardized by a Hungarian authority,

b) are not provided with an originally built-in control device standardized by the competent authority,

c) are not commissioned within three years reckoned from the date of manufacturing,

d) fail to meet the other requirements defined in the legal rule.

(11) No licence may be given to operate money-winning machines for a period in excess of five years reckoned from the date of manufacturing.

(12) Game rooms included in category I may not be visited by persons under eighteen years of age, and they may not play on money-winning machine in game rooms included in category II. Game rooms included in category I may not be operated within a 200 metre radius of youth, children, or educational institutions, youth clubs, furthermore, church, and/or health institutions.

(13)

#### Section 26/A

The notary of a local government shall be obliged to withdraw the licence issued by him to operate a shop if it is established that a money-winning machine is operated in the shop without licence, or the gambling organizer failed to meet its game tax payment obligation. The decision shall be executed regardless of appeal.

### Title 3

#### Casinos

#### Section 27

(1) Casinos may be operated by an economic organization under the majority control of the state or by a business association that is exclusively controlled by the state game organizer and/or by a concession company with an equity (registered) capital of no less than HUF 100 million or no less than HUF 300 million for casinos operated in Budapest or Pest County, established exclusively for this purpose.

(2) Casinos must be installed in buildings which are used exclusively for this purpose, or in a part of a building that is completely enclosed and comprises a separate unit from all other activities, where the safe placement of various game and card tables, gambling devices is ensured, and which features adequate facilities for the continuous monitoring of players and control and supervision of equipment. Casinos cannot be operated through communication equipment and networks. Casinos shall not be authorized to offer

any contests of chance via communication equipment and networks.

(3) GS shall define in the licence the place, as well as the operational and visiting conditions of casinos, the individual types of games, their rules, the highest stakes applicable in the case of individual games, the ratio of stakes and prizes, as well as all facts, circumstances or conditions, which are required for the safe operation of casinos.

(4) The concession fee per unit shall be

a) no less than 350 million HUF annually in Budapest and in Pest County,

b) with the exception set forth in Paragraph a), no less than 50 million HUF annually.

(5) The concession fees prescribed in Paragraphs a)-b) of Subsection (4) of Section 27 shall be valorized on an annual basis. The concession shall be calculated as increased by the annual consumer price index published by the Central Statistical Office for the year preceding the year when the concession fee was paid, and paid accordingly by the 15th of February of the year in question. If the concession period commences during the year, the concession fee for such year shall be paid as appropriate for the remainder of the year.

(6) The period of concession shall not be more than 10 years.

(7) GS shall establish separate rules with regard to the composition of the employees of casinos fulfilling substantial duties in games (hereinafter: employees of the casino), the conditions of qualification, the rules of individual games, the conditions of visiting, as well as the safety of the casino and the control of handling cash.

(8)

(9) Casinos may not be visited by persons under eighteen years of age.

#### Section 27/A.

(1) Casinos may not offer services other than those directly related to hospitality and money exchange services. Exchange of money, as an auxiliary financial service, may only be performed if duly licensed according to Act CXII of 1996 on Credit Institutions and Financial Enterprises.

(2) The concession company,

a) that is a business association under the majority ownership of the state, or

b) is a business association exclusively owned by the state, or

c) is a concession company,

and is engaged in gambling operations in a convertible currency, shall display all stakes and prizes in a convertible currency.

#### Section 28

(1) The members (shareholders), senior officers, members of the Supervisory Board, as well as employees of the economic association, furthermore, their relatives may not play in the casino operated by the economic association.

(2) The employees of the casino may not accept tips, with the exception of subsection (3).

(3) If GS allows employees in the licence to accept tips, joint containers shall be placed for this purpose. The acceptance of a tip offered directly to an employee is prohibited.

(4) In the case defined in Subsection (3), in the license GS may permit the division of not more than 50 per cent of the tips deposited in the joint containers.

#### Title 4

#### Betting

#### Section 28/A

(1) The betting event is a future event with at least two possible prominent renditions of outcome over which the game organizer has no influence whatsoever. For the purposes of this Act, placing a wager of some amount on a presumption of the fortuitous conclusion or the uncontrolled outcome of a future event shall be regarded as betting. Betting may not be allowed to be concluded if such infringes on the interests of a third party.

(2) Only a state game organizer that has at least 1 billion forints in equity (registered) capital and has been involved in gambling operations falling under the scope of this Act for at least five years prior to organizing the aforementioned betting shall be allowed to organize betting, with the exception of horse-race betting and bookmaking.

(3) The betting organizer shall allow a period described in the license, not to exceed 90 days following the betting event, for winners to collect their winnings.

(4) With regard to betting - with the exception of bookmaking - the betting organizer shall make use of all winning prizes unclaimed by winners for

the purposes of future prizes. Unclaimed winning prizes may also be returned to betters through drawing, based on the provisions on the prizes of drawing games. With regard to bookmaking, the provisions of Subsection (3) of Section 11 of this Act shall be applied in respect of unclaimed winnings.

#### Section 29

(1) Horse-race betting may only be organized by the legal persons defined in Subsection (1) of Section 3, which are established for such purpose and having a registered (primary) capital of no less than 100 million HUF. The term of the concession may not exceed 10 years.

(2) The amount of the concession fee shall be at least HUF 200 million.

(3) The number of concessions granted may not exceed 5 at any given point in time.

#### Operation of Gambling Machines

#### Section 29/A

(1) Any equipment providing entertainment services, which is suitable for pursuing electronically or mechanically controlled games, which shall not come under the force of Section 26, subsection (1), shall qualify as game machine. GS shall decide if an equipment qualifies as game machine or not.

(2) Gambling machines may be operated by legal entities, unincorporated economic associations and individual entrepreneurs.

(3) Operators shall annually report, for the purpose of registration, to GS the gambling machines they intend to operate. Gambling machines may not be operated without appropriately fulfilling the obligation of reporting.

(4) Only gambling machines, which are in conformity with the technical requirements prescribed in legal rules with regard to gambling machines shall be entered in the register by the Gambling Supervision.

(5) In the case of failure to meet the obligation of reporting referred to in subsection (3), the provisions of Section 26/A shall appropriately apply.

#### Chapter II

#### Prize Basis of Draws, and Totalizer Type Bets

#### Section 30



(1) For the purposes of this Act, the amount received when multiplying the number of tickets issued by the sale price shall be construed as the prize-pool for raffle draws. In respect of continuously organized gambling activities the prize-pool shall be calculated by multiplying the number by the sale price of the tickets issued to participate in the game as approved in the game plan.

(2) With the exception of the raffle draws described in Section 16, no less than 55 per cent of the prize-pool of non-continuous drawing games shall be distributed as prizes. In respect of continuously organized gambling activities, GS may permit the accumulation of prizes within a specific period of time.

(3) The monthly prize-pool of the draw game described in Section 21 shall be the total amount of bets which equal the selling price of tickets sold during any given month, as approved in the game plan. In respect of drawing games no less than 55 per cent of the prize-pool shall be distributed as prizes.

(4) In respect of numbers games, with the exception of bingo and "keno", no less than 55 per cent of the prize-pool shall be distributed as prizes. In respect of bingo, no less than 68 per cent of the prize-pool described in Subsection (1) of Section 30 of this Act, and in respect of keno no less than 48 per cent of the prize-pool shall be distributed as prizes.

(5) In respect of lottery games, the purchase price of validated lottery tickets paid by the players to enter the game during a given month shall be construed as the prize-pool for that month.

#### Section 30/A.

The prize-pool of betting shall be the total of sums wagered. With regard to bookmaking, totalizer-type betting organized by a state-owned entity and totalizer-type dog or horse race betting domestically, no less than 60 per cent, 45 per cent and 68 per cent of the prize-pool, respectively, shall be distributed as prizes. These requirements shall be satisfied on an annual basis in respect of bookmaking. In the case of progressive totalizer-type betting the Commission may authorize the accumulation of prizes from the starting date up to a period of one year.

### Chapter III

#### Title 1

#### Taxation of Gambling Organizers

#### Section 31

(1) Gambling organizers, also including operators of gambling machines, shall pay game tax in accordance with the rules contained in this chapter.

(2) Game tax shall be taken into account among various expenditures when entrepreneurial profit tax is calculated.

(3) Gambling organizers shall assess, return and pay game tax (self-assessment).

(4) Act on the Rules of Taxation shall apply to the issues related to taxation, but not regulated in this Act.

#### Title 2

#### Game Tax

#### Game Tax of Draws, and Totalizer-Type Bets

#### Section 32

(1) With the exceptions set forth in Section 16 of this Act, the game tax on non-continuous raffle draws shall be 16 per cent of the prize-pool. The game tax on drawing games shall be 16 per cent of the monthly prize-pool described in Subsection (3) of Section 30, the game tax on lotteries shall be 24 per cent of the monthly prize-pool described in Subsection (5) of Section 30, the game tax on bingo games shall be 7 per cent of the monthly prize-pool, and the game tax on joker games shall be 17 per cent of the monthly prize-pool. The game tax on keno shall be 24 per cent of the net monthly proceeds.

(2) The game tax on continuously organized totalizer-type bettings shall be 17 per cent of the monthly prize-pool, and 17 per cent of the prize-pool for non-continuous totalizer-type bettings.

(3) The sums refunded during the month for invalid bets shall be deducted from the net gambling proceeds of bookmaking. The game tax on bookmaking shall be 30 per cent of the net gambling proceeds reduced as described above.

(4) The drawing games described in Section 16 and the prize drawing described in Section 23, furthermore, the totalizer-type inland dog and/or horse race betting shall be exempt from game tax.

#### Game Tax of Money-Winning and Gambling Machines

#### Section 33

(1) The game tax on Category I and Category II gambling machines, with the exception of the gambling machines operated in casinos, shall be

75,000 forints per month per location. The game tax shall be payable for each month or fraction thereof.

(2) The game tax of a money-winning machine already paid may not be included in the game tax of another money-winning machine or in any other tax liability, and/or may not be reclaimed on any legal grounds, unless the Supervisory Board of Gambling Activities has established that:

a) the money-winning machine was destroyed or became permanently out of order;

b) operation in accordance with legal rules is not possible.

(3) The provisions of the Act on the Rules of Taxation shall apply to the game tax of money-winning machines with the following differences:

a) the organizer of gambling activities shall return the game tax monthly;

b) the payment of game tax is due simultaneously with the return;

c) no payment by instalments or deferred payment may be permitted in connection with the game tax of money-winning machines.

(4) The state tax authority shall quarterly inform the GS on the return and payment of the game tax of money-winning machines.

(5) In the case of ignoring the obligation of tax return and tax payment, the GS shall withdraw the licence of the organizer of gambling activities. This decision may be immediately implemented regardless of legal remedy.

(6)

#### Section 33/A

The annual tax of gambling machines shall be 60,000 HUF per machine. Operators of gambling machines shall declare and pay the tax applicable for half-a-year, prior to the submission of the application for the semi-annual registration of the machine. Evidence shall be provided in proof of payment.

Game Tax of Bets based on the Bookmaker System

#### Section 34

Game Tax of Casinos

#### Section 35

(1) The game tax of casinos, also including the money-winning machines operated therein, shall be 30 per cent of the net monthly gaming revenues.

(2) The net monthly gaming revenues shall be increased by 50 per cent of the tips received during the month.

#### Chapter IV

#### Control of Gambling Organization

#### Section 36

(1) GS shall exercise supervision of legality over the organization of gambling activities. Within the framework thereof, it shall continuously control whether the activity corresponds with the legal rules, the licence, the game plan and the regulations issued by GS on the basis of the relevant legal rule.

(2) GS may appoint an auditor or other expert to fulfil the duties of control. The appointed person shall meet the content of Section 8, subsections (1) and (3). The employee of GS, as well as the auditor appointed by GS, and/or the expert, shall qualify as an official person in the course of the procedure of control.

(3) The Gambling Supervision shall be entitled to request the submission of records, data, certificates and investigation materials affecting the activities prescribed in Section 1, subsection (2) of the Act at any time, may have access to them, and may conduct on-the-spot examinations. Gambling organizers and parties pursuing the activities contained in Section 1, subsection (2) of the Act shall be obliged to provide opportunity of checking the official markings for the authorities.

(4) GS shall define the manner and frequency, as well as the personal and material conditions of control in its control regulations.

#### Section 36/A

(1) In the course of its checking activities, the state tax authority and the customs authority shall examine the observation of the provisions contained in this Act.

(2) If the provisions contained in this Act are violated, in addition to the state organs indicated in subsection (1), the following authorities shall act in their sphere of competence, or shall put the evidence of violating legal rules in writing and transfer the matter to the competent authorities in order to take the necessary measures:

a) the police,

b) the consumer protection supervisions of the counties, and/or

c) the public area supervision in the localities where one exists.

## Chapter V

### Interpretative Provisions

#### Section 37

1. Stake: An amount of cash entitling to participation in gambling.

2. Net gaming revenues: the difference between the bets received and the winnings paid out.

3. Bookmaker system: a form of betting in which the betting organizer offers a specific amount - determined by the odds - on the conclusion or outcome of the betting event specified in the betting offer to the better, and in the case of winning, pays such amount in accordance with the contents of the agreement.

4. Totalizer-type bets: a form of betting in which the wagers are added up and a certain portion of this amount - as specified in the game plan - is distributed as winnings according to the contents of the game plan.

5. Aim in the public interest: An aim exceeding the scope of activity of the gambling organizer, which serves community interests over and above his own or his employees' interests. The agreement of the organ performing the supervision of the activity defined as an aim in the public interest shall be required for defining community interest. In the case of horse-race betting, the breeding of race-horses shall also qualify as an aim in the public interest.

6. Player: that who obtained right to gambling by paying the stake.

7. Economic association: limited liability company, or company limited by shares issuing exclusively registered shares.

8. Odds: the instrument of calculating the winnings of bookmaking bets which specifies the multiple figure of the bet placed to be paid by the organizer to the better.

9. Lotto: shall mean a lottery game held at regular intervals as authorized by the Commission bearing such name, where prizes are given to players whose numbers are drawn from a predetermined lot.

10. Pools bet: A bet organized in the totalizer system, where the punter has to guess the results of matches of football teams correctly.

11. Unit: One casino operated in accordance with a concession contract concluded on the basis of one tender.

12. Cash collector: A person appointed to handle stakes and prizes.

13. Continuously organized gambling: Gambling defined in the special provisions of the Act in respect of which the licence of the gambling organizer allows the organization of gambling on several occasions within a definite period of time.

14. Prohibited gambling: Gambling organized without licence, or in a manner different from the content of the licence, and/or by evading the provisions of the present Act, or infringing an obligation or prohibition contained therein.

15. Gambling organizer:

a) a concession company, a state game organizer, a business association that is exclusively controlled by the state game organizer or an economic organization under majority control by the state in respect of the activities defined under Subsection (3) of Section 1, and a business association engaged only in liberalized activities, as well as

b) organizations or persons pursuing the activities defined in Section 16, and in respect of Section 12, in Section 23.

16. Betting offer: an offer published by the betting organizer which contains the conclusion or outcome of the betting event on which bets can be placed, and in the case of totalizer-type bets, the method of determining the amount to be applied toward winnings, and in the case of bookmaking, the odds.

17. Communication equipment and network: shall mean any equipment or network system that features specific functions to allow a player to make a declaration or to perform an action by which to enter a contest of chance covered by this Act. Such are, in particular, entry forms with or without address, standard letters, order forms published in advertisements placed in newspapers, catalogues, telephone sets, automatic calling devices, cellular and video phones, videotex (with microcomputer screen) with keyboard or with touch-screen, the Internet, electronic mail (e-mail), facsimile machines and television sets.

Court Resolution 1994. No. 698. II. Aspects of the qualification of lottery [Act XXXIV of 1991, Section 37, paragraph 9.].

#### Concluding Provisions

##### Section 38

(1) This Act shall come into force on the date of its promulgation. Section 58 of Act XXII of 1990 shall cease to be in force simultaneously with the coming into force of this Act. The provision referred to in Section 41, subsection (3) shall apply to the services, and/or procurements provided following the day of the coming into force of this Act. The provision defined in the first sentence of Section 27, subsection (7) shall apply as of 1 January 1997.

(2) The Minister of Finance is authorized to define in legal rules the detailed rules related to the

a) personal, objective and economic conditions of gambling activities,

b) running and checking of certain gambling activities,

c) game plan,

d) draws and bets,

e) operation of money-winning machines, gambling machines, game rooms and casinos, as well as the

f) the costs specified in Subsection (2) of Section 30 and in Point 2 of Section 37.

The Minister of Agriculture is hereby authorized to define the rules of horse-race betting, furthermore, the Minister performing supervision of the National Office for Physical Education and Sports is hereby authorized to define the rules of the bingo game in legal rules to be created jointly with the Minister of Finance.

(3) Following the coming into force of this Act, with the exception of Section 39, subsections (1) and (2), gambling may exclusively be organized with the permission of GS.

##### Section 39

(1) The licences issued prior to the coming into force of this Act until the deadline specified in the licence on the basis of a legal rule, or by a state measure, for draws and bets, shall exclusively be valid with regard to the entitled parties contained in the licence, under the conditions and until the deadline specified in the licence, with the proviso that the provisions defined in this Act shall apply to game tax and prize basis (Section 30). The

parties provided with such licences shall present their licence at GS for the purpose of entering it in the register, within 30 days reckoned from the coming into force of this Act.

(2) If no deadline is specified in the licence defined in subsection (1), the licence shall be valid not later than until the first day of the third month following the coming into force of this Act.

(3) The parties provided with licence to operate a casino prior to the coming into force of this Act, may pursue casino operation activities, without the invitation of a tender, on the basis of a concession contract corresponding with the provisions of the Act, if the concession fee has been paid prior to the date of coming into force of this Act. The content of Section 6, subsection (2) shall also apply in this case.

(4) The parties provided with licence to operate a casino prior to the coming into force of this Act may take part in the tender invited by the Minister of Finance on the basis of this Act, under the same conditions as other bidders, if they did not pay the concession fee prior to the coming into force of this Act, and/or if the obligation of paying concession fee was not prescribed in the licence.

(5) Upon request by the concession beneficiary the Minister of Finance may grant an extension until 31 December 1999, without the announcement of a new tender and upon the payment of the applicable concession fee, for concession contracts concluded for the operation of casinos that are scheduled to expire during 1999. Subsequently of such extension GS may not approve the petition of a concession company applying for a license, if the concession company has failed to meet its tax liability, connected with its gambling organization activity, or has met it incompletely or belatedly, within 5 years prior to submitting the application, and/or has failed to meet its obligation of tax return and report, or has met it belatedly, and the tax authority has imposed a fine against such concession company.

##### Section 40

The licences issued to operate money-winning machines, and/or the exemptions from prohibition issued prior to the coming into force of this Act shall cease to be in force upon the coming into force of this Act.

#### Amending Provisions

##### Section 41

(1)-(2)

(3)

Schedule to Act XXXIV of 1991

On the Administrative Service Fees of Procedural, Licensing, Control and Expert Services Related to the Organization of Gambling

Section 1

In accordance with the authorization of Section 67, subsection (2) of Act XCIII of 1990 on Duties, gambling organizers shall pay administrative service fees for the following procedural and expert services:

- a) participation in the concession tender invited to organize gambling;
- b) procedures aiming at the issue of the licence entitling to gambling organization activities, those at the supervision of the game plan, and the approval of the amendment of the game plan;
- c) supervisory control of the operation of gambling organizers.

Section 2

Rate of the fee:

(1) In the case defined in Section 1, paragraph a), 0.5 per mille of the concession fee of the lowest rate which can be established on the basis of Act XXXIV of 1991 on the Organization of Gambling (hereinafter: GA), but at least 50 thousand forints.

(2) For the procedure referred to in Section 1, paragraph b):

- a) in the case of draws, 0.5 per mille of the prize basis indicated in the game plan, but not more than 10 million forints;
- b) in the case of bets, not more than HUF 1 million per application;
- c) 2 thousand forints by money-winning machine on the basis of the concession contract of an economic association operating money-winning machines, but not more than 200 thousand forints per gambling rooms;
- d) in casinos, 20 thousand forints per gambling table, and 2000 forints per money-winning machine, but not more than 1 million forints per casino.

(3) Fee of supervisory control referred to in Section 1, paragraph c):

a) in the case of continuous draws and totalizer-type bets, 1 per mille of the quarterly prize basis, but not more than 2.5 million forints per quarter;

b) in the case of bets of the bookmaker system, 2 per mille of the quarterly net game income, but not more than 250 thousand forints per quarter;

c) 5 per mille of the quarterly net game income of economic associations operating money-winning machines, but not more than 500 thousand forints per gambling room;

d) 2.5 per cent of the quarterly net game income of economic associations operating casinos, but not more than 2.5 million forints per quarter;

e) in the case of non-continuous draws, 1 per mille of the prize basis, but not more than 500 thousand forints;

f) in the case of non-continuous bets, 1 per mille of the net game income, but not more than 500 thousand forints.

Section 3

(1) Gambling organizers defined in Section 3, subsections (1) to (4) of GA shall pay the administrative service fee in cash

a) in the case of Section 1, paragraph a), simultaneously with the submission of the tender concession;

b) in the case of Section 1, paragraph b), within 8 days following the submission of the application;

c) in the case of Section 1, paragraph c), for the procedure defined in Section 2, subsection (3), paragraphs a) to d), quarterly, by the 15th day of the month following the subject quarter, for the procedure defined in Section 2, subsection (3), paragraphs e) and f) within 10 days preceding the event serving as basis for the draw, and/or the bet, to the bank account number specified in a separate legal rule.

(2) In case the obligation defined in Section 1, subsection (1), paragraphs a) and b), as well as in Section 2, subsection (3), paragraphs e) and f) is ignored, tenders shall be refused ex officio by the Minister of Finance, and applications by the Gambling Supervision.

Court Resolution 1994. 698 Organization of draw is not activity which may only be pursued by an economic organization with exclusive state participation [Section 3, subsections (1) and (3) of Act XXXIV of 1991.]

## **7. Latvia**

### **7.1. Law on Associations**

#### **ASSOCIATIONS AND FOUNDATIONS IAW**

##### **Division A General Provisions**

##### **Chapter I Basic Regulations**

##### **Section 1. Purpose of the Law**

(1) The purpose of this law is to promote the activity of associations and foundations and their long-term development, and to support the strengthening of a democratic civic society.

(2) This law shall regulate the basic principles of the activity of associations and foundations, their organisational structure, liquidation and reorganisation.

##### **Section 2. Concept of associations and foundations**

(1) An association is a voluntary organisation of people, which is founded to achieve the objective set out in its articles of association, which is not of a profit gaining nature.

(2) A foundation, also fund, is a body of assets which has been set aside to achieve the objective determined by the founder, and which is not of a profit gaining nature.

##### **Section 3. Legal status of associations and foundations**

An association or a foundation gains status as a legal person at the time it is entered into the register of associations and foundations.

##### **Section 4. Liability delimitation for associations and foundations**

(1) An association or foundation is liable for all its obligations with all of its assets.

(2) An association is not liable for the obligations of a member. A member is not liable for the obligations of the association.

(3) A foundation is not liable for the obligations of its founder. The founder is not liable for the obligations of the foundation.

##### **Section 5. Legal address of an association or foundation**

(1) The legal address of an association or foundation is the address which is entered into the register of associations and foundations. The

institution of the register of associations and foundations shall be notified of a change of the legal address.

(2) If information, documents or other correspondence is sent to an association or foundation at the legal address registered at the register of associations and foundations, it shall be deemed that the association or foundation has received such documents, information or other correspondence on the seventh day if the sender has proven that such sending has taken place.

##### **Section 6. Name of an association or foundation**

(1) The name of an association or foundation shall not be in contradiction to legislative enactments and good morals, i.e., it shall not contain the name of a military group or of an organisation or group which is recognised as criminal or anti-constitutional, it shall not show a positive attitude towards violence etc.

(2) The name of a foundation shall contain the word "nodibinajums" [foundation] or "fonds" [fund].

(3) The name shall clearly and definitely differ from the names of associations or foundations already registered or signed up in the register of associations and foundations.

(4) Only the letters of the Latvian or Latin alphabet shall be used in the name of an association or foundation.

(5) The name shall not contain misleading information about the objective, type of activity or legal form of the association or foundation.

(6) The name of an association or foundation shall not include the names of local government institutions or the words "state" or "local government".

(7) An association or foundation whose rights have been infringed upon by illegal use of its name may demand from the infringer to stop using the name, and to compensate the association or foundation for the losses incurred by the illegal use of its name.

##### **Section 7. The right of associations and foundations to carry out business operations**

(1) An association or foundation has the right to carry out business operations in the form of supplemental activities, which are related to maintaining or utilising its assets, and to carry out other business operations in order to achieve the objectives of the association or foundation.

(2) The income of an association or foundation may be used only for the achievement of the objective set out in the articles of association. The profit which is gained from the business operations that the association or foundation has carried out, shall not be divided amongst the members of the association or the founders of the foundation.

#### Section 8. Volunteer work

(1) Associations and foundations have the right to engage persons in volunteer work. Volunteer work shall be considered to be work or services provided without pay, which is carried out by a natural person who does not enter into legal employment relations with the association or foundation, and which is directed at achieving the objective of the association or foundation as set out in its articles of association.

(2) At the request of a person, a written agreement may be entered into regarding volunteer work, setting out the work to be done and timeframe for performing it.

(3) A person carrying out volunteer work may request compensation for such expenses as are incurred during the performance of the volunteer work, if this is set out in the articles of association or board decisions of the association or foundation.

(4) An association or foundation is liable for harm caused to a person during the performance of volunteer work if it has taken on such a responsibility or if the harm has been caused due to the fault of the association or foundation.

#### Section 9. Payment for activities in an association or foundation

If a person receives payment (remuneration) for activity in the association or foundation, this payment (remuneration) shall be set in conformity with the relevant person's scope of duties and the financial situation of the association or foundation.

#### Section 10. Public activities

(1) In order to achieve the objective set out in the articles of association, an association or foundation has the right to carry out activities which are not contrary to law, especially to freely distribute information on its activities, create its own press publications and other mass media, organise meetings, marches and demonstrations, and other public activities.

(2) In regard to questions relating to the objective of the activities of an association or foundation, the association or foundation may ask state and local government institutions, and may go to court

and defend the rights or legally protected interests of its members.

#### Section 11. Prohibition to create armed or militarised units

An association or foundation is prohibited from arming its members or other persons, to organise military training for them and to create militarised units.

#### Section 12. Laws which regulate the activity of other not-for-profit entity associations and foundations

The activities of political parties, religious organisations, trade unions, professional organisations, and their associations, who are the autonomous subjects of public law, and the activities of public foundations (funds) shall be regulated by other laws.

#### Chapter II Register of Associations and Foundations

#### Section 13. Record keeping of the register of associations and foundations

(1) Information on associations and foundations is recorded in the register of associations and foundations (hereafter also - register).

(2) The register is kept by a state institution (hereafter also - register institution) which is authorised by law to do so.

#### Section 14. Accessibility of the register

(1) Everyone has the right to access the records of the register and the documents submitted to the register institution.

(2) After submitting an appropriate written application and paying a state fee, everyone has the right to receive an information statement of the records of the register, and an extract or copy of a document in the register files. At the request of the receiving party, the correctness of the extract or copy shall be certified by the signature of an official of the register institution and stamp, showing the date of issue. Information on personal identity codes of board members, liquidators and administrators shall be issued by the register only if the person can justify the reasoning of their interest.

(3) At the request of the receiving party, an official of the register institution shall provide a statement that a specific record in the register has not been altered, or that a specific entry has not been recorded in the register.

Section 15. Information to be entered into register

The following information shall be entered into the register:

- 1) the name of the association or foundation;
- 2) the legal address of the association or foundation;
- 3) the objective of the association or foundation;
- 4) the date of the founding decision and when the articles of association were signed;
- 5) the name, surname and personal identity code of the board members, indicating whether they have the right to represent the association or foundation separately or together;
- 6) the time of operation for the association or foundation if the association or foundation is founded for a period of time;
- 7) information about the prohibition of public activities or other activities, termination or continuation of activities of the association or foundation, and insolvency, liquidation and reorganisation of the association or foundation;
- 8) information on the appointment of a liquidator, indicating his or her name, surname and personal identity code;
- 9) information on the appointment of an administrator in an insolvency case, indicating the name, surname and personal identity code of the administrator;
- 10) the date the entry is made; and
- 11) other information as provided for by law.

Section 16. Documents to be submitted to the register institutions and their maintenance

(1) Documents which justify entries to be made in the register (Section 15) and their amendments, and other documents as specified by law (Section 52, Paragraph three; Section 95, Paragraph four; and Section 102) shall be submitted to the register institution. The original or an appropriately certified copy of the document shall be submitted to the register institution. Public documents which have been issued abroad, shall be legalised in the procedure set out in international agreements, and a notarised translation into Latvian shall be attached to them.

(2) At the request of the register institution, the association shall provide information on the number of its members.

(3) The documents submitted to the register institution shall be kept in the file of the relative association or foundation, if on their basis an entry has been made in the register.

Section 17. Making an entry in the register

(1) An entry is made in the register on the basis of an application or court decision. The application forms shall be approved by the Cabinet.

(2) An application to enter an association into the register shall be signed by all founders or at least two persons authorised at the founding meeting; to enter a foundation (fund) into the register – all founders; and in regard to a foundation based on a will – the executor of the will, heir or guardian.

(3) The decision to make an entry in the register, a refusal to make an entry or postponement of making an entry shall be made by a register institution official within seven days of receiving the application. Within the same period of time, a register institution official shall take a decision regarding making an entry in the register on the basis of a court decision.

(4) A decision to postpone making an entry shall be taken by a register institution official if:

1) in drafting the articles of association or in selecting a name, the requirements of this law or other laws have not been taken in to consideration; or

2) all documents, as required by law, have not been submitted.

(5) A decision to refuse to make an entry shall be taken by a register institution official if:

1) the objective set out in the articles of association is in contradiction to the Constitution, laws or other international agreements binding to Latvia;

2) the procedure for founding an association or foundation as set out in this law has been breached; or

3) after a decision has been taken to postpone making an entry has been taken, the shortcomings in the articles of association of the name have not been eliminated within the set period of time.

(6) The decision to refuse to make an entry in the register or to postpone the entry shall be justified. In the decision to postpone making an entry, a



period of time shall be set to eliminate the shortcomings.

(7) A register institution official shall send the decision mentioned in Paragraph three of this Section to the applicant within three days of the day the decision is taken.

(8) The applicant has the right to contest and appeal the decision of the register institution official in accordance with procedures proscribed by law.

(9) The entry shall be made in the register on the same day when the decision is taken to make the entry.

#### Section 18. Certificate of registration

(1) After the association or foundation is registered in the register, a certificate of registration shall be issued which is issued and stamped by a register institution official.

(2) The certificate of registration shall contain:

- 1) name;
- 2) registration number;
- 3) place of registration; and
- 4) date of registration.

#### Section 19. Deletion of an association or foundation from the register

An association or foundation is deleted from the register based on:

- 1) an application from the liquidator of the association or foundation;
- 2) an application from the administrator of an insolvent association or foundation;
- 3) an application from the association or foundation to make a reorganisation entry; or
- 4) a court decision.

#### Section 20. State fee

(1) A state fee shall be paid for making an entry in the register, the amount of which shall be determined by the Cabinet.

(2) A state fee in the amount set out in legislative enactments shall be paid for the issuing of an extract from the register or an extract or copy of a document from a register file.

(3) A state fee for an entry in the register, for issuing an extract or copy, or for providing information shall not exceed the administrative costs related to taking a decision regarding registration and making the appropriate entry, or for searching for a document or information, processing it and copying it.

#### Section 21. Time period to provide information

Information on the basis of which new entries in the register are made, and documents required by law shall be submitted to the register institution within 14 days of the relevant decision being taken, if not otherwise specified in this Law.

#### Section 22. Liability for providing false information to the register institution

The relevant persons shall be held liable according to law for providing false information to the register institution.

### Division B Associations

#### Chapter III Founding an association

##### Section 23. Founders

(1) The founders of an association may be natural or legal persons, or partnerships with legal status.

(2) The number of founders may not be less than two.

##### Section 24. Decision to found an association

(1) In order to found an association, the founders shall take a decision to found the association.

(2) In the decision to found the association shall be indicated:

- 1) the name of the association;
- 2) the objective of the association;
- 3) the name, surname and personal identity code of the founders, and for a legal person or partnership — the name, registration number and legal address;
- 4) the rights and responsibilities of the founders if the founders have agreed on such;

5) the authorisation (if such is given) to individual founders to sign the articles of association and application for the register institution; and

6) other information which the founders consider to be necessary.

(3) After the decision to found an association has been taken, the founders approve the articles of association, elect the association's executive body (hereafter – board), which may be collegial or consist of one person, and other bodies if such are provided for in the articles of association.

(4) The decision to found an association is prepared in written form, and it is signed by all the founders of the association. The decision may be signed on behalf of a founder by a person authorised by him, who has participated in the taking of the decision. A written authorisation shall be attached to the decision.

Section 25. Articles of association of an association

(1) The articles of association of an association shall be prepared in writing.

(2) The articles of association shall indicate:

1) name of the association;

2) objective of the association;

3) term of operation of the association (if the association is founded for a certain period of time);

4) prerequisites for members to join or leave the association;

5) rights and responsibilities of the members;

6) procedure by which the rights and responsibilities of territorial and other units of the association (if such are founded) shall be determined;

7) procedure for calling a general meeting and taking decisions;

8) name of the executive body, and its numerical composition, denoting the rights of the members of the executive body to represent the association individually or together; and

9) structure of the auditing body of business and financial operations, procedure for elections, competence, procedure for taking decisions and term of office, or the procedure by which a sworn auditor is appointed and terms authority.

(3) The articles of association may provide for other regulations which are not in contradiction to the law. If the articles of association are in contradiction to the law, the provisions of the law shall be applicable.

(4) The articles of association shall be signed by all founders or at least two of their authorised representatives, and the date of approval shall be indicated in the articles of association.

Section 26. Application for an association to be entered in the register

(1) The founders shall submit an application to the register institution to enter the association in the register. The application shall indicate the information mentioned in Section 15, Clauses 1-6 of this Law.

(2) Attached to the application shall be:

1) decision to found the association;

2) articles of association; and

3) list of board members.

(3) The application shall be signed by all founders or at least two of their authorised representatives.

Section 27. Liability for obligations which have come about before the association is registered in the register

(1) A founder, who has acted on behalf of the association to be founded before the association is registered in the register, is liable for obligations which have arisen from these actions. If several founders have acted on behalf of the association to be founded, they shall be jointly liable.

(2) The obligations mentioned in Paragraph one of this Section shall be transferred to the association from the time it is registered in the register if the founders had the right to act on behalf of the association to be founded.

(3) If a founder did not have the right to act on behalf of the association, the obligations, which have arisen from such actions, shall be transferred to the association if a general meeting definitely approves such obligations.

Chapter IV Members

Section 28. Minimum number of members

(1) An association shall consist of at least two members if the articles of association do not

provided for a larger number of members. After the association is registered in the register, the founders of the association gain the status of members of the association.

(2) Each association shall keep a register of its members which shall indicate the name, surname, personal identity code and home address (name and address of a legal person) of each member. Information about member of the association shall be accessible only to the members of the relevant association, and to controlling and law enforcement institutions.

#### Section 29. Membership in an association

(1) The board shall take a decision for a member to join an association, unless otherwise provided for in the articles of association.

(2) If the board or other body (except a general meeting), responsible for the joining of members, shall take a decision to refuse to accept a member, the person, who wishes to become a member, has the right to request a review of the matter according to the procedure provided for by the articles of association.

(3) Responsibilities for members shall be determined only in accordance with the procedure provided for by the articles of association.

(4) A member's participation in an association shall not be transferable to a third party or inheritable unless otherwise provided for by law. The member's participation shall end with leaving or being removed from the association, and also the death of a member - natural person, or the dissolution of a member - legal person.

(5) A member's — legal person's participation shall continue if the legal person is reorganised, altering it in accordance with procedures provided for by law. If a legal person is reorganised by merging it with another subject or by dividing it, this person's participation in the association shall end.

(6) When a member - legal person is reorganised through separation, the participation in the association of the legal person to be separated shall continue.

(7) A legal person within the meaning of Paragraphs four, five and six of this Section, shall be understood to also be a partnership with legal status.

(8) Persons with special status (nominee members, honorary members, associated members, long-standing members etc.) whose rights and responsibilities shall be determined by the articles of association.

#### Section 30. Leaving the association

A member may leave the association at any time by submitting a written announcement to the board of the association, unless it is provided for in the articles of association that such announcement shall be submitted to a different administrative body.

#### Section 31. Exclusion from the association

(1) A member may be excluded from the association based on a decision of the board or a decision of another body in accordance with the cases and procedures prescribed by law. The articles of association may also provide that a member may be excluded from an association based on a decision of a meeting of the members.

(2) A member may be excluded from an association, regardless of the regulations of the articles of association, with good reason. A gross violation of the articles of association or committing a significant harm to the association shall be considered to be good reason in any situation.

(3) The board of the association is obliged to inform a member in writing within five days of the decision to exclude him or her from the association and the reasoning (justification) for this decision.

(4) If the decision to remove a member is taken by the board or another body, the member has the right to request a review of the matter at a general meeting.

#### Section 32. The consequences of the end of a member's participation

(1) If a member's participation in an association comes to an end, the membership fee provided for in the articles of association and which has been paid shall not be repaid.

(2) A person, whose participation in an association has ended, does not have the right to the association's assets.

(3) The association does not have the right to collect an unpaid membership fee from a member.

#### Chapter V Organisational Structure of an Association

##### Section 33. Administrative bodies of an association

(1) The administrative bodies of an association are a general meeting (meeting of the members) and the board.

(2) The articles of association may also provide for other administrative bodies and determine the procedure for their creation and their competence.

#### Section 34. General meeting

(1) The highest body of an association is a general meeting.

(2) All members of an association have the right to participate in general meeting, unless otherwise provided for by law. A member may also participate in a general meeting with the intermediation of a representative, unless otherwise provided for by law. An authorisation to participate and vote in a general meeting shall be issued in writing.

#### Section 35. Competence of a general meeting

(1) The competence of a general meeting shall include:

- 1) amending the articles of association;
- 2) the election and removal of members of the board and audit bodies, if such rights are not granted to another administrative body by the articles of association;
- 3) taking a decision to terminate, continue or reorganise the activities of the association; and
- 4) other issues which in accordance with the law or the articles of association are within the competence of the general meeting.

(2) A general meeting has the right also to take such decisions as are within the competence of the board and other bodies as provided for by the articles of association, unless otherwise provided for by the articles of association.

#### Section 36. Calling a general meeting

(1) The board shall call a general meeting in accordance with the procedures prescribed by law or the articles of association in the cases determined by law or the articles of association, or if the calling of a general meeting is necessary in the interests of the association.

(2) The board shall call a general meeting immediately (without delay to be found fault with) if such is requested in writing by no less than one tenth of the members and if the articles of association do not provide for a smaller number of members.

(3) If the board does not call a general meeting based on Paragraph two of this Section, the members who are requesting a general meeting, may call a general meeting independently,

observing the procedures set out to call a meeting.

(4) The board shall inform members of calling a general meeting, if it is intended to take decisions on issues mentioned in Section 35, Paragraph one, Clauses 1-3 at the meeting, and shall announce its agenda no later than 14 days before the meeting unless the articles of association provide for a longer time period.

#### Section 37. General meeting proceedings

(1) The general meeting is able to take decisions if more than half of the members participate in it and if the articles of association do not provide for a larger quorum.

(2) If the general meeting does not have the right to take decisions in accordance with Paragraph one of this Section, the board, not later than three weeks later, shall again call a general meeting with the same agenda. The meeting thus called shall be able to take decisions regardless of the number of members present, but only if at least two members participate in the general meeting.

(3) If in calling a general meeting, the regulations of law or the articles of association regarding the procedure or date for calling a meeting have been violated, the general meeting shall not have the right to take decisions, except in cases when all members participate in the general meeting.

(4) The general meeting shall be chaired by the chairperson of the board if the members do not elect a different chairperson for the meeting. Minutes shall be taken of the proceedings of the general meeting. The minutes shall be signed by the chairperson of the meeting and the minute taker.

(5) General meetings are open if the meeting does not take a reasoned decision for a different procedure for the meeting.

#### Section 38. Decisions of the general meeting

(1) A decision of the general meeting is adopted if more than half of the member present vote in favour of it, unless the law or articles of association provide for a larger number of votes.

(2) Each member of the general meeting shall have one vote. A member shall not have the right to vote if the general meeting is voting on signing a transaction with this member or on raising a claim or ending a claim against such member.

(3) In order to amend or terminate the rights of a member, which are different from the rights of other members, or to determine obligations of a member which are different from the obligations

of other members, the consent of this member is required.

Section 39. Adopting a decision to amend the articles of association

(1) A decision to amend the articles of association is adopted if not less than half of the members present vote in favour of it, if the articles of association do not provide for a larger majority of votes.

(2) Amendments to the articles of association shall come into force at the time they are adopted if the articles of association or the decision do not provide otherwise, and in regard to third parties - only after the amendments to the articles of association are registered in the register.

(3) Notification of amendments to the articles of association shall be submitted to the register institution, attaching an extract of the minutes of the general meeting or an extract of the minutes of the voting with the decision on amendments to the articles of association and the full revised text of the articles of association.

Section 40. Finding the decision of a general meeting to be invalid

(1) A court, based on the application of a member, board member, or auditor (also of another body if so indicated in the articles of association) of the association, may find a decision of the general meeting to be invalid if such decision or its adopting procedure is in contradiction with the law or the articles of association, or if significant violations have taken place in the calling of the meeting or in taking the decision. A claim may be raised within three months from the day the relevant person came to know, or should have come to know of the decision of the general meeting, but not later than one year from the day the decision was adopted.

(2) In accordance with the regulations of Paragraph one of this Section, the court may find the decisions of other bodies of the association also to be invalid.

Section 41. Meeting of proxies

(1) The articles of association may provide that the responsibilities of the general meeting within the scope provided for by the articles of association, are carried out by a meeting of proxies elected from the total number of members. The representation quota, and the procedure for nominating and electing proxies shall be determined by the board if the articles of association do not provide otherwise. All members of the association have the right to participate in proxy elections.

(2) The provisions of this law regarding the general meeting shall be applicable to the meeting of proxies if not otherwise provided by law.

Section 42. Board

(1) The board shall manage and represent the association.

(2) The board may consist of one member or more members. The general meeting shall elect a chairperson of the board from the board members unless otherwise provided for by the articles of association.

(3) Board members shall be natural persons with legal capacity.

(4) Not less than half of the board members shall be persons whose place of residence is Latvia.

Section 43. Competence of the board

(1) The board shall administrate and manage the affairs of the association. It shall administrate the assets of the association and shall deal with its funds in accordance with laws, the articles of association, and decisions of the board or other bodies.

(2) The board shall organise bookkeeping accounts for the association in accordance with legislative enactments and shall carry out other responsibilities in accordance with its competence as set out in the articles of association.

Section 44. Right of representation for the board

(1) All board members have the right of representation. The board members represent the association jointly, unless otherwise provided for by the articles of association.

(2) The right of representation for the board in regard to third parties shall not be limited. The right of board members to represent the association jointly or individually as set out in the articles of association shall not be considered to be a limitation of the right of representation for the board within the meaning of this Section.

(3) In relation to the association, the board shall observe limitations of representation as prescribed in the articles of association, decisions of the general meeting and other bodies as provided for by the articles of association.

Section 45. Election, removal and right to leave office of board members

(1) Board members shall be elected by a decision of the general meeting unless otherwise provided for by the articles of association.

(2) A board member may be removed by the body which has elected the board member or by the general meeting.

(3) The articles of association may provide for a board member to be removed only if there is good reason to do so. Such a reason shall be considered to be, in any case, non-performance or inadequate performance of responsibilities, inability to manage the association, harm done to the interests of the association and loss of trust.

(4) A board member does not have the right to transfer his or her authority to third parties.

(5) A board member may at any time submit an announcement to the association regarding leaving the office of board member.

(6) The election of a board member or the end of his or her term of office shall be announced for entry in the register, and the announcement shall be accompanied by an extract of the minutes of the general meeting, or other body provided for by the articles of association, with the decision regarding the election or recall of the board member.

#### Section 46. Adopting of decisions of the board

(1) The board has decision taking rights if its meeting is attended by more than half of the board members and unless the articles of association provided for a larger quorum.

(2) If the board consists of several members, a decision shall be adopted with a simple majority of votes of the board members present, unless the articles of association provide for a larger majority of votes.

(3) Regardless of the provisions of Paragraphs one and two of this Section, the board has the right to take decisions without calling a meeting if all board members vote in written form for taking the decision and unless otherwise provided for by the articles of association.

(4) Minutes shall be taken at board meetings of the association. It shall be mandatory to record in the minutes the decisions taken, indicating the vote of each board member "for" or "against" each decision.

#### Section 47. Payment and covering of expenses

(1) A board member shall carry out his or her responsibilities without pay unless otherwise provided for by the articles of association.

(2) If the articles of association provide for a board member to have the right to receive pay, its amount and procedures for payment shall be

determined by a decision of the general meeting, unless otherwise provided for by the articles of association.

(3) A board member may request the covering of such expenses as are incurred during the carrying of his or her responsibilities, unless otherwise provided for by the articles of association.

#### Section 48. Other bodies of the association

The articles of association may provide that in addition to the board another body may be created to carry out separate activities according to the procedures provided for in the statutes for appointment (election).

#### Section 49. Liability of members of the board and other bodies

(1) Members of the board and other bodies are jointly liable for losses arising to the association through their fault.

(2) An association may raise a claim against a member of the board or other body within five years, counting from the day the rights were violated or the day when violation of rights became known.

#### Section 50. Units of the association

(1) An association may have its territorial and other organisationally independent units. Units of the association are not legal persons.

(2) If a unit of an association has its own general meeting and board, then the provision of Sections 33, 34, 36-38, 40-43, 45-47 and 49 of this Law shall be applicable in regard to them.

#### Section 51. Right of control of the general meeting

(1) The board shall ensure that the members of the association have all necessary information and documents in regard to the operations of the association and shall also prepare a relevant report at their request.

(2) The general meeting shall control the activities of all administrative bodies. For this purpose, the general meeting has the right to determine an internal audit.

(3) Board members have the responsibility to provide all information and documents necessary for the audit to the auditing body.

(4) The auditor shall prepare an opinion on the results of the audit which shall be presented to the general meeting.

Section 52. Annual report of an association

(1) At the end of a reporting year, the board shall prepare an annual report of the association in accordance with the Law on Accounting and other regulatory enactments.

(2) The annual report of the association shall be reviewed by the auditing body of the business and financial operations or a sworn auditor. Members of the association have the right to familiarise themselves with the annual report.

(3) Every year, not later than by 31 March, the annual report shall be submitted by the association to the State Revenue Service and the register institution.

Chapter VI Termination of activities of an association and liquidation

Section 53. Basis for the termination of activities for an association

The activities of an association shall be terminated:

- 1) with a decision of the general meeting;
- 2) by starting bankruptcy proceedings of the association;
- 3) when the number of members is decreased to one member or another number as provided for by the articles of association;
- 4) when the time period set out in the articles of association has ended (if the association is founded for a period of time);
- 5) with a court decision; or
- 6) on a different basis as set out in law or in the articles of association.

Section 54. Terminating the activities of an association with a decision of the general meeting

A decision of the general meeting to terminate the activities of an association is considered adopted if two thirds of the members present vote in favour of it and if the articles of association do not provided for a larger majority of votes.

Section 55. Terminating the activities of an association by starting bankruptcy proceeding

The procedure by which the operations of an association shall be ended in case of bankruptcy shall be regulated by a separate law.

Section 56. Terminating the activities of an association with a decision of the board

If the number of members is decreased to one member or another number as provided for by the articles of association, or if the time period set out in the articles of association, for which the association was founded, has ended, the decision to terminate activities shall be taken by the board of the association.

Section 57. Terminating the activities of an association with a court decision

(1) The activities of an association, based on a court decision, may be terminated:

- 1) if the operations of an association are in contradiction to the Constitution, laws or other regulatory enactments;
- 2) if business operations, of a profit-gaining nature, have become the main operations of the association;
- 3) if the board of the association has not submitted an application to terminate the activities of the association in accordance with this Law; or
- 4) in other cases as provided for by law.

(2) A prosecutor or a State Revenue Service Territorial Institution may submit an application in court if the association:

- 1) after receiving a warning in writing, has not eliminated violations during the time period specified in the warning. The time period for eliminating violations shall be set as not less than 15 days and not longer than three months; or
- 2) within a year of having received the warning, repeatedly commits a violation, especially in its public activities.

(3) At the request of the applicant, the court may prohibit the association from carrying out public activities or other activities until the final decision is taken in the matter. The decision may be appealed in accordance with the procedure set out in the Civil Law.

(4) The decision regarding the prohibition of public activities of the association or other activities shall be sent to the register institution in order for an entry to be made in the register.

(5) The court, taking into account the severity and consequences of the violation committed by the association, and evaluation the objective and activities of the association overall, may limit itself

to issuing a warning to the association, and not terminating its activities.

#### Section 58. Liquidation of an association

(1) When the operations of an association are ended, liquidation of the association takes place unless otherwise provided for by law.

(2) The word "likvidejama" [to be liquidated] shall be added to the name of the association.

#### Section 59. Liquidators of the association

(1) The liquidation is carried out by members of the board unless otherwise provided for by the articles of association, a decision of the general meeting or court decision.

(2) If a liquidator is appointed by the general meeting, it will determine the amount of his or her payment and procedures for paying.

(3) If the operations of an association are ended based on a court decision, a liquidator is appointed and the amount of his or her payment and procedure for paying shall be determined by the court.

(4) A liquidator may be a legally competent natural person whose place or residence is in Latvia.

#### Section 60. Notification of terminating the activities of an association and its liquidation

(1) If the activities of an association are terminated in relation to the conditions mentioned in Section 53, Clauses 1, 3 and 4 of this Law, the board shall submit a notification to the register institution regarding the termination of activities of the association. Attached to the notification shall be:

1) an extract of the minutes of the general meeting with the decision to terminate the activities of the association if the activities of the association have been terminated with a decision of the general meeting; and

2) information about the liquidator's name, surname and personal identity code.

(2) If the activities of an association are terminated based on a court decision, the court shall send the respective decision for entry into the register. Within three days of the decision coming into force, the liquidator shall submit the information mentioned in Paragraph one, Clause 2 of this Section to the register institution.

(3) If the liquidation is carried out by the members of the board, this fact is indicated in the

notification or in the court decision and the information mentioned in Paragraph one, Clause 2 of this Section shall not be attached.

#### Section 61. Recalling of the liquidator

(1) A liquidator may be removed by a decision of the general meeting, at the same time appointing a different liquidator.

(2) A liquidator may be removed by a decision of the court, based on the application of a member or other concerned party, with good reason to do so.

(3) A court appointed liquidator may be removed only by a court decision based on the application of a member or other concerned person, with good reason to do so, and a different liquidator is appointed at the same time.

(4) The decision to recall a liquidator shall be submitted by the new liquidator to the register institution within three days of the decision being taken.

#### Section 62. Rights and responsibilities of a liquidator

(1) A liquidator has all the rights and responsibilities of the board and other bodies provided for by the articles of association (except the general meeting) which are not in contradiction to the aim of liquidation.

(2) A liquidator shall collect debts, sell the assets of the association, settle creditor claims and after covering the costs of the liquidation and settling the claims of the creditors divide the remaining assets of the association among the persons who have rights to these assets.

(3) A liquidator may conclude only such deals as are necessary for the liquidation of the association.

#### Section 63. Right of representation of the liquidator

(1) If the liquidation of an association shall be carried out by several liquidators, they have the right to represent the association only jointly unless otherwise provided for by the statutes, a decision of the general meeting or court decision. The provision for individual representation shall be valid only in relation to third parties if so registered in the register.

(2) The liquidators may authorise one or several persons from amongst themselves to carry out separate legal activities.

#### Section 64. Submitting notification of insolvency



If during the proceedings of the liquidation it is found that the assets of the association to be liquidated are not sufficient to settle all the justified creditor claims, the liquidator shall have the responsibility to submit a notification of insolvency in accordance with the procedures prescribed by law.

#### Section 65. Informing creditors and raising claims

(1) The liquidator shall announce notification of the termination of activities of the association and its liquidation in the newspaper "Latvijas Vēstnesis" within 15 days after the respective decision has come into force.

(2) The liquidator shall send a notification of the initiation of liquidation to all known creditors of the association.

(3) In the notification mentioned in Paragraphs one and two of this Section, creditors of the association shall be asked to raise their claims within three months after the day of publication of the claim if a decision of the general meeting or court decision regarding the termination of activities of the association does not prescribe a longer period of time to raise claims.

(4) Within the set period of time, creditors shall notify the liquidator of their claims against the association. The claim shall state the content of the claim, basis and amount and documents which justify the claim shall be attached to it.

#### Section 66. Financial report at the beginning of liquidation

After the end of the time period for creditors to make claims, the liquidator shall prepare a financial report of the beginning of the liquidation.

#### Section 67. Creditor protection

(1) If a known creditor does not make a claim, does not accept fulfilment or the obligation cannot be fulfilled yet, the amounts which they are entitled to shall be deposited in court.

(2) if there is a controversial creditor claim, the assets of the association shall be divided only if the respective creditor has been provided for.

#### Section 68. Closing financial report of the association and division of assets

(1) After settling the claims of the creditors, or depositing the money intended for them, and covering the costs of liquidation, the liquidator shall prepare a closing report of the association in accordance with regulatory enactments and shall divide the remaining assets of the association

among the persons who have a right to these assets in accordance with the statutes or law.

(2) The articles of association may prescribe that before dividing the assets of the association, a general meeting shall designate the persons who have the right to these assets unless otherwise provided for by law. Such rights may not be indicated for the founders of the association, members of the board or other bodies, or for other persons with a similar material interest, especially spouses, relatives and in-laws, with a kinship to the second degree and affinity to the first degree.

(3) If the articles of association or decisions of the general meeting do not provide for persons who have a right to the remaining assets, they shall be divided in equal shares among the persons who were members of the association at the time of terminating activities unless otherwise provided for by law.

(4) If the assets of the association cannot be divided in accordance with the procedure set out in Paragraphs one, two and three of this Section, the assets of the association shall transfer to the State.

(5) If the operations of the association have been ended in accordance with the provisions of Section 57, Paragraph one, Clauses 1 and 2 of this Law, after covering the costs of the liquidation and settling the claims of the creditors, the remaining assets shall transfer to the State.

(6) The assets of the association shall be divided not sooner than six months after the day when the notification of terminating the activities of the association was published. The court may allow the remaining assets of the association to be divided before the designated time period if losses will not be incurred by the creditors.

#### Section 69. Storing of documents of the association

The liquidator shall carry out the necessary actions to put the documents of the association in order and to deposit them at the state archives. The costs of putting the documents in order and depositing them at the archives shall be covered from the assets of the association to be liquidated.

#### Section 70. Continuing the operations of the association

(1) If the termination of activities of the association is provided for by the statutes or if the decision to the operations of the association is adopted by the general meeting, until the commencement of the division of the assets, the

members may take a decision to continue the operations of the association or to reorganise the association. The decision shall be considered to be adopted if more than two thirds of the members present vote in favour of it.

(2) When the decision to continue the operations of the association is taken, a board and other bodies provided for by the articles of association shall be created at the same time.

(3) A liquidator shall submit notification to the register institution regarding the continuation of operations of the association. The decision to continue operations of the association shall come into force after it is registered in the register.

#### Section 71. Deletion from the register

(1) After the remaining assets of the association are divided, the liquidator shall submit a notification to the register institution regarding the end of liquidation. The closing financial report of the association shall be attached to the notification.

(2) In the notification the liquidator shall certify that:

1) the closing financial report of the association has not been contested in court or that the respective claim has been denied;

2) all creditor claims have been settled or that money intended for them has been deposited; and

3) the documents of the association have been deposited for storage at the state archive.

#### Section 72. Liability of the liquidator

(1) The liquidator shall be liable for losses occurring due to his or her fault.

(2) If there are several liquidators, they shall be jointly liable for the losses occurring due to their fault.

### Chapter VII Reorganisation of Associations

#### Section 73. Reorganisation

(1) An association may be reorganised through joining or division.

(2) Only associations may take part in the reorganisation process unless otherwise provided for by law.

(3) The articles of association may provide that reorganisation is permissible or not permissible upon certain preconditions

#### Section 74. Joining

(1) The association may be joined with another association through acquiring or merging.

(2) Acquiring is a process in which the association (association being acquired) transfers all of its assets to another association (acquiring association).

(3) Merging is a process where two or more associations (associations being acquired) transfer all of their assets to the association being founded (acquiring association).

(4) In the event of joining, the association to be acquired ceases to exist without liquidation proceedings.

(5) In the event of joining, the rights and obligations of the association being acquired are transferred to the acquiring association. Members of the association being acquired shall become members of the acquiring association.

(6) In regard to the association being founded, the provisions of this Law on founding an association shall be applicable to the association being founded, insofar as is not prescribed otherwise in this chapter. The associations being acquired shall be considered to be the founders of the association.

#### Section 75. Division

(1) Division is a process when the association (association being divided) shall transfer its assets to one association or several different associations (acquiring associations) through splitting or partition.

(2) In the event of splitting, the association being divided shall transfer all of its assets (rights and obligations) to two or more acquiring associations and cease to exist without liquidation proceedings.

(3) In the event of splitting, the members of the association being divided become members of the acquiring association in accordance with the agreement or decision of reorganisation.

(4) In the event of partition, the association being divided shall transfer part of its assets (rights and obligations) to one acquiring association or several such associations. In the event of partition, the association being divided shall continue to exist.

(5) In the event of partition all members of the association being divided or part of them become members of the acquiring associations in accordance with the agreement or decision of reorganisation.

(6) The acquiring association may be an existing association or an association being founded. In regard to the association being founded the provisions of this Law on founding an association shall apply insofar as this Chapter does not prescribe otherwise.

#### Section 76. Agreement of reorganisation

(1) If two or more existing associations participate in the process of reorganisation, they shall enter into an agreement of reorganisation. The agreement shall be entered into in writing.

(2) The agreement shall set out:

1) the name, registration number and legal address of the associations involved in the reorganisation;

2) the rights which the acquiring association shall grant to the members of the association being acquired or divided;

3) the consequences of reorganisation for the employees of the associations involved in the reorganisation process;

4) in the event of division - the material and non-material rights and obligations to be transferred to each acquiring association;

5) in the event of merging - the further utilisation of the non-material rights of each association.

(3) In the event of merging associations, in addition to the information mentioned in Paragraph two of this Section, the name and legal address of the acquiring association (association being founded) shall also be noted in the reorganisation agreement.

(4) If another already existing association is not involved in the division process, the association being divided shall adopt a decision on division which shall replace the agreement mentioned in this Section. In addition to the information mentioned in Paragraph two of this Section, the name and legal address of the acquiring association and information on the division of the assets of the association being divided shall be set out in the decision on division. The assets division document may be attached to the decision as a separate document.

#### Section 77. Decision on reorganisation

(1) The draft agreement on reorganisation shall be reviewed and the decision on reorganisation shall be adopted by the general meeting of each association involved in the reorganisation process.

(2) Not less than one month before the day when the general meeting to approve the agreement is planned, all members of the association shall be given the opportunity to familiarise themselves with the draft agreement according to their legal addresses.

(3) The decision on reorganisation shall be considered to be adopted if more than two thirds of the members present vote in favour of it and if the articles of association do not prescribe a greater majority of votes.

(4) The decision on reorganisation shall be prepared as a separate document.

(5) If the acquiring association is a newly founded association, the general meeting of each association involved in the reorganisation process shall review the draft articles of association of the association being founded. At the same time as the decision on reorganisation is adopted, the articles of association of the association being founded shall be approved.

(6) Based on the decision on reorganisation, the relevant association enter into an agreement.

#### Section 78. Protecting the interests of the creditors

(1) Within fifteen days from the day a decision is adopted for reorganisation, each association involved in the reorganisation process shall inform all known creditors in writing who had claim rights against the association up to the adoption of the decision for reorganisation.

(2) Each association involved in the reorganisation process has the responsibility to publish an announcement in the newspaper "Latvijas Vēstnesis" that a decision for reorganisation has been adopted. The announcement shall state:

1) the name, registration number and legal address of the association;

2) the name, registration number and legal address of the other associations involved in the reorganisation;

3) the fact that a decision for reorganisation has been adopted, indicating the type of reorganisation; and

4) the place and time, which may not be less than one month from the date of the publication, of claims to be made by creditors.

(3) An association being acquired or divided shall secure a creditor's claim if it is requested and if it is submitted within the time set out in Paragraph two of this Section. A creditor of an acquiring association may request securing of a claim only if it is proved that joining will threaten the settlement of his claim.

(4) A secured creditor may request securing only for the amount of the unsecured part of the debt.

#### Section 79. Dispute of a decision to reorganise

(1) Based on the claim of a member or board member of an association involved in reorganisation, a court may adjudicate that a decision for reorganisation is not valid, if it has been adopted by violation of the law or articles of association and it is not possible to eliminate these violations or they are not eliminated within the time period set by the court.

(2) The time period to raise a claim is three months after the date of publication of the announcement mentioned in Section 78 of this Law.

(3) The association, whose general meeting decision on reorganisation has been deemed to be invalid, shall have the responsibility to publish an announcement regarding this in the newspaper "Latvijas Vēstnesis" within 15 days of the date of court decision coming into force.

(4) If the decision for reorganisation is adjudged to be invalid, it shall not affect the obligations which the association has taken on in regard to third parties during the process of reorganisation.

#### Section 80. Application to the register institution

(1) Each association involved in the reorganisation process shall submit to the register institution, not earlier than three months after the date of publication of the announcement, an application to register the reorganisation. Attached to the application shall be:

1) the agreement for reorganisation or an appropriately certified copy of it;

2) an extract of the minutes and decision for reorganisation;

3) articles of association of the acquiring association (if a new association is being created as a result of the reorganisation); and

4) a list of the members of the board of the acquiring association if a new association is being created as a result of the reorganisation).

(2) In the application the association shall certify that creditor claims, which have been submitted within the prescribed time period, are secured or settled and that the decision for reorganisation has not been contested in court or that the respective claim has not been satisfied.

(3) In the event of associations being merged, the associations being acquired shall submit to the register institution a joint application for the association being founded to be registered in the register.

#### Section 81. Name of the acquiring association

The acquiring association may continue its operations using the name of the acquired association.

#### Section 82. Entry to be made in the register regarding reorganisation

(1) An entry regarding the association being acquired shall be made after entries have been made regarding all acquiring associations.

(2) After an entry is made in the register regarding the acquiring of the association, the file of the association being acquired is added to the register file of the acquiring association, and the acquired association is deleted from the register.

(3) After an entry has been made in the register regarding the reorganisation of an association being divided, the appropriate extracts from the file of the association being divided are attached to the files of the acquiring associations, and in cases when the division takes place by way of splitting, the association being divided is deleted from the register.

#### Section 83. Legal meaning of the entry made in the register regarding reorganisation

(1) Reorganisation shall be deemed to be in force from the moment entries are made in the register regarding all of the associations involved in the reorganisation process, including newly founded associations.

(2) From the moment the reorganisation comes into force:

1) the assets of the association being acquired shall be considered to be transferred to the acquiring associations; and

2) the assets of the association being divided shall be considered to be transferred to the acquiring associations.

(3) Upon the deletion of the association from the register, this association shall be considered to be liquidated.

Section 84. Liability of the associations involved in the reorganisation process

(1) The acquiring association shall be liable for all of the obligations of the association being acquired.

(2) All the associations involved in a division, including newly founded associations, shall be jointly liable for the obligations of the association being divided, which have arisen until the time the reorganisation has come into force.

(3) If the obligations of an association involved in a division are not set out in the agreement, it is jointly liable together with the other associations involved in the division for the obligations of the association being divided which have arisen up to the time the reorganisation has come into force and whose time of discharge is five years from the time of the reorganisation coming into force.

Section 85. Liability of board members

(1) The board members of the associations involved in reorganisation shall be jointly liable for losses which have been incurred by the association during the reorganisation proceeding due to their fault.

(2) The limitation period of the claim set out in Paragraph one of this Section shall set in within five years from the day the reorganisation shall come into force.

Division C Foundations

Chapter VIII Founding a Foundation

Section 86. Founders

(1) A foundation may be founded by one or more persons.

(2) If a foundation has several founders, they shall realise their founder rights only jointly.

(3) Persons who have granted assets to the foundation, after it has been registered in the register, shall not be considered founders.

(4) The status of founder shall not be inherited and it may not be transferred to third parties. If a founder has undertaken obligations before the

foundation is registered in the register, the provisions of Section 27 of this Law shall be applicable.

Section 87. Basis for founding

A foundation is founded based on the decision of a person to found a foundation or on a will.

Section 88. Decision to found a foundation

The provisions of Section 24 of this Law shall apply to a decision to found a foundation.

Section 89. Founding of a foundation on the basis of a will

(1) When a foundation with generally useful and charitable objectives is founded based on a will (foundation based on a will), the provisions of the Civil Law shall be applicable insofar as this Law does not prescribe otherwise.

(2) If a will does not include the information mentioned in Section 24 of this Law, the articles of association for the foundation being founded have not been drafted, or board members have not been appointed, the executor of the will, heir or guardian (Section 496 of the Civil Law) shall carry out the appropriate actions (drafting of articles of association, appointing board members). In carrying out the actions mentioned in this Section, the executor of the will, heir or guardian shall take in to consideration the wishes of the testator as far as possible.

(3) Until the board members are appointed, the executor of the will, heir or guardian shall utilise the rights of a founder, administer the assets which have been transferred to the foundation being founded, and shall carry out other activities as prescribed by Law.

(4) The authority of the executor of the will, heir or guardian as set out in this Section shall end on the day that the foundation is registered in the register.

Section 90. Articles of association of the foundation

(1) The articles of association of the foundation shall set out:

1) the name of the foundation;

2) the objective of the foundation;

3) the procedure according to which assets shall be transferred to the foundation;

4) the procedure according to which the funds of the foundation shall be used;

5) the period of operation of the foundation (if the foundation is set up for a specific time period);

6) the procedure for division of assets in the case of liquidation of the foundation;

7) the procedure for appointing and recalling board members and the term of office;

8) the procedure for appointing and recalling members of other administrative bodies (if such are provided for) and the term of office;

9) the structure of the business and financial operations auditing body, procedure for election, competence, procedure for adopting decisions and term or office, or the procedure for appointing a sworn auditor and term of office; and

10) procedure for making amendments to the articles of association.

(2) The articles of association may prescribe other provisions which are not in contradiction to the law. If the articles of association are in contradiction to the law, the provisions of the law shall apply.

Section 91. Beneficiary and restrictions of the operations of the foundation

(1) The articles of association may prescribe a set of beneficiaries. In case of doubt, a beneficiary shall be considered to be a person to whom funds may be paid from the assets of the foundation in accordance with the articles of association of the foundation.

(2) The foundation is prohibited to grant funds, offer guarantees, issue bills of exchange, or otherwise fund the founders, members of the board or other administrative bodies (if such have been created), or other persons who have similar material interests, especially spouses, relatives, and in-laws, in kinship to the second degree and affinity to the first degree.

Section 92. Application to register the foundation in the register

(1) A founder shall submit an application to the register institution to register the foundation in the register. The application shall set out the information mentioned in Section 15, Clauses 1-6 of this Law.

(2) The application shall be signed by the founder, and when founding a foundation based on a will, the executor of the will, heir of guardian.

(3) Attached to the application shall be:

1) the founding decision;

2) the articles of association;

3) the written consent of each board member to be a board member.

(4) When founding a foundation based on a will, instead of attaching the founding decision, an appropriately authenticated copy of the will shall be attached as well as documents which certify the authority of the guardian (Section 496 of the Civil Law) and the coming into legal force of the will.

Chapter IX Organisational Structure of a Foundation

Section 93. Administrative bodies of a foundation

(1) The administrative body of a foundation is the board.

(2) The articles of association may provide for the creation of other administrative bodies, prescribing the procedure for their creation and their competence, and the granting of administrative competence to other subjects or their bodies (hereafter - other administrative bodies).

Section 94. Board

(1) The provisions of Section 42-45 and Section 49 of this Law shall be applicable in regard to the board of a foundation insofar as this Chapter does not prescribe otherwise.

(2) The articles of association may prescribe restrictions in regard to members of the board. Board members may not be persons mentioned in Section 89, Paragraph two of this Law, if the will does not prescribe otherwise.

(3) The board shall consist of at least three members. If the articles of association do not prescribe otherwise, the board members shall elect a chairperson of the board from among themselves, who shall organise the work of the board.

(4) In its activities, the board shall observe the objective of the foundation, the wishes of the testator, and the instructions of other administrative bodies (if the articles of association provide for such instructions to be given) as set out in the decision of the founder and in the articles of association, and also the competence prescribed by law and in the articles of association.

Section 95. Appointing and removing board members and their right to leave office

(1) If the foundation is founded during the lifetime of the founder, the board members are appointed by the founder. If a foundation is founded based on a will, the board members are appointed by the persons listed in Section 89, Paragraph two of this Law, except in cases when the board members are appointed by the will.

(2) Decisions on further changes in the composition of the board, and the removal of board members shall be adopted according to the procedures set out in the articles of association.

(3) A board member may at any time submit a notification of leaving the office board member.

(4) The appointment of a board member or the end of his or her term of office shall be announced for entry into the register. If in accordance with the articles of association, the decision of appointing or removing a board member is adopted by a different administrative body, the respective decision of the body shall be attached to the application, as well as the written consent of the board member to be a board member. If a board member leaves office in accordance with Paragraph three of this Section, the respective announcement of the board member shall be attached to the application.

Section 96. Payment and reimbursement of expenses

(1) A board member shall carry out his or her responsibilities without pay unless the articles of association prescribe otherwise.

(2) If the articles of association provide for payment to a board member, the amount and procedure for paying shall be determined by the person or body who has the right to appoint board members in accordance with the articles of association.

(3) A board member may request reimbursement for such expenses as he has incurred during the carrying out of his or her responsibilities if the articles of association do not provide otherwise.

Section 97. Adopting of board decisions

(1) The board has the right to adopt decisions if more than half of the board members are present in its meeting.

(2) The board shall adopt its decisions with a simple majority vote of the board members present, if the articles of association do not prescribe a greater majority vote.

(3) Minutes shall be taken at board meetings. The minutes shall set out:

1) the name of the foundation;

2) the place and time of the board meeting;

3) participants of the meeting;

4) items of the agenda;

5) the procedure and proceedings of discussing the items of the agenda;

6) results of voting, indicating the vote of each board member "in favour" or "against" for each decision; and

7) the decisions adopted.

(4) If a board member does not agree with a board decision and votes against it, the differing opinion of the board member shall be recorded in the minutes of the board meeting at his or her request.

(5) Minutes of board meetings shall be signed by the board members present at the meeting.

Section 98. Other administrative bodies

(1) If the articles of association provide for the creation of another administrative body or granting administrative competence to another subject or its body, then such subject or its body may adopt decisions only for issues which are not in the competence of the board in accordance with the law or the articles of association.

(2) In regard to a collegial administrative body, the provisions of Section 97 of this Law shall be applicable.

Section 99. Restriction for members of the board and other administrative bodies

(1) If the interests of the foundation are in conflict with the interests of a member of the board or other administrative body, his or her spouse, relative or in-law, with kinship to the second degree and affinity to the first degree, the issue shall be decided at a meeting of the body at which the member concerned of the administrative body may not participate in discussions of the issue, and also shall not have voting rights, and such shall be recorded in the minutes of the meeting of the administrative body. A member of the administrative body has the responsibility to announce such interests before the start of the respective meeting. A member of the administrative body has the responsibility to announce such interests to the administrative body after the body meeting as well.

(2) A member of the administrative body who has violated the provision of Paragraph one of this Section, is responsible to compensate the losses incurred by the foundation.

Chapter X Revoking or amending the founding decision and the articles of association

Section 100. Revoking or amending the founding decision and the articles of association before the foundation is registered in the register

(1) The founder may revoke or amend the decision on founding or the articles of association.

(2) In the case of death of a founder - natural person, or closing of a founder - legal person, the other founders do not have the right to revoke the founding decision, if the founding decision or other agreement of the founders does not provide otherwise.

Section 101. Amending the articles of association after the foundation is registered in the register

(1) After the foundation is registered in the register, amendments to the articles of association may be made only by the board. The board may make amendments to the articles of association only in the cases provided for by the articles of association, or if the need for amendments is justified by the fact that the conditions, from which the objective of the foundation arose, have changed.

(2) The articles of association may provide that amendments to the articles of association require the consent of another administrative body.

(3) Amendments to the articles of association shall come into force from the time they are adopted unless the decision provides otherwise, and in regard to third parties, only after the articles of association are registered in the register.

(4) When applying for amendments to the articles of association to be entered into the register, the minutes of the board meeting with the decision to amend the articles of association, a document which certifies the consent of another administrative body to the amending of the articles of association (if so prescribed by the articles of association) and the full text of the revised articles of association shall be attached.

Chapter XI Annual report and control of a foundation

Section 102. Annual report of a foundation

At the end of the reporting year, the board shall prepare and submit an annual report in

accordance with the provisions of Section 52 of this Law.

Section 103. Rights of control of donors

Persons who donate to the foundation may at any time find out about the activities of the foundation, and familiarise themselves with all documents, except accounting documents and information on other persons who have made donations to the foundation.

Chapter XII Termination of activities, liquidation and reorganisation of a foundation

Section 104. Basis for termination of activities of a foundation

The activities of a foundation shall be terminated:

- 1) with a court decision;
- 2) when the term of operation ends (if the foundation is founded for a specific period of time);
- 3) upon initiating bankruptcy proceedings for the foundation; or
- 4) on the basis prescribed by another law or the articles of association.

Section 105. Termination of activities of a foundation with a court decision

(1) The activities of a foundation shall be terminated, based on a court decision:

- 1) if the objective of the foundation has been achieved or its achievement has become impossible, and the articles of association do not prescribe the right for the board to change the objective of the foundation, or the board has not received the consent of other administrative bodies to change the objective (if so provided for in the articles of association);
- 2) if the operations of the foundation are in contradiction to the Constitution, laws or other regulatory enactments;
- 3) if the operations of the foundation are not in accordance with the objective set out in the articles of association;
- 4) if business operations with a profit gaining nature have become the basic activity of the foundation; or
- 5) in other cases prescribed by law.



(2) In the case set out in Paragraph one, Clause one of this Section, the application for terminating the activities of the foundation shall be submitted by the board.

(3) In the cases set out in Paragraph one, Clauses 2-5 of this Section, the application shall be submitted in court by a prosecutor or a State Revenue Service Territorial Institution if the foundation:

1) after receiving a written warning, has not eliminated the violations within the time period set out in the warning. The time period for eliminating violations shall be not less than 15 days and not longer than three months; or

2) repeatedly commits a violation within one year of receiving a warning, especially in its public activities.

(4) At the request of the applicant, the court may prohibit the foundation to carry out public activities or other activities until the final decision is adopted. The decision may be appealed in accordance with the procedure prescribed by the Civil Law.

(5) The decision to prohibit the public activities or other activities of the foundation shall be sent to the register institution in order for an entry to be made in the register.

(6) The court, taking into consideration the severity and consequences of the violation, and also evaluating the overall objective and activities of the foundation may limit itself to issuing a warning but not terminating its activities.

Section 106. Termination of activities of a foundation upon initiating bankruptcy proceedings

The procedure according to which activities of a foundation shall be terminated in the event of bankruptcy shall be regulated by a separate law.

Section 107. Liquidation of a foundation

(1) The provisions of Chapter VI of this Law on the liquidation of an association shall be respectively applicable to foundations insofar as is not otherwise prescribed in this Chapter.

(2) Liquidation shall be carried out by members of the board if the articles of association do not prescribe otherwise. If liquidation is carried out by other persons who are not board members, the articles of association shall prescribe the procedure for appointing such liquidators.

(3) If the activities of a foundation are terminated when the conditions set out in Section 104, Clauses 2 and 4 set in, the board shall submit a

notification to the register institution regarding the termination of activities of the foundation. The name, surname and personal identity code of the liquidator shall be attached to the notification.

(4) If the activities of a foundation are terminated based on a court decision, the court shall send the respective decision for registration in the register. Within three days of the decision coming into force, the liquidator shall submit to the register institution the information set out in Paragraph three, sentence of two of this Section.

(5) If the liquidation is carried out by board members, this fact shall be indicated in the notification or in the court decision and the information set out in Paragraph three, sentence of two of this Section shall not be attached.

(6) A liquidator may be removed by a court decision, based on the application of an interested person, with good reason, and another liquidator shall be appointed at the same time.

(7) The decision to continue operations of the foundation shall be adopted by the board or other administrative bodies provided for by the articles of association.

Section 108. Closing financial report of the foundation and division of assets

(1) After satisfying the claims of creditors or depositing money intended for them, and covering the costs of liquidation, the liquidator shall prepare a closing financial report in accordance with regulatory enactments and shall divide the remaining assets of the foundation among the persons who have a right to these assets in accordance with the articles of association, if not provided otherwise by law. The assets shall be divided among these persons in equal parts unless otherwise prescribed by the articles of association.

(2) If the activities of a foundation are terminated in accordance with the provisions of Section 105, Paragraph one, Clauses 2-5 of this Law, then after covering the costs of liquidation and satisfying creditor claims the remaining assets shall be transferred to the State, for utilisation for similar objectives, except in cases when the donor has prescribed other procedures for the use of the assets in the case of liquidation.

(3) The assets of a foundation shall not be divided among the founders, members of the board or other administrative bodies, or among other persons with similar material interests, especially spouses, relatives and in-laws, with kinship to the second degree and affinity to the first degree.

Section 109. Reorganisation of a foundation

(1) The provisions of this Law on the reorganisation of associations shall be respectively applicable to foundations insofar as this Section does not prescribe otherwise.

(2) Reorganisation may be carried out only in the cases set out in the articles of association. The reorganisation of a foundation based on a will is not permitted.

(3) The decision for reorganisation shall be adopted by the board of each foundation involved in the reorganisation. The articles of association may prescribe that a decision for reorganisation shall require the consent of another administrative body. The decision for reorganisation shall be considered adopted if more than two thirds of the board members vote in favour of it, and if the articles of association do not prescribe a greater majority of votes. The decision shall be prepared as a separate document.

(4) The reorganisation agreement shall set out:

1) the name, registration number and legal address of the foundations involved in the reorganisation;

2) the consequences of reorganisation for the employees of the foundations involved in the reorganisation proceedings; and

3) in the case of division, the assets to be transferred to each foundation.

(5) If another already existing foundation is not involved in the division proceedings, the foundation being divided shall adopt a decision on division, which shall replace the agreement mentioned in this Section. In the decision on division, in addition to the information mentioned in Paragraph three of this Section, the name and legal address of the acquiring foundation and information on the division of the assets of the foundation being divided shall be set out in the decision on division. The document on the division of assets may be attached to the decision as a separate document.

(6) A document which certifies the consent of other administrative bodies to the reorganisation (if such consent is prescribed by the articles of association) shall be additionally attached to the application for registering reorganisation in the register.

#### Transitional Provisions

1. The coming into force of this Law shall be determined by a special law.

2. Section 15, Clause 9; Section 19, Clause 2; Section 53, Clause 2; Sections 55 and 64; Section

104, Clause 3; and Section 106 of this Law shall come into force at the same time as the law which regulates the insolvency of associations and foundations.

This Law shall come into force on 1 April 2004.

This Law has been adopted by the Saeima on 30 October 2003.

## 7.2. Law on Foundations

See chapter "Law on Associations"

## 7.3. Law on NPO

Supreme Council of the Republic of Latvia LAW passed 12.17.1991

LAW ON NON-PROFIT ORGANIZATIONS Amended by the Law of 05.11.93

### CHAPTER I.

Terms Referred to in This Law.

Non-profit organization - non-profit organization established for provision of services, charity. Production or other purposes the aim of participants of which is other than profit.

Founders - natural persons and legal entities having established any non-profit organization by investment of assets in its statutory fund and having signed documents on foundation of such organization.

Participants - natural persons and legal entities including founders, having invested their assets in the statutory fund of any non-profit organization.

Donors - natural persons and legal entities who donate assets for operation of any non-profit organization without becoming its participants.

Statutory fund - material assets and money of participants and donors earmarked for operation of any non-profit organization.

### CHAPTER II.

Basic Principles of Operation of Non-Profit Organizations.

Article 1.

Application of the Law.

This Law shall regulate foundation and operation on non-profit organizations. Founders and participants of any non-profit organization shall not be entitled to gain any profit from capital invested for its operation.

#### Article 2.

##### Legal Status of Non-Profit Organizations.

Non-Profit organizations may exist in a form of an entrepreneurial company, single owner's enterprise enjoying the rights of legal entity, or non-governmental organization. Procedures on foundation, operation, reorganization and liquidation shall be regulated by this Law, provisions of Laws of the Republic of Latvia on the respective form of entrepreneurial activity unless inconsistent with this law, and the Articles of incorporation of such non-profit organization. Non-governmental organizations shall operate in accordance with the Law on Non-Governmental Organizations.

No one non-profit organization shall have the right to expand its activities over the areas provided for in its Articles of Incorporation.

Non-profit organizations may be established by any natural person or any family only in the form of a company with limited liability.

#### Article 3.

##### Fixed Assets of Non-profit Organizations.

Fixed assets of non-profit organizations shall consist of investments by their participants in the statutory fund. Non-profit organizations shall have the right to accept donations in the form of money or other assets and to use those only for purposes declared in their Articles of Incorporation.

#### Article 4.

##### Reserve fund.

Non-profit organizations shall transfer the assets exceeding their expenses into the reserve fund that shall be transferred to the next economic year without imposition of the profit tax. Such profit may not be withdrawn or paid to the participants, it may be used only for purposes provided for in the Articles of Incorporation.

In the event of liquidation of any non-profit organization, fixed assets or other property purchased for assets of its reserve fund may not be divided among its participants.

#### Article 5.

##### Other assets (funds).

It shall be prohibited for non-profit organizations to create other assets (funds). Non-profit organizations shall have no right to act as donors or make any expenses other than those relate to production (services).

#### CHAPTER 3.

##### Foundation and Registration of Non-Profit Organizations.

#### Article 6.

##### Foundation of Non-Profit Organizations.

Non-profit organizations may be established by either natural persons or legal entities, by investment of their capital in assets (building, constructions, machinery, etc.).

Non-profit organizations may be established by public offices when permitted by the respective ministry, by local governments - when decided so by the district, city or rural community council. Regulations on establishment of non-profit organizations shall be analogous to those on establishment of the respective form of entrepreneurial activity.

In addition to foundation documents required by the law for the respective form of entrepreneurial activity, founders of non-profit organizations shall sign a special declaration stating that they shall not gain any profit and that the income exceeding expenses shall be transferred to the reserve fund.

#### Article 7.

##### Registration of Non-Profit Organizations

Non-profit organizations shall be registered in accordance with procedure set by the Republic of Latvia Law "On Enterprise Registry of the Republic of Latvia" dated November 20, 1990, (Latvijas Republikas Augstākās Padomes un Valdisbas Zinotājs '90, No 49). It shall be compulsory to include the phrase "non-profit organization" in the application for registration and in the name of such organization.

Any non-profit organization shall achieve the rights of a legal entity starting with the day such organization is registered with the Enterprise Registry of the Republic of Latvia.

Non-profit organizations shall be registered in a separate list only by the chief notary of the Enterprise Registry of the Republic of Latvia, and the documents shall be reviewed and the registration filled by a notary specially trained for such job.

When submitting application for registration of any non-profit organization, in addition to documents referred to in the Republic of Latvia Law "On the Enterprise Registry of the Republic of Latvia" and the Republic of Latvia Law "On Entrepreneurial Activity" dated September 26, 1990 (Latvijas Republikas Augstākās Padomes Zinotājs '90 no 42), the founders' declaration filled in accordance with provisions of Article 6, shall be presented. Article 8. Articles of Incorporation of Non-Profit Organizations. Non-profit organizations shall operate in accordance with their Article of Incorporation. Such Articles shall be approved by the meeting of founders of such organization. Articles of Incorporation of non-profit organizations shall contain the following:

- name, address and legal status of such organization;
- area of activity and purposes of such organization;
- provisions on management of such organization and on control over its operation:
- amount in the statutory fund and sources of financing;
- provisions on acceptance of participants;
- remuneration procedure;
- procedure on withdrawal of investment shares;
- procedure on use of the reserve fund;
- reorganization and liquidation procedure;
- other provisions related to the specific features of such organization.

#### Chapter IV. Assets of Non-Profit Organizations and Rights of Participants.

##### Article 9. Property of Non-Profit Organizations.

Property of any non-profit organization may be used only for purposes declared in its Articles of Incorporation.

Non-profit organizations shall be liable for their undertakings with all property owned by them.

##### Article 10. Rights of Participants of Non-Profit Organizations.

Participants of non-profit organizations shall have the right to take part in management of such

organizations. Participants of non-profit organizations may withdraw their investment shares not earlier than in two years after having entered such organization.

General procedure on withdrawal of investment shares shall be regulated by the non-profit organization Articles of Incorporation.

#### Chapter V. Operation of Non-Profit Organizations.

Article 11. Tax Imposition. Non-profit organizations shall pay taxes in accordance with procedure set by the Republic of Latvia legislation acts.

##### Article 12.

Control Over Operation of Non-profit Organizations. Enterprise Registry of the Republic of Latvia shall submit the list of non-profit organizations to the chief inspector of the State Finance Inspection once each quarter for establishment of the necessary control system.

Audit of financial and operational activities of non-profit organizations may be initiated by the State Control, the State Finance Inspection, Enterprise Registry of the Republic of Latvia of local governments in accordance with the procedure set forth by legislation acts in any event at least once in every two years.

In the event the Articles of Incorporation are violated by any non-profit organization or any profit is gained, within one month such non-profit organization shall be re-registered as an enterprise or an entrepreneurial company and the respective laws shall be applicable to such organization. In any event of exclusion of any non-profit organization from the registry of non-profit organizations and in any event of loss of such status, such announcement shall be published in the newspaper "Diena" by such organization within the same month.

##### Article 13.

#### Management of Non-Profit Organizations.

Management of non-profit organizations shall be regulated by their Articles of Incorporations.

##### Article 14.

#### Reorganization and Liquidation of Non-Profit Organizations.

Reorganization and liquidation procedure of any non-profit organization shall be regulated by the Articles of Incorporation of such organization and

by Laws of the Republic of Latvia. Decision on reorganization or liquidation shall be made by the owner of such organization or by the meeting of participants who set such procedure and decide on whose expense the documents of such non-profit organization shall be arranged and kept. <\*>

In the event any non-profit organization is liquidated or reorganized into a profit enterprise, the reserve fund and any property purchased for the assets accumulated in such fund shall be passed over to the State; in the event any assets of any local government are invested in such non-profit organization such property shall be passed over to such local government; such property shall be used for charity. [<\*> - amended in accordance with the Republic of Latvia Law of 05.11.93]

#### Chapter VI.

#### Responsibility in the Event of Violation of This Law.

Article 15. Responsibility of Non-Profit Organizations in the Event of Violation of This Law.

Any income gained in the result of activity of non-profit organization that is exceeding its expenses and that is obtained by its participants through violation of this Law, shall be transferred to the State revenues. A. Gorbunovs, Chair, Supreme Council of the Republic of Latvia I. Daudiss, Secretary, Supreme Council of the Republic of Latvia.

Amendments to the Law on Non-Profit Organizations (17.12.1991. Amended by the Law of 05.11.1993.)

Article 2, Paragraph 2 The economic activities of non-profit organization shall be conducted in accordance with the Law on Public Organizations.

Article 5. Other assets (funds) It shall be prohibited for a non-profit organization to create others assets (funds). The stock exchange may establish a fund of guarantees for transactions in negotiable securities from the payments made by the participants of the stock exchange with the framework of its Charter and in accordance with the law on Securities. A non-profit organization shall have the right to made donations for charity as well as other donations and to incur expenses with the purpose of promoting the activities and achieving the aims prescribed by the Articles of Incorporation of the said non-profit organization. [<\*> - according to the law of

August 24, 1995, effective as of Septembers 27, 1995].

#### Article 6.

Foundation of a Non-profit organization A non-profit organization may be established by natural and legal persons by investing their capital in the assets (building, constructions, machinery etc.) or in cash.

#### 7.4. Law on NGO

#### 7.5. Law on Other Legal Forms

#### 7.6. Other Laws

*(a) Law on the Annual Accounts of Undertakings*

#### Terminology used in this law

The management is the administrative body of an undertaking entitled to take decisions in relation to the operations of the undertaking. In regard to an individual undertaking, the management shall be considered to be the owner or a person authorised by the owner.

A group is an aggregate of undertakings which includes a parent undertaking of the group and its subsidiary undertakings. If one or more natural persons own separate individual undertakings, they do not form a group.

Related undertakings are undertakings which, in relation to an undertaking included in a group and concerning which annual accounts have been prepared, are subsidiary undertakings of the group or the parent undertaking of the group, or other subsidiary undertakings of this group, or subsidiary undertakings of the subsidiary undertakings of this group.

A cash flow statement is a non-excludable part of annual accounts, which reflects the flow of cash and its equivalents during the accounting period and classifies it as cash flow from basic operations, investment operations and financial operations.

An associated undertaking is such undertaking as is under the significant influence of another undertaking, which is ensured with not less than 20, but not more than 50 per cent of the stockholders' or shareholders' voting rights in this undertaking.

A parent undertaking of a group is such undertaking as directly or indirectly (with the

participation of one or more subsidiary undertakings of the group) has obtained influence over another undertaking – a subsidiary undertaking of the group in accordance with the provisions of Sections 4 and 5 of the Law on Consolidated Annual Accounts.

A subsidiary undertaking of a group is such undertaking as is under the influence of the parent undertaking of the group in accordance with the provisions of Sections 4 and 5 of the Law on Consolidated Annual Accounts.

The statement of changes in own capital is a component of the whole financial report, which provides data on the own capital of an undertaking and changes in the amounts of its components, under the influence of specific economic transactions during the accounting period, as well as on total net income or loss during this period, including amounts included or written off directly from own capital.

The financial report is a unified whole which consists of a balance sheet, a profit or loss account, a cash flow statement, a statement of changes in own capital and an annex.

[6 November 1996; 16 December 1999; 22 March 2000]

## Chapter 1

### General Provisions

#### Section 1.

(1) This Law applies to all undertakings, companies, and non-profit-making organisations (hereinafter - undertakings) registered in the Enterprise Register of the Republic of Latvia irrespective of their form of entrepreneurial activity and form of ownership.

(2) This law does not apply to farms and fishing undertakings and individual undertakings, whose annual income from economic activities does not exceed 45,000 lati at the beginning of the accounting year.

(3) This law does not apply to credit institutions, insurance companies and private pension funds.

(4) [6 November 1996]

[23 February 1995; 6 November 1996; 10 September 1998; 16 December 1999]

#### Section 2.

The unit of currency of the Republic of Latvia shall be used as the unit of currency in annual accounts. Annual accounts shall be prepared in Latvian.

#### Section 3.

(1) The accounting year shall cover 12 months and usually coincide with the calendar year. An undertaking (company) may have a different beginning and end of the accounting year if so determined by the articles of association of the respective undertaking (company) or by a partnership agreement. Undertakings belonging to one group shall have identical accounting years.

(2) The accounting year may be changed. A change of the accounting year shall be justified and appropriate explanations shall be provided in the notes to the annual accounts.

(3) The first accounting year of a newly established undertaking may cover a shorter or a longer period of time, but not longer than 18 months.

(4) If the beginning of the accounting year of an existing undertaking is changed, the accounting year may not exceed 12 months.

(5) The accounting year in which an undertaking terminates its activities, as well as an accounting year the beginning of which is changed, may be shorter than 12 months.

[23 February 1995; 6 November 1996]

#### Section 4.

(1) The annual accounts, as a unified whole, shall consist of a financial report and the report of the undertaking management regarding the development of the undertaking during the accounting year.

(2) The annual accounts shall be prepared in accordance with the Law on Accounting, this Law and other regulatory enactments.

(3) The annual accounts shall provide a true and fair view of the assets and liabilities of the undertaking, its financial state, profit or loss and cash flow.

(4) If the information included in annual accounts prepared in accordance with this Law does not provide a sufficiently true and fair view of the undertaking, additional information shall be provided in the annex to the annual accounts.

(5) In exceptional cases, if the application of any of the provisions included in Chapters 3, 4 and 5 of this Law contradicts the requirement specified in Paragraph three of this Section regarding the submission of a true and fair view, there may be derogation from the relevant provisions. Each such derogation shall be explained in the notes to the annual accounts, indicating its essence, reason and influence on the assets, liabilities, financial state and profit or loss of the undertaking, and the method chosen shall also be explained.

[6 November 1996; 16 December 1999; 22 March 2001]

#### Section 5.

1) The balance sheet shall be prepared and the profit or loss shall be calculated in accordance with the forms provided in Sections 10-14 of this Law. The undertaking may choose one of these forms for preparing a profit or loss account.

(2) The form of the profit or loss account may not be changed unless one and the same form has been used for the accounts for at least two years in succession.

(3) [6 November 1996]

(4) The requirements of Paragraph two of this Section may be not applied in exceptional cases, if the reason for the change of the profit or loss account form is the acquisition of a subsidiary undertaking of a group and the requirement by the parent undertaking of the group that the same form be utilised in related undertakings.

(5) A change in the profit or loss account form shall be referred to in the annex and the reason for the change explained.

[6 November 1996; 16 December 1999]

#### Section 6.

(1) The items set out in Sections 10-14 of this Law shall each be separately presented in the prescribed sequence. The items designated by Arabic numerals may be subdivided if the special characteristics of the undertaking so require. Additionally, new items designated by such numerals may be added if their content is not included in any of the existing items.

(2) The items designated by Arabic numerals may be combined if their amounts are insignificant or if such combining provides greater clarity.

Combined items shall be set out in detail in the notes.

#### Section 7.

(1) The annual accounts shall show the respective figures from the previous annual accounts for each item of the balance sheet, the profit or loss account, the cash flow statement and the statement of changes in own capital, and for the supplements referred to in Section 6, Paragraph two of this Law. If these figures are unable to be reconciled, an explanation thereof shall be provided in the annex to the annual accounts.

(2) The balance sheet, profit or loss account, cash flow statement and statement of changes in own capital items which have no figures (amounts), shall be set out only if there is a corresponding item with an amount in the preceding annual accounts.

[16 December 1999]

#### Section 8.

Mutual set-off of asset and liability items or income and expense items shall not be allowed.

#### Section 9.

(1) If an asset or a liability relates to several items of the form, its relation to other items shall be reflected either below the item in which it is included, or in the notes to the accounts, if such reflection is necessary for understanding the annual accounts.

(2) The undertaking's own stocks or shares, as well as participation in the capital of another undertaking shall be set out only under the items intended for this purpose.

[16 December 1999]

#### Chapter 2

Layout of the Balance Sheet Preparation and Profit or Loss Account

#### Section 10.

Layout (chart) of the Balance Sheet Accounts

Assets

Long term assets

I. Intangible Assets

1. Research and undertaking development costs
2. Concessions, patents, licenses, trade marks and similar rights
3. Other intangible assets
4. Goodwill
5. Payments on account for intangible assets

II. Fixed assets:

1. Land, buildings and structures, long-term plantings
2. Long-term investments in rented fixed assets
3. Equipment and machinery
4. Other fixed assets and inventory
5. Payments on account for fixed assets and fixed assets in the course of construction
6. Payments on account for fixed assets

III. Long-term financial assets:

1. Participation in capital of affiliated undertakings
2. Loans to affiliated undertakings
3. Participation in associated undertakings
4. Loans to associated undertakings
5. Other securities and investments
6. Other loans
7. Own stocks and shares
8. Loans to co-owners of the undertaking and management

Current Assets

I. Inventories (Stocks)

1. Raw materials, basic materials and consumables
2. Work in progress
3. Finished products and goods for resale
4. Work in progress for third parties
5. Advance payments for goods
6. Draft animals and productive animals

II. Debtors:

1. Trade debtors
2. Amounts owed by affiliated undertakings
3. Amounts owed by associated undertakings
4. Other debtors
5. Company capital not paid up
6. Short-term loans to co-owners of undertakings and management
7. Prepaid expenses
8. Accrued income

III. Securities and participation in capital

1. Participation in capital of related undertakings
2. Own stocks and shares
3. Other securities and participation in capital

IV. Cash

Liabilities

Own capital:

1. Stock or share capital (share capital)
2. Stock (share) emission premium
3. Long-term investment revaluation reserve



<p>4. Reserves:</p> <p>a) reserves determined by law</p> <p>b) reserves for own stocks or shares</p> <p>c) reserves determined by the company articles of association</p> <p>d) other reserves</p> <p>5. Retained earnings:</p> <p>a) retained earnings brought forward from previous financial years</p> <p>b) retained earnings of the current financial year</p> <p>Provisions:</p> <p>1. Provisions for pensions and similar liabilities</p> <p>2. Provisions for contingent taxes</p> <p>3. Other provisions</p> <p>Creditors - Long-term Obligations:</p> <p>1. Debenture loans</p> <p>2. Convertible loans</p> <p>3. Loans from credit institutions</p> <p>4. Other loans</p> <p>5. Prepayments received from purchasers</p> <p>6. Accounts payable to suppliers and contractors</p> <p>7. Bills of exchange payable</p> <p>8. Amounts owed to related undertakings</p> <p>9. Amounts owed to associated undertakings</p> <p>10. Taxes and social insurance payments</p> <p>11. Other creditors</p> <p>12. Deferred income</p> <p>13. Dividends payable for the financial year</p> <p>14. Unpaid dividends for previous years</p>	<p>Creditors - Short-term Obligations</p> <p>1. Debenture loans</p> <p>2. Convertible loans</p> <p>3. Loans from credit institutions</p> <p>4. Other loans</p> <p>5. Prepayments received from purchasers</p> <p>6. Accounts payable to suppliers and contractors</p> <p>7. Bills of exchange payable</p> <p>8. Amounts owed to related undertakings</p> <p>9. Amounts owed to associated undertakings</p> <p>10. Taxes and social insurance payments</p> <p>11. Other creditors</p> <p>12. Deferred income</p> <p>13. Dividends for the accounting year</p> <p>14. Unpaid dividends for previous years</p> <p>15. Accrued obligations</p> <p>[6 November 1996; 16 December 1999; 22 March 2001]</p> <p>Section 11.</p> <p>Profit or Loss Account Form in Vertical Format (classified by method of payment for the period)</p> <p>1. Net turnover</p> <p>2. Changes in stocks of finished goods and work in progress</p> <p>3. Work performed for own purposes and capitalised</p> <p>4. Other income from economic activities of the undertaking</p> <p>5. Cost of materials</p> <p>a) costs of raw materials and consumables</p> <p>b) other external costs</p>
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<p>6. Labour costs:</p> <p>a) remuneration for work</p> <p>b) pensions from undertaking funds</p> <p>c) other social insurance costs</p> <p>7. Write-offs and value adjustments:</p> <p>a) depreciation and write off of fixed and intangible assets</p> <p>b) write-off of the value of current assets over and above regular write-offs</p> <p>8. Other costs of economic activity</p> <p>9. Income from participation in capital of group subsidiary undertakings and of associated undertakings</p> <p>10. Income from securities and loans forming long-term investments</p> <p>11. Other income from interest and similar income</p> <p>12. Write-off of the value of long-term financial investments and short-term securities</p> <p>13. Interest payments and similar costs</p> <p>14. Profit or loss before extraordinary items and taxes</p> <p>15. Extraordinary income</p> <p>16. Extraordinary expenses</p> <p>17. Profit or loss before taxes</p> <p>18. Enterprise income tax for the accounting year</p> <p>19. Other taxes</p> <p>20. Profit or loss for the accounting year</p> <p>[6 November 1996; 16 December 1999]</p> <p>Section 12.</p> <p>Profit or Loss Account – Vertical Format</p> <p>(according to period costs method)</p> <p>1. Net turnover</p> <p>2. Production costs of goods sold</p>	<p>3. Gross profit or loss</p> <p>4. Sales costs</p> <p>5. Administrative expenses</p> <p>6. Other income from economic activities of the undertaking</p> <p>7. Other costs of economic activities of the undertaking</p> <p>8. Income from participation in capital of group subsidiary undertakings and of associated undertakings</p> <p>9. Income from securities and loans forming long-term investment</p> <p>10. Other interest income and similar income</p> <p>11. Write-off of the value of long-term financial investments and short-term securities</p> <p>12. Interest payments and similar expenses</p> <p>13. Profit or loss before extraordinary items and taxes</p> <p>14. Extraordinary income</p> <p>15. Extraordinary expenses</p> <p>16. Profit or loss before taxes</p> <p>17. Enterprise income tax for the accounting year</p> <p>18. Other taxes</p> <p>19. Profit or loss for the accounting year</p> <p>[16 December 1999]</p> <p>Section 13.</p> <p>Profit or Loss Account Form in Account Format</p> <p>(classified according to period costs method)</p> <p>Expenses:</p> <p>1. Decrease in the inventory of finished products and work in progress</p> <p>2. Costs of supplies:</p> <p>a) costs of raw materials and consumables</p> <p>b) other external costs</p>
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<p>3. Labour costs:</p> <p>a) remuneration for work</p> <p>b) pensions from undertaking funds</p> <p>c) other social insurance costs</p> <p>4. Write-off of the value of assets:</p> <p>a) depreciation and write-off of fixed assets and intangible assets</p> <p>b) write-off of the value of current assets to the extent that they exceed the amount of normal write-offs</p> <p>5. Other costs of economic activity</p> <p>6. Write-off of value of long-term investments and short-term securities</p> <p>7. Interest payments and similar expenses</p> <p>8. Profit before extraordinary items and taxes</p> <p>9. Extraordinary expenses</p> <p>10. Enterprise income tax for the accounting year</p> <p>11. Other taxes</p> <p>12. Profit for the accounting year</p> <p>Income:</p> <p>1. Net turnover</p> <p>2. Increase in the inventory of finished products and work in progress</p> <p>3. Work performed for own purposes and capitalised</p> <p>4. Other income from economic activities of the undertaking</p> <p>5. Income from participation in capital of group subsidiary undertakings and of associated undertakings</p> <p>6. Income from securities and loans forming long-term investments</p> <p>7. Other interest income and similar income</p> <p>8. Loss before extraordinary items and taxes</p> <p>9. Extraordinary income</p>	<p>10. Loss for the accounting year</p> <p>[6 November 1996; 16 December 1999]</p> <p>Section 14.</p> <p>Profit or Loss Account Form in Account Format</p> <p>(classified according to sales costs method)</p> <p>Expenses:</p> <p>1. Production costs of sold products</p> <p>2. Selling costs</p> <p>3. Administrative costs</p> <p>4. Other costs of economic activity for the undertaking</p> <p>5. Write-off of the value of long-term financial investments and short-term securities</p> <p>6. Interest payments and similar expenses</p> <p>7. Profit before extraordinary items and taxes</p> <p>8. Extraordinary expenses</p> <p>9. Enterprise income tax for the accounting year</p> <p>10. Other taxes</p> <p>11. Profit for the accounting year</p> <p>Income:</p> <p>1. Net turnover</p> <p>2. Other income from economic activities of the undertaking</p> <p>3. Income from participation in capital of group subsidiary undertakings and of associated undertakings</p> <p>4. Income from securities and loans which form long-term investments</p> <p>5. Other interest income and similar income</p> <p>6. Loss before extraordinary items and taxes</p> <p>7. Extraordinary income</p> <p>8. Loss for the accounting year</p>
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[6 November 1996; 16 December 1999]

### Chapter 3

#### Special Provisions Regarding Individual Balance Sheet Items

##### Section 15.

Assets which are intended for long-term use or are invested in a long-term use property are long-term investments. Other assets are current assets.

##### Section 16.

Each item of long-term investments on the balance sheet or in the annex shall include the following information:

- 1) acquisition cost or cost of production in accordance with the balance sheet of the preceding year;
- 2) increases, including improvements during the accounting year
- 3) liquidation value at the commencement of the accounting year
- 4) any transfers from one item to another during the accounting year
- 5) revaluation during the accounting year
- 6) total amount of revaluation before the balance sheet date, including that mentioned in Clause 5
- 7) depreciation and write-offs of value during the accounting year
- 8) adjustments for depreciation and write-offs of value for previous years, including adjustments in depreciation and write-offs of value of liquidated assets and assets withdrawn from use; and
- 9) total depreciation and write-offs of value before the balance sheet date, including as set out in Clauses 7 and 8.

[16 December 1999]

##### Section 17.

(1) Expenses, incurred before the balance sheet date, but relating to future years, shall be set out as prepaid expenses on the asset side. Income, received before the balance sheet date, but relating to the next year or future years, shall be set out as deferred income in the liabilities.

(2) Amounts receivable within one year, and amounts receivable later than within one year, after the balance sheet date, shall be set out separately for each item of obligations of debtors in the balance sheet.

(3) Amounts payable within one year, and amounts payable later than within one year, after the balance sheet date, shall be set out separately for each item of obligations to creditors.

(4) Obligations which are payable within one year after the balance sheet date shall be considered to be short-term creditor obligations. Obligations which are payable later than within one year after the balance sheet date shall be considered to the long-term creditor obligations. The total amounts of short-term and long-term creditor obligations shall also be set out separately.

(5) The content of the costs and income as set out in Paragraph one of this Section shall be explained in the annex.

[6 November 1996; 16 December 1999]

##### Section 18.

Only rights acquired in exchange for valuable consideration may be set out in the investments in intangible assets item "Concessions, patents, licenses, trade marks and similar rights".

[6 November 1996]

##### Section 19.

(1) Reserves are intended to cover specific forms of losses, liabilities or expenses which relate to the accounting year or previous years and which are foreseeable or known with certainty during the preparation of the annual accounts period, but for which the size or the specific date of the creation and covering of the liability is unknown.

(2) Reserves shall not exceed the amount necessary. Detailed information regarding the reserve items established shall be provided in the annex, setting out the basis for establishing each reserve, the amount at the beginning and end of the accounting year and increase and decrease of

the reserve amounts, and explaining the reason and the valuation methods used.

(3) Amounts included in the "Other reserves" item shall be presented in the annex divided according to the type of reserve, and shall provide the information set out in Paragraph two of this Section.

(4) Irrespective of the date of the receipt or issue of the invoice, expenses that are created in the accounting year shall not be attributed to the reserves if the amount of this expense or the date of payment is precisely known during the preparation of the annual accounts period.

[16 December 1999; 22 March 2001]

#### Section 20.

Under the item "Retained earnings for the accounting year", the amount shall be set out which corresponds to the amount set out under the profit or loss item "Profit or loss for the accounting year". The profit distribution or coverage of losses as determined by the general meeting of the shareholders shall be set out in the accounts for the following year, correspondingly decreasing the amount set out at the beginning of the accounting year under the item "Retained earnings for the previous year".

[16 December 1999]

#### Chapter 4

Special Provisions Regarding Individual Items in the Profit or Loss Account

#### Section 21.

Net turnover is income from the basic activities of the undertaking, sale of goods and provision of services, from which trade discounts and other allocated discounts, and value added tax and other taxes directly related to sales, have been subtracted.

[6 November 1996; 22 March 2001]

#### Section 22.

(1) Under the item "Production costs of goods sold" referred to in Sections 12 and 14 of this Law shall be set out the costs of products, goods or

services used to achieve net turnover as the actual cost of their production or acquisition.

(2) There shall be included in the items "Selling costs" and "Administrative costs" referred to in Sections 12 and 14 of this Law, the related personnel costs, material costs and amounts of depreciation and write-off of the value of fixed assets, and other related costs.

(3) There shall be included in the items "Other income from economic activities" and "Other costs for economic activities" the related income from economic activities or costs for economic activities which are not set out under other profit or loss account items and which have occurred as the result of economic activity or are connected with it or result directly from it.

[16 December 1999]

#### Section 23.

(1) Income and expenses, which occur as a result of events or transactions, which are clearly different from the usual activities of an undertaking and which are not expected to be frequently or periodically repeated, shall be set out under the items "Extraordinary income" and "Extraordinary expenses".

(2) Usual activities are any activities which an undertaking performs within its operational activities, and activities which support the operational activities of the undertaking, or have developed in relation to such activities or are a direct result of such.

(3) The amounts and types of extraordinary income and expenses shall be explained in the annex, except in cases where the amounts are insignificant

[16 December 1999]

#### Section 24.

(1) Undertakings which, as of the balance sheet date, do not exceed the limits of the two criteria mentioned in Paragraph two of this Section, may establish an item "Gross profit" or "Gross loss" in the required format on the profit or loss account form by combining:

in Section 11 - items 1 to 5

in Section 12 - items 1 to 3 and 6

in Section 13 - expense items 1 and 2, and income items 1 to 4

in Section 14 - expense item 1 and income items 1 and 2.

(2) The criteria mentioned in Paragraph one shall be as follows:

1) balance sheet total - 1,000,000 LVL

2) net turnover - 2,400,000 LVL

3) average number of employees for the accounting year - 250

(3) The balance sheet total mentioned in Paragraph two of this Section is the total sum of the asset items set out in Section 10 of this Law. The average number of employees shall be calculated by adding up the working employees on the last date of each month of the accounting year and dividing the sum by the number of months in the accounting period.

(4) The undertaking shall no longer be entitled to the privileges mentioned in Paragraph one of this Section, if it exceeds two of the limits mentioned in Paragraph 2, items 1-3 of this Section, but only if this occurs for two years in succession.

[6 November 1996; 16 December 1999; 22 March 2001]

## Chapter 5

### Valuation Rules

#### Section 25.

(1) The items of annual accounts shall be evaluated according to the following accounting principles:

1) it shall be assumed that the undertaking will continue as a going concern;

2) the evaluation methods utilised shall be the same as utilised in the previous accounting year;

3) the evaluation shall be carried out with appropriate care in compliance with the following conditions:

a) only the profit earned before the balance sheet date shall be included in the accounts;

b) all foreseeable amounts at risk and losses that have occurred during the accounting year or previous years, even if they have become known

during the time period between the balance sheet date and the annual accounts preparation date, shall be taken into account;

c) all decrease in value and depreciation amounts shall be calculated and taken into account regardless of whether the accounting year has closed with a profit or a loss.

4) income and expenses related to the accounting year shall be included in the profit or loss account regardless of the payment date or the date of receipt or issue of the invoice. Expenses shall accord with income for the respective accounting periods.

5) the component parts of the asset and liability items shall be evaluated separately;

6) the opening balance sheet of each accounting year shall accord with the closing balance sheet of the previous accounting year;

7) all items that have a significant influence on the evaluation or taking of decisions by the users of the annual accounts shall be set out. Insignificant items, which do not significantly alter the annual accounts, but make it excessively detailed, may be not set out. In such case, combined items shall be set out in the balance sheet, the profit or loss account, the cash flow statement and the statement of changes in own capital, and details of such shall be provided in the annex; and

8) economic activities of an undertaking shall be recorded in the books and reflected in the annual accounts, taking into account their economic content and nature, not just their legal form.

(2) In exceptional cases, there may be derogation from the accounting principles mentioned in Paragraph one of this Section. Each such derogation shall be explained in the annex, indicating how it will affect the assets and liabilities, financial position and financial results of the undertaking.

[6 November 1996; 16 December 1999]

#### Section 26.

(1) Long-term investments shall be evaluated in accordance with their initial value, that is, the cost of their acquisition or actual cost of production.

(2) The acquisition cost shall be calculated by adding the expenses related to the acquired object until the time when it is put into operation to the acquisition price. The acquisition price is the amount of money or its equivalent paid or the

true value of consideration given to acquire the asset at the time when the asset was acquired or made. The true value is the amount for which the asset could be exchanged between well-informed, mutually self-interested and financially unrelated parties.

(3) The actual cost of production shall be calculated by adding up the cost of raw materials and materials, and other expenditures directly related to the production of the object. The actual cost of production may also include parts of costs which are indirectly related to the production of the object if these costs are applicable to the same time period.

(4) The interest on loans received for the formation of fixed assets in respect of the period up to the time the object is put into operation may be included in the actual cost of the newly created object. In such case, information regarding the amount of interest included in the composition of fixed assets shall be set out in the annex.

[16 November 1999; 22 March 2001]

#### Section 27.

The initial value of long-term investments as have a limited period of usefulness, shall be gradually written off (depreciated) over the expected period of usefulness. The initial value of land parcels shall not be subject to write-off (depreciation).

[6 November 1996]

#### Section 28.

(1) If, due to lasting circumstances, the value of the object of a long-term investment is lower than the value calculated according to the provisions of Sections 26 and 27 of this Law, the respective object shall be valued according to the lower value.

(2) Decrease in value may also be applied to long-term financial investments, evaluating them in accordance with the lower value as of the balance sheet date.

(3) Valuation of the object in accordance with the conditions of Paragraphs one and two of this Section may be stopped if there is no longer a reason for decrease in value.

(4) Decreases in value in accordance with the conditions of Paragraphs one and two of this Section, and changes in value in accordance with

the conditions of Paragraph three of this Section, shall be set out under a separate balance sheet item in the annex of the annual accounts with sufficient justification and detail.

[16 December 1999]

#### Section 29.

(1) Fixed assets and long-term financial investments, the value of which is significantly higher than the actual cost of their acquisition or production or their valuation on the balance sheet of the previous year, may nevertheless be valued in accordance with their higher value, if it may be assumed that the value increase is long-term. Depreciation of fixed assets and the decrease in value of investments shall be recalculated every year in accordance with the value recorded for the respective year and shall be recorded in the same amounts in the profit or loss account.

(2) The increase in value resulting from such revaluation shall be recorded under the item "Revaluation reserve for long-term investments" in the section "Own capital".

(3) The revaluation reserve for long-term investments shall be reduced if the re-valued object has been liquidated or is no longer utilised, or if the increase in value is no longer justified.

(4) The revaluation reserve for long-term investments shall only be decreased in the cases set out in Paragraph three of this Section. The revaluation reserve for long-term investments shall not be allocated to dividends, used to cover losses, transferred to capital or other reserves, or used in for social purposes, for charity or for other purposes.

(5) [16 December 1999]

(6) When Paragraph one of this Section is applied, there shall be set out in the annex the justification for the revaluation of each re-valued asset item of the balance sheet, as well as differences in value where the value determined in accordance with the procedures provided for in Paragraph one of this Section is compared with the value determined in accordance with Sections 26, 27 and 28 of this Law.

[6 November 1996; 16 December 1999]

#### Section 30.

(1) The valuation of current assets shall be based on actual acquisition or production costs.

(2) The actual cost of acquisition shall be calculated by adding expenses related to purchase to the purchase price.

(3) The actual cost of production shall be calculated by adding up the usage of raw materials, basic materials and consumables, in accordance with the costs of acquisition and additional costs directly related to production of the product being valued. There may be added to production costs, the cost of relevant parts not directly related with the production of the product, if these costs are applicable to the same period. Sales costs shall not be included in the actual cost of production.

#### Section 31.

(1) The actual cost of acquisition or production of inventory may be determined as the weighted average price or by using the "First in – first out" method (FIFO).

(2) If the value established by using the methods set out in Paragraph one of this Section differs significantly from the market price on the balance sheet date, the difference for each inventory item shall be explained in the annex.

[16 December 1999]

#### Section 32.

(1) The valuation applied to current assets shall be such as to value them on the balance sheet date in accordance with the lowest market price or actual cost.

(2) Inventory balances shall be valued in accordance with either the actual cost of production or acquisition, or the lowest market price on the balance sheet date; moreover, it is mandatory that the lowest valuation price be used. The valuation of inventory balances shall not be higher than the market price.

[16 December 1999]

#### Section 33.

(1) Securities which are included in current assets and are subject to rate fluctuations at a recognised stock exchange, may be valued at the stock exchange rate on the balance sheet date, regardless of the conditions of Section 30 of this Law.

(2) The application of Section 32 and Paragraph one of this Section shall be reflected in the annex.

[16 December 1999]

#### Section 34.

Expenses related to the establishing of the undertaking and the increasing of the capital of the undertaking shall be reflected on the assets side of the balance sheet, but they shall be written off as expenses over a three-year period.

#### Section 35.

(1) Expenses related to the creation of the investments in intangible assets mentioned in items 1-4 of the division "I. Investments in Intangible Assets" of Section 10 of this Law shall be systematically written off over the period of useful life.

(2) Justification for the composition of acquired investments in intangible assets shall be documented, and expenditures for their acquisition shall not be written off as expenses immediately after acquisition.

[6 November 1996]

#### Section 36.

(1) If the repayable amount of a loan is higher than the amount received, the difference shall be set out separately on the asset side of the balance sheet or in the annex.

(2) The amount of this difference shall gradually be written off as expenses, reasonably allocated by year. It shall be completely written off by not later than the debt repayment date.

#### Section 37.

(1) Debtor and creditor balances shall be set out in the balance sheet in accordance with the corroborating documents and entries in accounting registers, and they shall accord to the accounting data of the debtors and creditors themselves on the balance sheet date. In case of disputes, balances shall be set out in the balance sheet in accordance with the accounting data. For debtor debts, repayment of which is dubious, bad debt reserves shall be set up in the amount of the



doubtful amounts. The debtor debt balances shall be set out in the balance sheet at their net value, which shall be calculated by subtracting the balances of the established bad debt reserves, from the accounting value of the debts according to the accounting data. Justification for the amount of the established bad debt reserves shall be provided in the annex of the annual accounts. If a debt is considered unrecoverable (lost without hope of recovery), it shall be respectively written off from reserves established for bad debts or shall be included in losses.

(2) [16 December 1999]

(3) The own capital of an undertaking shall be set out in the balance sheet by components.

(4) All debts whose payment is due more than a year after the end of the respective accounting year, shall be considered long-term debts. All other debts shall be considered short-term debts.

(5) For short-term debts the following shall be set out under separate items:

1) dividends or amounts allocated to the owner or for division among the owners of the undertaking;

2) amounts that are considered obligations of the undertaking regarding the next accounting year;

3) any obligations towards employees in regard to wage payments; and

4) any debts regarding taxes and fees due to State and local government institutions.

[6 November 1996; 16 December 1999]

#### Section 38.

If the undertaking has sold stock or shares for a larger amount than the nominal value, the difference shall be set out under "Own capital" and "Stock (share) emission premium" items on the liability side of the balance sheet. If stock or shares have been sold for an amount below the nominal value, the difference shall be set out under the same item as a negative number.

#### Section 39.

(1) In addition to the provisions for evaluation provided for in Sections 26, 28 and 29 of this Law, a parent undertaking of a group, if the derogations set out in Sections 8 and 9 of the Law On Consolidated Annual Accounts are not

applicable to it, shall, in its annual accounts, evaluate its participation in the share capital of a subsidiary undertaking of the group, and participation in the share capital of an associated undertaking, in accordance with the procedures provided for in Paragraphs two, three, four, five, six and seven of this Section.

(2) Participation in the share capital of a subsidiary undertaking of the group and participation in the share capital of an associated undertaking shall initially be set out as costs of acquisition under the respective balance sheet item "Participation in capital of related undertakings" or "Participation in capital of associated undertakings".

(3) At the end of each accounting year the amounts set out under the item "Participation in capital of related undertakings" or under the item "Participation in capital of associated undertakings" shall be increased or decreased in accordance with changes in the value of participatory shares in the own capital of the subsidiary undertaking of the group or the associated undertaking during the accounting year. Annual account information approved by a general meeting of owners of the subsidiary undertaking of the group or the associated undertaking respectively, shall be used for this purpose. The increase or decrease of the value of a participatory share in the own capital of a subsidiary undertaking of a group or an associated undertaking for the accounting year shall be set out in the profit or loss account under one of the following items:

1) under the item "Income from participation in the capital of subsidiary undertakings of a group and associated undertakings" if it is a share of the profit of a subsidiary undertaking of a group or an associated undertaking, and

2) under the item "Decrease in the value of long-term financial investments and securities" if it is a share of the losses of a subsidiary undertaking of a group or an associated undertaking.

(4) The amount set out under the item "Participation in the capital of related undertakings" or under the item "Participation in the capital of associated undertakings" shall also be reduced at the end of each accounting year by the calculated dividend amount related to such participation. The balance under the balance sheet item "Participation in the capital of related undertakings" shall be reduced and the balance under the balance sheet item "Debts of related undertakings" shall be increased by the amount of dividends calculated for a subsidiary undertaking of the group. The balance under the balance sheet item "Participation in the capital of associated undertakings" shall be reduced and the balance

under the balance sheet item "Debts of associated undertakings" shall be increased by the amount of dividends calculated for an associated undertaking.

(5) If the increase of the participatory share value for the accounting year set out under the profit or loss account item "Income from participation in the capital of subsidiary undertakings of a group or associated undertakings" exceeds the amount of dividends calculated, the difference shall be transferred to a reserve, which may not be allocated to dividends, used to cover losses, transferred to capital or other reserves, or used for social purposes, for charity or for any other purposes.

(6) In determining the changes in value of participatory capital shares in own capital of a subsidiary undertaking of a group or an associated undertaking for the accounting year, the income and expenditures which have occurred as the result of mutual transactions shall be excluded, applying the provision of Section 21, Paragraph one of the Law On Consolidated Annual Accounts.

(7) In special cases, derogation from the provisions of Paragraph six of this Section may be allowed, if the income and expenditure amounts which have occurred as the result of mutual transactions are so negligible that even without excluding them it is possible to provide a true and fair view of the changes in the value of participatory capital shares regarding a subsidiary undertaking of a group or an associated undertaking for the accounting year.

(8) This Section is not applicable if the information regarding the own capital, profit or loss of a subsidiary undertaking of a group or an associated undertaking is insignificant in regard to fulfilling the requirements of Section 4, Paragraph three of this Law.

[6 November 1996; 16 December 1999]

## Chapter 6

### Rules Regarding the Content of the Annex

#### Section 40.

The explanations, comparisons, details and justification required in Sections 5, 6, 7, 9, 16, 17, 19, 23, 25, 26, 28, 29, 31, 36 and 37 of this Law, and the information prescribed by Sections 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 and 54 of this Law shall be set out in numbers, text and tables in the annex to the annual accounts.

[6 November 1996; 16 December 1999]

#### Section 41.

Information shall be provided in the annex regarding the methods used for the valuation of different items in the annual accounts, and the methods for calculation of depreciation, decrease in value and write-off of the value of long-term investments. If any amounts in the annual accounts have been converted from a foreign currency into units of currency of the Republic of Latvia, justification for such conversion shall be provided.

#### Section 42.

(1) There shall be set out in the annex, in regard to the subsidiary undertakings of a group, and in regard to associated undertakings, names and legal addresses, the participatory share of the undertaking in the share capital of these undertakings as a percentage, and the amount of own capital and of profit or loss in accordance with the last approved annual accounts of each such undertaking. This information may be not provided if it is insignificant for fulfilling the requirements set out in Section 4, Paragraph two of this Law.

(2) Information required by Paragraph one of this Section may be not provided if it could seriously harm the respective undertaking. Not providing such information for this reason shall be mentioned in the annex.

(3) The amount of own capital and profit or loss of an undertaking mentioned in Paragraph one of this Section may be not presented if the respective undertaking does not publish its annual accounts and if the participatory share in it is less than 50 per cent.

[16 December 1999]

#### Section 43.

If the capital of an undertaking consists of several types of stock or shares, the number and nominal value of each type of stock or shares shall be set out in the accounts. Stock companies shall always set out the number of stock and their nominal value.

#### Section 44.

If an undertaking has taken a loan which may be converted into stock, the amount payable for any such loan, the exchange rate and periods pursuant to which the loan may be converted into capital of the undertaking, shall be disclosed. If a loan has been obtained against the security of bonds or other debt documents, with a right to receive interest, the amount payable on any such loan and the stipulated interest rate shall be disclosed.

Section 45.

(1) Each debt item in the balance sheet shall provide information about the part payable more than five years after the balance sheet date.

(2) If the assets of an undertaking have been pledged or encumbered by some other loan security, such shall be set out together with the information regarding the terms of the pledge and any other conditions by way of guarantee to secure repayment of the loan, and the balance sheet value of the pledged property. The total encumbrances regarding subsidiary undertakings and total encumbrances regarding other undertakings of the group shall be set out separately in the annex.

(3) The total amount of old-age pensions, warranties and guarantees, discounted bills of exchange and other financial liabilities not reflected in the balance sheet shall be set out. If an undertaking has entered into lease or rent agreements which are significant for its operations, the obligations provided for under these agreements shall be specially mentioned. Obligations to the parent undertaking and subsidiary undertakings shall be set out separately.

(4) Amounts of loans, pledges or guarantees issued to the owners, board, council and management members of an undertaking or of its parent undertaking shall be set out separately for each category together with information regarding the interest rate, the most important terms and amounts payable.

(5) Amounts of loans and pledges, and warranties or guarantees issued or given to shareholders of the undertaking, except for the parent undertaking and shareholders of the parent undertaking, shall be set out separately, setting out the amounts repayable.

[6 November 1996; 16 December 1999]

Section 46.

If the cadastral value of immovable property of the undertaking has been determined, it shall be set out in the annex.

[16 December 1999]

Section 47.

If part of the profit expected for work which has not been completed by the end of the accounting year is included in the item "Work in progress", it shall be set out together with the evaluation methods utilised.

Section 48.

(1) The net turnover set out in the profit or loss accounts shall be presented in the annex, allocated according to forms of basic activity and geographical markets, if the forms of basic activity (selling of products and provision of services) and geographical markets differ significantly.

(2) The provisions of this Section are not applicable to undertakings which may use the profit or loss account form in accordance with the conditions of Section 24, Paragraph one of this Law. These conditions may be not fulfilled by other undertakings, where the interests of the undertakings mentioned are seriously harmed, but in such case that shall be set out in the annex.

[6 November 1996; 16 December 1999]

Section 49.

(1) Information shall be provided in the annex regarding the amounts of taxes and fees paid in the accounting year, allocated according to types of taxes and fees and tax relief received and abatements granted - for each tax separately indicating the documents which confirm the rights to such relief and abatements.

(2) The amounts of tax and fee obligations, the late charges calculated, penalty payments and other amounts payable or overpaid to the State budget or local government budgets, included in accounts payable or accounts receivable, appropriately reconciling such amounts with the tax administration, shall be set out in detail according to types of taxes and fees.

(3) The amount of the Enterprise income tax calculated for the accounting year and referable to

the difference between extraordinary income and expenses shall be set out separately.

[6 November 1996; 16 December 1999]

Section 50.

(1) Information shall be provided regarding the average number of persons employed during the accounting year. Personnel costs shall be detailed as required by Section 11, item 6 and Section 13, expense item 3 of this Law.

(2) Salaries calculated for members of the council, board and management for performance of their functions, and the total income shall be set out allocated according to separate groups of positions. The same shall apply to the social insurance payments for these persons. Board member bonuses shall be set out separately. The remuneration (except salaries) received by council and board members shall be set out separately.

[6 November 1996]

Section 51.

(1) The following information shall be provided regarding the undertaking's aggregate own stock or shares:

1) the number of stocks or shares and the total amount of their nominal value, and the ratio of this total amount in the capital of the undertaking;

2) the number of stocks or shares repurchased or sold during the accounting year, their nominal value, their percentage ratio in the capital of the undertaking, and the total repurchasing or selling price;

3) the reason for acquiring own stock or shares of the undertaking in the accounting year.

(2) The information mentioned in Clause 1 of this Section shall be set out separately for those stocks or shares which have been acquired as property and those which have been acquired by way of pledge.

Section 53. [16 December 1999]

Section 54.

(1) Undertakings, which on the balance sheet date do not exceed two of the criteria of Paragraph two of this Section, may, in their current year calculations, not provide the information mentioned in Section 44; Section 45, Paragraphs one and two; Section 46; Section 49, Paragraphs one and three; and Section 52 of this Law. However, the part of the debt of the undertaking which is repayable more than five years after the balance sheet date, and the total amount of mortgages of the undertaking, shall be set out.

(2) The criteria mentioned in Paragraph one of this Section are as follows:

1) balance sheet total - 100,000 lati

2) net turnover - 200,000 lati

3) average number of employees in the accounting year - 25.

(3) [16 December 1999]

(4) The balance sheet total in accordance with the requirements of Paragraph two of this Section shall be formed by the total amount of all asset items mentioned in Section 10 of this Law. The average number of employees shall be calculated by adding up the number of working employees of the undertaking on the last date of each month of the accounting year and dividing the amount by the number of months in the accounting year.

(5) If on the balance sheet date, the undertaking exceeds or ceases to exceed two of the criteria mentioned in Paragraph two of this Section, this shall affect the application of the conditions of Paragraph one of this Section only if it occurs for two accounting years in succession.

(6) Owners of individual undertakings or members of partnerships with unlimited liability shall set out all other assets and obligations not related to such undertaking, except for movable property which is not used by the undertaking, in the annex.

[6 November 1996; 16 December 1999; 22 March 2001]

Chapter 7

Management Report

[16 December 1999]

Section 55.

(1) The management report shall include information regarding the circumstances which

are not reflected in the balance sheet, the profit or loss account and the annex, but which are significant for evaluation of the assets and liabilities of the undertaking, its financial position and financial results for the accounting year, except in cases where, due to special circumstances, such information may be harmful to the undertaking.

(2) The management report shall provide information about:

1) any meaningful events since the end of the accounting year;

2) future development of the undertaking;

3) research and development activity, if such exist;

4) branches and representative offices of the undertaking in foreign states.

(3) The management report shall provide proposals regarding the use of the profit of the undertaking or covering of its losses.

(4) The management report of the parent undertaking shall include information about the joint indicators of the group in accordance with Paragraphs one and two of this Section.

(5) If the management is of the opinion that the undertaking cannot continue operation of the undertaking without such special preconditions as writing off of debt or additional capital investment, a detailed explanation of such shall be provided in the management report.

(6) Undertakings, the shares of which are quoted in a stock exchange, shall include, in the management report, a comparison of the profit or loss of the accounting year with that of the previous year, explaining the reasons for the occurrence of fluctuations, and shall provide information in the annex on participation and performance of management functions by members of the board, council and management, in other undertakings registered in the Enterprise Register, except for participation or performance of management functions in subsidiary undertakings in which the parent undertaking owns all capital shares or stock.

[6 November 1996; 16 December 1999]

Chapter 8

Annual Accounts of a Group [16 December 1999]

Chapter 9

The Form of Drawing Up and Signing of the Annual Accounts of Undertakings

Section 61.

(1) There shall be set out in the annual accounts of undertakings:

1) the full name and legal address of the undertaking, as well as its registration number in the Enterprise Register;

2) for individual undertakings – also the name and surname, address, and the personal identity number of the owner;

3) for State undertakings or local government undertakings – also the name of the ministry or other administrative body under whose supervision they are;

4) for partnerships – also data regarding persons with full liability and regarding members of management bodies (for legal persons – also the registration number at the Enterprise Register; and for physical persons – also their personal identity number);

5) for all forms of companies with articles of association and other forms of undertakings – also the names and surnames of and offices held by all board and council members. This information shall also be provided regarding those persons who have left such offices during the accounting year.

(2) The annual accounts shall be signed by:

for an individual undertaking – the owner;

for undertakings with unlimited liability – persons with full liability;

for undertakings with limited liability:

for stock companies – the chairperson of the board, the chairperson of the council and the executive director;

for other undertakings with limited liability – executive bodies or the undertaking manager.

(3) If any of the persons, who is required to sign the annual accounts or management reports, considers that it cannot be approved, or has objections to the accounts or the report which he or she wishes to inform the shareholders of, he or she shall set out such in a special note.

[6 November 1996; 22 March 2001]

Chapter 10

Auditing and Publishing of Accounts and Management Reports

Section 62.

(1) If a company's indicators exceed two of the criteria of Section 54, Paragraph two of this Law its prepared annual accounts shall be audited by a sworn auditor or a sworn auditor commercial company (hereinafter – sworn auditor) in accordance with the Law On Sworn Auditors.

(2) [16 December 1999]

(3) If amendments are made in the annual accounts after the sworn auditor has audited it, the sworn auditor shall audit the accounts anew, in respect of the amendments made. Such repeated audit shall be mentioned in the opinion of the auditor regarding the audit of the annual accounts.

[6 November 1996; 12 February 1998; 16 December 1999; 22 March 2001]

Section 63.

(1) The audit of the annual accounts shall also include an accounting audit, to determine whether the accounts of the undertaking comply with the basic rules of accounting. It shall be determined in the audit whether requirements of law and the provisions of the articles of association of the undertaking have been observed.

(2) The lawful representatives of the undertaking shall submit the annual accounts to the sworn auditor immediately after preparation of such.

(3) The sworn auditor may require from the lawful representatives of the undertaking all information and explanations which are necessary for a thorough audit. If necessary, the sworn auditor may require such information before receiving the annual accounts.

(4) Neither the sworn auditor, nor his or her assistants may disclose commercial secrets of the undertaking of which they become informed during the audit.

[16 December 1999; 22 March 2001]

Section 64.

The sworn auditor shall prepare a written auditor's report of the results of the audit performed in accordance with the requirements of the Law On Sworn Auditors.

[6 November 1996; 16 December 1999; 22 March 2001]

Section 65. [16 December 1999]

Section 66.

(1) Undertakings, not later than a month after approval of the annual accounts and not later than four months after the end of the accounting year, but undertakings, the volume of whose activity exceeds the criteria mentioned in Section 24, Paragraph two of this Law, not later than seven months after the end of the accounting year, shall submit (send by mail or courier) a copy of the audited annual accounts and of the report of the sworn auditor (if such exists), to the office of the State Revenue Service according to the location of the undertaking and to the Latvian Enterprise Register, together with an explanation as to when the annual accounts were approved. The documents mentioned may be submitted in electronic form, attaching a written statement of their accordance with the original documents. The undertaking is liable for the receipt of the documents sent by mail or courier or submitted in electronic form.

(2) The undertakings to which the provisions of Section 54 of this Law are applicable are not required to submit a management report. In such cases an approved copy of the minutes of the general meeting of the stockholders or shareholders, in which the decision taken regarding distribution of the profit or covering of the losses is set out, shall be submitted.

(3) An undertaking, in complying with the provisions of Paragraph two of this Section or of Section 54, shall attach an explanatory note signed by the board of the undertaking to the submitted annual accounts, stating that the provisions of Paragraphs two, three, four and five of Section 54 have been complied with. This explanation shall be confirmed by the auditor of the undertaking.

(4) Undertakings the volume of whose activity exceeds the criteria mentioned in Section 24, Paragraph two of this Law, shall submit for publication in the newspaper Latvijas Vēstnesis [the official Gazette of the Government of Latvia], at their own expense, a copy of the annual accounts and of the report of the sworn auditor, not later than two months after the approval of

the annual accounts and not later than eight months after the end of the accounting year.

(5) Copies of annual accounts and reports of sworn auditors received by the Enterprise Register, and copies of minutes of general meetings as mentioned in Paragraph two of this Section shall be kept in the registration file of the undertaking, and they shall be available to the public for inspection by anyone upon payment of a State fee.

(6) [6 November 1996]

[6 November 1996; 16 December 1999; 22 March 2001]

#### Section 67.

(1) If the annual accounts of the undertaking and the reports of sworn auditors are published in full, they shall be in the form and version as they were audited in, moreover, together with the report of the sworn auditor.

(2) If the annual accounts are not published in full, it shall be clearly stated that they are published in an abridged version and are available in full at the Enterprise Register. The full report of the auditor shall not be published in this case, but an amount of publishable information prepared by the auditor conforming to an abridged version of the report of the sworn auditor instead.

[16 December 1999; 22 March 2001]

#### Section 68.

If the management of an undertaking fails to submit documents in accordance with the requirements of Section 66, Paragraph one and Section 67, Paragraph one of this Law, an official of the State Revenue Service shall impose a fine in accordance with the procedures set out in law.

[6 November 1996]

#### Transitional Provisions

1. The amendments made by this Law are applicable to annual accounts commencing with the 1999 accounting year, except the amendments in Section 10 of this Law in relation to short-term creditors and long-term creditors and amendments in Section 17, Paragraph three of this Law which are applicable commencing with the 2000 accounting year.

2. Consolidated annual accounts, commencing with the 1999 accounting year, shall be prepared in accordance with the Law on Consolidated Annual Accounts.

*(b) LAW ON VALUE ADDED TAX*

(1 May 1995 as amended through 12 December 2002) (unofficial translation, excerpt)

#### CHAPTER I. General Provisions

(...)

#### Section 3. Persons Taxable with Value Added Tax and their Registration

(...)

(3) If the total value of the taxable supply of goods and services provided by natural or legal persons and groups of such persons bound by a contract or agreement, or by representatives of such groups, during the preceding 12 months has attained or exceeded 10 000 lati, they shall be registered with the State Revenue Service as taxable persons not later than one month after attaining or exceeding such sum. (...)

(5) If the total value of taxable transactions carried out by natural or legal persons and groups of such persons bound by contract or agreement, or by representatives of such groups, has not attained the sum specified in Paragraph three of this Section during the preceding 12 months, they have the right to be registered with the State Revenue Service as taxable persons pursuant to the procedures prescribed by the Cabinet.

(5<sup>1</sup>) If natural or legal persons and groups or their representatives associated by contract or agreement with such persons, within a period of 12 months, have performed only one taxable supply of goods or provided only one taxable service, the value of which reaches or exceeds 10 000 lati, or as result of this transaction the total taxable value performed within a period of 12 months has reached or exceeded 10 000 lati, they have the right not to register with the State Revenue Service as a taxable person, if this transaction is not associated with the economic activities of the persons referred to.

(5<sup>2</sup>) If the transaction referred to Section 5<sup>1</sup> of this Section within the period of the next 12 months is repeated, then the persons, not later than within a period of one month after the performance such a repeated transaction, shall

register with the State Revenue Service as a taxable person.

(6) Taxable persons have a right to a deduction of input value added tax.

(...)

## Chapter II. Exemptions and Relief

### Section 6. Exemptions

(1) Tax shall not be imposed on the following supplies of goods and services:

1) services (including catering) which are provided by retirement or old people's homes, welfare and rehabilitation centres and specialised welfare centres or homes, which are fully or partly financed from the State budget or budgets of local governments;

(...)

5) fees for professional training or retraining of the unemployed, which is organised by the State Employment Service;

(...)

8) theatre, cinema and circus shows, concerts, performances in cultural institutions, visits to museums, exhibitions, zoos and botanical gardens, performances for children and for charitable purposes, performances of amateur arts groups and sporting events;

9) health services, supplies of medicaments and medicinal products inland according to a list approved by the Ministry of Welfare and harmonised with the Ministry of Finance;

9<sup>1</sup>) medical services according to a list approved by the Ministry of Welfare and harmonised with the Ministry of Finance;

(...)

11) betting, raffles (lotteries) and other forms of gambling;

(...)

16) scientific research, which is performed with funds from public foundations, the State budget and the budgets of Local Governments, or international institutions;

(...)

20) educational and scientific literature, first publications of original literature and publications

intended for children in the Latvian language published in Latvia in accordance with lists approved by the Ministry of Education and Science, as well as services of printing-offices in respect of the production (formation) of such literature;

(...)

22) services provided by co-operative societies (except the supply of goods) to the members of the co-operative society:

a) maintenance and management of residential houses

(...)

25) fire-safety services which are provided by the Fire-fighting and Rescue Service of the Ministry of the Interior, and fire-safety services of institutions, undertakings (companies) and organisations, voluntary fire-fighting societies and voluntary fire-safety associations; and

(...)

27) carriage of schoolchildren that is conducted by carriers licensed specially for this purpose if these services are financed from local government budgets.

(2) Tax shall not be imposed on the importation of the following goods:

1) importation of goods mentioned in Paragraph one of this Section;

2) consignments of foreign financial assistance pursuant to procedures prescribed by the Cabinet;

(...)

5) the importation of such goods that are not subject to customs duty pursuant to Chapters 6 and 9 of the Law On Customs Duty (Tariffs), except supplies of goods on which a 0 per cent rate of customs duty is imposed.

(...)

### Section 7. Application of 0 Per Cent Tax Rate

(1) A 0 per cent tax rate shall be applied to the following:

(...)

7) supplies of goods and services which have been provided in return for foreign financial assistance



funds – in accordance with procedures prescribed by the Cabinet;

(...)

*(c) LAW ON PERSONAL INCOME TAX*

(11 May 1993 as amended through 29 July 1995)  
(unofficial translation, excerpt)

(...)

Chapter II DETERMINATION OF ANNUAL TAXABLE INCOME (...)

Article 10. Allowable expenses

1. The following expenses shall be deducted from the annual taxable income of a taxpayer prior to taxation:

(...)

3) amounts transferred as donations or gifts to public cultural, educational, scientific, sports, charity, health care and environmental protection organizations and foundations and religious organizations and budget institutions that have been granted the permit to receive donations under a procedure determined by the Cabinet pursuant to Article 20 of the law 'On Enterprise Income Tax'; however, said amounts shall not exceed 20% from the taxable amount;

(...)

Article 12. Annual Non-taxable Minimum of Taxpayer

1. Annual taxable income of taxpayer shall not include an amount equal to the annual nontaxable minimum for one person. The annual non-taxable minimum shall be the sum total of 12 monthly non-taxable minimum shall be determined by the Cabinet.

2. Non-taxable minimum shall not apply to non-residents. (...)

Article 14. Substantiation of Allowable Expenses and Relief for Taxpayer

1. Rights of a taxpayer to claim deduction of allowable expenses, relief and expenses connected with economic activity from taxable income shall be substantiated with documents, by

producing the respective documents, by producing the respective documents, or submitting their copies.

2. On the basis of the documents submitted, tax inspection shall record the items of relief, but an employer shall take into account the allowable expenses listed in Part 2, Article 10 of this Law. Accuracy of the entries shall be of equal responsibility of both the employer and the taxpayer.

3. If a taxpayer has failed, for a valid reason, to submit document certifying allowable expenses and relief in due time, then, in accordance with a decision of the tax inspection, said documents shall be taken into account for a time period after commencement of the rights, but the period shall not exceed one receding year.

4. The documents of a taxpayer certifying allowable expenses shall pertain to the taxation period only. (...)

Chapter V CONTROL AND ADJUSTMENT OF TAX RETURNS (...)

Article 22. Control of Tax Return

Tax inspection shall check the data stated on a submitted tax return on the basis of employer's notice on payroll withholding and tax cards received, the journal of income and expense records, as well as information from inspections, monitoring and other information available to the inspection. (...)

*(d) LAW ON ENTERPRISE INCOME TAX*

1 March 1995 as amended through 22 November 2001 (unofficial translation, excerpt)

Section 2. Tax Payers

(1) Enterprise income tax payers are:

1) domestic undertakings, which carry out entrepreneurial activity, public and religious organisations, and institutions financed from the State budget or local government budgets, which obtain income from economic activity and to which the requirements of Paragraphs two, three and four of this Section do not apply (hereinafter - residents)

CHAPTER II Determining Taxable Income

#### Section 4. Taxable Income of a Resident and of a Permanent Representative Office

(1<sup>1</sup>) Taxable income in respect of public organisations and their associations, religious organisations, as well as other taxpayers to which the Law On Annual Accounts of Undertakings, the Credit Institution Law and the Law On Insurance Companies and their Supervision are not applicable and which obtain income from economic activity and to which Section 2, Paragraphs two, three and four of this Law do not apply, is the difference between revenue from economic activity and expenses relating to the obtaining of the revenue mentioned and shall be adjusted in accordance with this Law.

#### Section 5. Expenses not Directly Related to Economic Activity

(1) There shall be included in expenses that are not directly related to economic activity, all expenses incurred by an undertaking for relaxation, pleasure trips and, recreation of owners and employees, for travel with the motor vehicles of an undertaking by owners and employees and benefits, gifts, credits and loans turned into gifts of owners and employees, as are not related to entrepreneurial activity, and other disbursements in cash or other form (in kind) to owners or employees that are not set out as remuneration or that are not related to the entrepreneurial activity of the taxpayer.

(4) Included in expenses that are not related to economic activity shall be donations or gifts to other persons, amounts of guarantees, which an undertaking as a guarantor is required to pay in accordance with an agreement of guarantee, deductions from profit, from turnover or other base quantity carried out by an undertaking on its own initiative, by order of its owner or in accordance with laws, and such expenses as are economically not related to economic activity of an undertaking.

### CHAPTER III Tax Rebates

#### Section 20. Tax Rebate for Donors

(1) Tax shall be reduced for residents and permanent representative offices by 85 per cent of amounts donated to budget institutions, as well

as public cultural, educational, scientific, sports, charitable, health and environmental protection organisations and funds registered in the Republic of Latvia, and religious organisations which have been granted permits to receive donations, the donors receiving a tax rebate. The Cabinet shall determine the procedures for the issuance and cancellation of the permits referred to, the term of validity and the documents to be submitted, as well as approve the form of the report on donors, the amount of donations and the utilisation of donations which shall be submitted.

(2) Tax shall be reduced for residents and permanent representative offices by 90 per cent of amounts donated to the Latvian Culture Foundation, the Latvian Olympic Committee and the Latvian Childrens Fund.

(3) The total tax rebate in accordance with the provisions of this Section may not exceed 20 per cent of the total amount of tax.

(4) The organisations, funds and budget institutions referred to in Paragraphs one and two of this Section shall by no later than 1 March of the post-taxation period submit a public report on donors, the amounts donated by them and the use of sums regarding donations received in the taxation year.

(5) The tax rebate is not applicable to payers indebted for taxes for previous years as of the first date of the second month of a taxation period.

(6) If an undertaking has violated the provisions of this Section or has concealed taxable income, the amount of tax shall be increased by two times the amount of such tax rebate.

#### Section 21. Special Tax Rebates

Undertakings comprising societies for the disabled or as are medical in nature, as well as other charitable fund undertakings shall, pursuant to a list submitted by the Cabinet and approved by the Saeima, be exempt from payment of tax if they transfer to the mentioned funds (programmes, organisations) amounts exceeding the amounts of such tax assessed.

*(e) Procedure of organization and maintenance of gambling and lotterie*

(prot. Nr.60 2.§)

Adopted pursuant to Section 39 of the law "On Gambling and Lotteries"<sup>213</sup>

1. These regulations shall determine procedure whereunder the Lotteries and Gambling Supervision Inspection of the Ministry of Finance (hereinafter referred to as the Inspection) shall monitor and control the way, in which companies (business companies), having received the special permission (license) for arrangement and maintenance of gambling and lotteries, as well as non-governmental organizations, associations thereof and religious organizations having received a special permission (license) in events provided by Section 25 of the law "On Gambling and Lotteries" (hereinafter referred to as the Holder of Authorization), exercises compliance with the law "On Gambling and Lotteries", other laws and regulations and rules of appropriate lottery or game of chance.

(With amendments made by the Cabinet Regulation No 52 of 28.01.2003, becoming effective at 05.02.2003.)

2. In order to perform supervision and control of the Holders of Authorization, the Inspection shall carry out examinations in locations, where lottery tickets or other acknowledgements for participation in lottery are sold, on sites, where lottery is taking place or prizes are handed out, as well as in places, where slot machines and equipment of the games of chance are installed or are operated, gambling slugs or other acknowledgements for participation in game of chance are sold, stakes for participation in totalizer or betting are collected or prizes are handed out (hereinafter referred to as the place for gambling arrangements).

2.<sup>1</sup> In order to perform supervision and control of the Holders of Authorization, the Inspection shall carry out examinations during the business hours of the gambling organizer also in places where gambling equipment and slot machines are located, as well as in the office premises of the Holder of Authorization where bookkeeping documents related to organization of the games of chance are stored.

(According to wording of the Cabinet Regulation No 507 of 25.05.2004)

3. In event if check of the place for gambling or lottery arrangement is performed while the place for gambling or lottery arrangement is closed for players (attendants), officers of the Inspection

<sup>213</sup> <http://pro.nais.dati.lv/naiser/text.cfm?Ref=0101032000121900435&Req=0101032000121900435&Key=0103011994061632773&Hash=>

shall be entitled to carry out the check only in presence of the gambling or lottery manager approved by the Inspection (hereinafter referred to as the Person-in-Charge).

4. Person-in-Charge shall ensure the following documents to be held at the place of lottery of local scale or single lottery of local scale and upon request of officer of the Inspection immediately to be produced:

4.1. special permission (license) issued by the Inspection to arrange a lottery of local scale or a single lottery of local scale or duplicate of the relevant special permission (license) certified by the Inspection;

4.2. duplicate of the lottery schedule approved by the Inspection;

4.3. copy of notification concerning commencement of the lottery arrangements (registered by territorial agency of the State Revenue Service, in the area of which activities the Holder of Authorization has been enlisted as a tax-payer);

4.4. copy of notification concerning commencement of the lottery arrangements (registered by territorial agency of the State Revenue Service, in the area of which activities the lottery is organized);

4.5. copy of notification concerning commencement of the lottery arrangements (submitted to local government, in which area the lottery is organized).

5. The Person-in-Charge shall ensure that duplicate of special permission (license) issued by the Inspection shall be present in the place of sales of lottery tickets of national scale. The said duplicate shall be immediately produced upon the demand of officer of the Inspection.

(According to wording of the Cabinet Regulation No 52 of 28 January 2003, becoming effective from 05.02.2003.)

6. The gambling organizer shall ensure presence of Person-in-Charge in game-halls and casinos. The Person-in-Charge upon the first requirement of the inspection officers shall:

6.1. produce special permission (license) to open a game-hall or casino issued by the Inspection;

6.2. produce gambling rules (duplicate) approved by the Inspection;

6.3. display records of the casino video-surveillance system, which are shot not earlier

than seven days prior to commencement of examination.

(According to wording of the Cabinet Regulation No 52 of 28 January 2003, becoming effective from 05.02.2003)

6.<sup>1</sup> The Person-in-Charge shall ensure that the following documents to be available in places of acceptance of stakes for the totalizator or betting and in bingo halls and upon requirement from the officers of Inspection to be immediately produced:

6.<sup>1</sup> 1. special permission (license) to open a bingo hall or place for acceptance of totalizator and betting stakes issued by the Inspection;

6.<sup>1</sup> 2. gambling rules (duplicate) approved by the Inspection.

(According to wording of the Cabinet Regulation No 52 of 28 January 2003, becoming effective from 05.02.2003)

6.<sup>2</sup> The gambling organizer shall ensure that the employee-in-charge for gambling slot machines to be present in places where gambling slot machines are installed outside casinos and game-halls. The employee upon requirement from the officers of Inspection shall produce:

6.<sup>2</sup> 1. special permission (license) to open a place for arrangement of slot machines for games issued by the Inspection;

6.<sup>2</sup> 2. gambling rules (duplicate) approved by the Inspection;

6.<sup>2</sup> 3. agreement (duplicate) concerning putting of the gambling slot machines into service, when the said is being contracted, or agreement (duplicate) concerning lease of premises for installation of gambling slot machines;

6.<sup>2</sup> 4. contract of employment (duplicate) with the capital entity slot machines whereof are installed in the current place of arrangements for games of chance of a person in charge of compliance with prohibition specified by Paragraph 9 of Section 21 of the law "On Gambling and Lotteries" and prescriptions provided by laws and regulations governing the procedure of arrangement of lotteries and gambling.

(According to wording of the Cabinet Regulation No 52 of 28 January 2003 with amendments made by Cabinet Regulation No 507 of 25.05.2004)

6.<sup>3</sup> The Person-in-Charge shall ensure that in places of arrangements for games of chance where the gambling slot machines are installed for each slot machine there would be a mandatory

document – accounting report for the gambling slot machine counters registered by the Inspection (Appendix). Accounting report for the gambling slot machine counters shall be filled-in, when the gambling slot machine is installed on the place of arrangements for games of chance, upon dismantling thereof, as well as simultaneously with encashment of the gambling slot machine. Accounting report for the gambling slot machine counters shall be filled-in at least twice per month, moreover, the interval between the first and the last filling-in of the report carried out in a month period shall be no less than 10 days.

(According to wording of the Cabinet Regulation No 52 of 28 January 2003 with amendments made by Cabinet Regulation No 507 of 25.05.2004)

7. When checks are carried out in the place of lottery of a local scale or in the place of single lottery of a local scale, officer of the Inspection shall be entitled to examine:

7.1. documents stipulated by Clause 4 of the present regulations;

7.2. compliance of the lottery arrangements to the lottery schedule and requirements provided by law;

7.3. compliance of the lottery ticket price and numbers as well as of the value and number of prizes to the lottery schedule.

8. When checks are carried out in the place of lottery of a national scale, officer of the Inspection shall be entitled to examine:

8.1. documents stipulated by Clause 5 of the present regulations;

8.2. compliance of the lottery arrangements to the lottery schedule and requirements provided by law.

9. When checks are carried out in the place of gambling arrangements, officer of the Inspection shall be entitled to examine:

9.1 documents stipulated by Clauses 6, 6<sup>1</sup>, 6<sup>2</sup> un 6<sup>3</sup> of the present regulations;

9.2 compliance of the participation fee of the game to gambling rules;

9.3 compliance of the total prize value to requirements provided by law, by review of indications of mechanical and electronic counters of the gambling slot machines in presence of the Person-in-Charge;

9.4. compliance of the place for gambling arrangements to requirements provided by law;

9.5. whether persons below 18 are taking part in games of chance;

9.6. compliance with procedure of marking of the gambling slot machines and equipment provided by the Cabinet of Ministers;

9.7. compliance of the information provided by the Holder of Authorization concerning installation or dismantling of the gambling slot machines and equipment to the actual situation;

9.8. compliance with registration requirements of the casino visitors;

9.9. whether the gambling slot machine or equipment is registered by the Inspection and whether the assigned identification number are attached thereto on a visible place.

(With amendments made by Cabinet Regulation No 360 of 07.08.2001, Cabinet Regulation No 52 of 28.01.2003 and Cabinet Regulation No 507 of 25.05.2004)

9.<sup>1</sup> When checks are carried out in location of gambling and lotteries arrangements, officers of the Inspection shall invite a representative of the lottery ticket seller (in locations of ticket sale locations of national scale) or a representative (employee) of the Holder of Authorization (hereinafter referred to as the External Person).

(According to wording of the Cabinet Regulation No 52 of 28 January 2003, becoming effective from 05.02.2003)

9.<sup>2</sup> When there is no representative (employee) of the Holder of Authorization present on the location of gambling and lotteries arrangements, officers of the Inspection shall be entitled to carry out checks, by inviting any other person substance of the check to be made known thereto in advance.

(According to wording of the Cabinet Regulation No 52 of 28 January 2003, becoming effective from 05.02.2003)

9.<sup>3</sup> Organizers and managers of gambling and lotteries during the check upon the first request by the officers of the Inspection shall ensure to them the documents and information stipulated by these regulations.

(According to wording of the Cabinet Regulation No 52 of 28 January 2003, becoming effective from 05.02.2003)

10. Control report of the location of gambling and lotteries arrangements (hereinafter referred to as the Control Report) are drawn by the officers of the Inspection in respect of checkup carried out on the location of gambling and lotteries arrangements.

(According to wording of the Cabinet Regulation No 52 of 28 January 2003, becoming effective from 05.02.2003)

11. The following information shall be indicated in the Control Report:

11.1. place, address, date and time when the Control Report is drawn;

11.2. officer of the Inspection (given name, surname and position) having carried out the control of location of gambling and lotteries arrangements;

11.3. name of the Holder of Authorization;

11.4. (deleted by the Cabinet Regulation No 52 of 28 January 2003, becoming effective from 05.02.2003MK);

11.5. address of the location of gambling and lotteries arrangements;

11.6. name of a lottery or game of chance;

11.7. substance and outcome of the check-up;

11.8. name, identity number, place of employment and position of the External Person.

12. The Control Report is being signed by:

12.1. officer of the Inspection having carried out the control of location of gambling and lotteries arrangements;

12.2. External Person.

13. When the External Person refuses to sign the Control Report, officer of the Inspection having carried out the control of location of gambling and lotteries arrangements shall indicate that in the Control Report.

14. The External Person shall be entitled to enter notes on the course of control in location of gambling and lotteries arrangements in the Control Report.

15. Officer of the Inspection shall participate in activities related to the casino encashment, such as, opening of the table cashboxes, filling-in of the forms of cash balance of casino, report of the

table opening and closing, table outcome report and the daily cash report of the casino.

(According to wording of the Cabinet Regulation No 507 of 25.05.2004)

16. Operations related to the casino encashment shall take place in locations, where the course thereof may be fixed by television surveillance system of the casino.

(According to wording of the Cabinet Regulation No 507 of 25.05.2004)

17. At the end of casino encashment the place where keys of any cashboxes and slug-boxes of the gaming-tables are kept, shall be locked by officer of the Inspection using the securing seal-mark. The securing seal-mark is removed by officer of the Inspection at the beginning of the next encashment of casino.

(According to wording of the Cabinet Regulation No 507 of 25.05.2004)

18. Officer of the Inspection shall draw up the casino encashment protocol in regard of each casino encashment where the following information is indicated:

18.1. name, legal address, taxpayer registration code of the capital company;

18.2. name and address of the casino;

18.3. date of the casino encashment;

18.4. time when the casino encashment was started and finished;

18.5. form number of the casino cash balance and the outcome report of casino tables;

18.6. number of the securing seal-mark;

18.7. value of the casino slugs in lati, upon opening and closing of casino;

18.8. total amount of cash, upon opening and closing of casino;

18.9. cash in lati received and handed out in the central cash-desk of the capital company and/or in the casino cash-desk of credit entity;

18.10. outcome of tables;

18.11. other revenues in lati;

18.12. balance sum of the casino cash-desk, upon opening and closing of casino;

18.13. the currency received, converted to lati under the rate defined by the Bank of Latvia, as effective on the date of business transaction;

18.14. amount of money from clearing settlements;

18.15. notes on the casino encashment.

(According to wording of the Cabinet Regulation No 507 of 25.05.2004)

19. Protocol referred to by Clause 18 of the Regulation is signed by officer of the Inspection, collector, cashier and the casino employee (pitboss), supervising the course of games at any gaming-tables and defining at which gaming-table the particular dealer will be appointed.

(According to wording of the Cabinet Regulation No 507 of 25.05.2004)

*(f) Law on Lotteries and Gambling*

Chapter I

General Provisions

Section 1. This law regulates the organization and support, as well as the derogation of lottery (drawings) and gambling in accordance with the Civil Law (section 2281.-2288).

Section 2. (1) To organize lotteries and gambling as a form of a business in the Republic of Latvia a special permission (license) is required, what can be conferred only to the companies which are registered in the Register of Enterprises of the Republic of Latvia.

(2) Foreign investors (except investors from European Union member states' and associate states') share in the share capital of those business companies, which organize lotteries and gambling can not exceed 49 percent.

(3) If international agreements approved by the Saeima\* include provisions, which differ from the norms in this Law, the provisions of the international agreements shall be applied.

(Wording with the modifications of the Law of November 11, 1999, which are made with the Law of June 19, 2003, which come into force in July 25, 2003)

Section 3. (1) In accordance with this Law the lottery and gambling is a game or bet, which is a kind of winning agreement and where gains are partly or completely coincidental; playing an automatic games (pusher), where players have a possibility to get a gain that depends on their skills and chance.

(2) In accordance with this Law the gambling is not such automatic game, where only gain is free of charge playing automatic games, as well as playing automatic games where gain is derivation of material benefits (except gain in terms of money).

(Wording of the Law of April 10, 1997, which come into force in July 01, 1997)

Section 4. Lottery plan or gambling provisions determines the possibility and form of gain (money, goods, shares etc.).

## Chapter II

### Forms of Lotteries and Gambling

Section 5. Interested person take part in the lottery for money or/and goods, buying tickets or paying participation fee in a different way, and the lottery organizer as a gain offers money, goods, shares etc.

Section 6. Express lotteries are lotteries, where interested persons immediately after buying lottery ticket can get to know the gain.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 7. In numerical lotteries (lotto, sport lotto, numerical lotto) the gain is being get after guessing lucky numbers, symbols or in the terms of lottery mentioned signs or combination of signs, and the gain depends on amount of the deposit stakes.

(With the modifications which are made by the Law of June 05, 1997, which come into force in July 01, 1997)

Section 7<sup>1</sup>. Game of chance on the phone is a gambling, where results partly or absolutely

depends on an accident and where interested person reply to the questions or in other way participate in the game, using telecommunications and pay participation fee in accordance with the tariff for telecommunications additional services, which is set up by the games organizer.

(Wording of the Law of November 11, 1999, which come into force in January 01, 2000)

Section 8. Bingo is a gambling, where interested persons using numerical card or electronical table, gain according to the total amount of the deposit stakes and guessed combination of numbers.

Section 9. Totalizator is a gambling, where result partly depends on an accident and where interested person deposit stake for the race result, but amount of the gain depends on the total amount of the deposit stakes.

(Wording of the Law of April 10, 1997, which come into force in July 01, 1997)

Section 9<sup>1</sup>. Bets in accordance with this Law is a gambling, where result partly depends on an accident and where interested person deposit stake and strike a bargain with the bet organizer about the possibility or impossibility of an event, and amount of the gain depends on the deposited stake, as well as on the index, which is fixed before the beginning of the mentioned event, and used to calculate the amount of the gain.

(Wording of the Law of April 10, 1997, which come into force in July 01, 1997)

Section 10. Cylindrical games (roulette) are gambling's, where interested persons, fixing combinations of numbers, symbols or other signs by the way of rotating device, gain according to the beforehand fixed total amount of interested persons' deposited stakes.

Section 11. Cards and dib is a gambling, where interested persons with laying out specific cards or dashing a specific number on a counter fix gain and it's amount.

Section 12. Automatic game is a gambling, where interested persons fix the gain by the way of the game equipment.

Section 13. (1) In the territory of the Republic of Latvia is allowed only lotteries and gambling, which are mentioned in this Law.

(2) Exploitation of the automatic games and games' equipment is not allowed till it is marked. Marking in accordance with this Law is a registration, checking and marking sign applying to the automatic games and games' equipment, which possesses to the licensed capital company or are bought on the basis of the financial leasing agreement. The marking procedure, terms of issuing marking signs', marking sign issuing institution as well as state tax for getting marking sign for automatic games and games' equipment are ruled by the Cabinet of Ministers.

(3) (excluded with the Law of June 19, 2003)

(4) In the place, where gambling is organized, which is not a casino or gambling hall in accordance with this Law, is not allowed to set up and exploit more than five automatic games.

(Wording with the modifications of the Law of November 11, 1999, which are made with the Law of June 19, 2003, which come into force in July 25, 2003)

### Chapter III

#### Casino and Gambling Halls

(The heading of the chapter in the version of the Law of June 13, 2002, which come into force in July 01, 2002)

Section 14. (excluded with the Law of June 13, 2002, which come into force in July 01, 2002 )

Section 15. (1) Casino is a constructively separated room or few interconnected rooms, marked in the inventory plan, which are specially equipped for organizing roulette, automatic games, cards and dib and where are set up at least:

four gaming-tables for cards or dib and one gaming-table for roulette, if casino is located in Riga;

two gaming-tables for cards or dib and one gaming-table for roulette, if casino is located in outside of Riga.

(2) Gaming – tables of cylindrical games, cards and dib are forbidden to set up and exploit outside of casino.

(Wording with the modifications of the Law of June 13, 2002, which are made with the Law of June 19, 2003, which come into force in July 25, 2003)

Section 16. (1) Gambling hall is a constructively separated room or few interconnected rooms, marked in the inventory plan, in which at least 10 automatic games are explicated.

(2) Bingo hall is a constructively separated room or few interconnected rooms, marked in the inventory plan, in which bingo is organized.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 16<sup>1</sup>. Within one gambling hall is allowed to set up automatic games which are a property of only one Capital Company or are bought on the basis of the financial leasing agreement.

(Wording with the modifications of the Law of June 13, 2002, which are made with the Law of June 19, 2003, which come into force in July 25, 2003)

Section 16<sup>2</sup>. Capital Company, which has received permission (license) to open gambling hall, has to provide uninterrupted presence of company's worker – person in charge within hall's working hours.

(In the version of the Law of June 13, 2002, which come into force in September 01, 2002)

Section 16<sup>3</sup>. Capital company, which has received permission (license) to open gambling hall, is responsible for the legality of the gambling process.

(Wording of the Law of June 13, 2002, which come into force in September 01, 2002)

Section 17. Entrance in the casino or gambling hall is allowed only to the persons, which are attained the age of 18.



(Wording with the modifications of the Law of September 28, 1995, which are made with the Law of June 13, 2002, which come into force in July 01, 2002)

Section 18. The electrical power system of casino or gambling hall has to provide uninterrupted and undisturbed gambling process.

(Wording of the Law of November 11, 1999, which come into force in January 01, 2000)

Section 19. The owner of the casino provides:

Real time video tape recording on each gaming-table, casino entrance, registry and cashier's desk within casino working hours. Video tape record has to be kept at least seven days, beginning from the day when video tape record was done;

separate cashier's desk;

at least two entrances – separately for casino staff and separately for casino visitors;

registration of each casino visitor before his entrance in premises, where gambling is organized;

Requirements prescribed in the Law of the Data Protection of the Physical Entities, when organizing the register of the casino visitors.

(Wording of the Law of June 13, 2002, which come into force in September 01, 2002)

Section 19<sup>1</sup>. (1) The visitor of the casino is being registered each time he visits casino, by asking him to show his identity document and entering into register following information about the visitor:

name (names), surname;

identity number (persons to whom identity number is not issued, issuing date of identity document, number of identity document and name of organization who issued the identity document);

date and time, when person entered into premises, where gambling is organized;

(2) In the case of reiterative visit, instead of identity document casino visitor can produce a

special casino visitor's card issued by the owner of the casino.

In the visitor's card should be:

photography;

name (names), surname;

Identity number (persons to whom identity number is not issued, issuing date of identity document, number of identity document and name of organization who issued the identity document).

(Wording of the Law of June 13, 2002, which come into force in September 01, 2002)

Section 19<sup>2</sup>. (1) The aim of the registration of the casino visitors is to identify the casino visitors to eliminate a possibility that under age person get into casino and to prevent the possibility of money laundering.

(2) The information included into the register of the casino visitors before handed into the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance, has to be stored electronically, preventing against information disappearance or spoilage, and implementing a system, which in the case if information is lost, allows to restore it fully.

(3) All the information included into the register of the casino visitors once in a month has to be summarized and handed into the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance, which provides the storing of the information for five years.

(4) The Procedure of Casino Visitors' Registration, the storing, summarizing and passing on the information included into the register, as well as the categories of the information receivers' and other technical and managerial activities connected with casino visitors' register, which provides protection of the personal data, regulates terms of the Cabinet of the Ministers.

(Wording of the Law of June 13, 2002, which come into force in September 01, 2002)

Section 20. (1) Municipal authority has rights to determine territories, where gambling organizing is forbidden. Within twelve month after passing of such resolution gambling organizers dismantle automatic games which are set up outside of the casino or gambling halls within these territories

and stop over to take on rates for participation in totalizer or bet within these territories, within thirty six months after passing of such resolution gambling organizers close casinos, gambling halls or bingo halls within these territories.

(2) Municipal authorities inform the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance about territories, where gambling is not allowed.

(3) Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance do not issue a license for organizing gambling in territories, where municipal authority has forbidden to do it.

(Wording with the modifications of the Law of November 11, 1999, which are made with the Law of June 19, 2003, which come into force in July 25, 2003)

#### Chapter IV

#### Restrictions on Lotteries and Gambling

Section 21. It is forbidden to organize lotteries and gambling, if:

there is no received proper license from Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance;

Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance has not approved lottery plan or gambling instruction;

Total amount of gain from all kind of lotteries is lower than 45 percent from total amount carried out from selling tickets, total amount of the gain from totalizer, bet and bingo – less than 50 percent from total amount of the deposited stakes, the gain from the automatic game (excluding in the Section 3 mentioned automatic games (pusher), where players have a possibility to get a gain that depends on their skills and chance) – less than 80 percent from the total amount of the deposits, from game of chance on the phone – less than 45 percent from the total amount of the deposits;

(excluded with the Law of June 19, 2003)

The special license (hereinafter – license) issued for organizing or supporting gambling is being given to the third person;

(excluded with the Law of June 19, 2003)

Gambling is organized into post offices or banks, in the places where multitude culture activities is being organized during they are ongoing, into health care centers and educational institutions, general government, churches and cult buildings;

Gambling is organized into shops and markets, railway stations, bus stations, airports, ports with building structures that are not specially lined off;

Persons who are younger than 18, take part into gambling;

(excluded with the Law of June 19, 2003)

(excluded with the Law of June 19, 2003)

(excluded with the Law of June 19, 2003)

(excluded with the Law of June 19, 2003)

(Wording with the modifications of the Law of September 28, 1995 and the Law of April 10, 1997, the Law of June 05, 1997, the Law of November 11, 1999 and the Law of June 19, 2003, which come into force in July 25, 2003)

Section 22. (1) In the Republic of Latvia the monopoly of organizing state scale gambling is owned by the state. State scale lotteries and gambling are organized and lottery tickets and game cards are distributed within the territory of the Republic of Latvia. Lottery gains' or game results' are identified in the way of public lottery or play.

(2) In the state scale lotteries and gambling the total sum of the value of the lottery tickets' or game cards' can not be under 100 000 Latvian Lats.

(Wording of the Law of September 28, 1995, which come into force in October 25, 1995)

Section 23. (1) In the local scale lotteries and gambling gains and gambling results are identified in the way of public lottery or play, and they have to be organized in the territory of the proper city, district or parish. It is forbidden for one organizer to organize local scale lotteries or gambling in a few cities, districts or parishes.

(2) In the state scale lotteries the total sum of the value of the lottery tickets' do not exceed 100 000 Latvian Lats.

(Wording of the Law of November 11, 1999, which come into force in January 01, 2000)

Section 23<sup>1</sup>. (1) For the local scale single type lottery gains' are identified in the way of public lottery or play, and they have to be organized during the opened public event and in the place, where it is being organized.

(2) Tickets for the middle scale single type lottery can be distributed only during the proper opened public event and only in the place, where it is being organized, and the total sum of the value of the lottery tickets' do not exceed 500 Latvian Lats.

(3) The middle scale single type lottery gains' can't be money.

(Wording of the Law of November 11, 1999, which come into force in January 01, 2000)

Section 24. (1) The lotteries and gambling's organizers and managers are responsible for lotteries and gambling's:

process legality;

tax and duty, as well as payment of other taxes and duties as provided for by the law;

for the proficiency and professionalism of the persons engaged in the implementation;

handing out such a gain within 24 hours after gaining it, which does not exceed 500 Latvian Lats. Gains which exceed 500 Latvian Lats, has to be handed out according to the procedure fixed in the gambling instruction or lottery plan.

(2) To guarantee the consideration of the requirements of laws and regulations, the gambling organizer has a claim to issue a regulation of an establishment, and the gambling place visitors have to take them into consideration.

(3) Other juridical entities, to whom gambling organizers in accordance with the effective laws and regulations of the Republic of Latvia have been handed on slot machines for serving, are responsible for setting up not more than five slot machines in the places where outside of the casino or is allowed to set up slot machines, as well as for considering the prohibition as mentioned in the Section 21, Chapter 9 of this Law.

(4) In each place outside of casino and gambling halls, where slot machines are set up and exploited, should be one person who is responsible for considering the prohibition as mentioned in the Section 21, Chapter 9 of this Law as well as requirements determinate in the

terms of the Cabinet of the Ministers and has concluded employment agreement with the licensed capital company, which slot machines are set up in this gambling place.

(5) Capital companies or physical entities, who organize lotteries and gambling without permission of Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance or organizes lotteries and gambling's, which are not mentioned in the Chapter 2 of this Law are being made to answer with an administrative responsibility or criminal liability. The incomes obtained in such way are included into state budget.

(Wording of the Law of September 28, 1995 and the Law of April 10, 1997, the Law of June 05, 1997, the Law of November 11, 1999 and the Law of June 19, 2003, which come into force in July 25, 2003)

Section 25. Nongovernmental organizations and their associations and religious organizations are allowed to organize only middle scale single type lotteries, if these lotteries are being organized in the way of opened public event or in accordance with public gathering to view artistic values, musical performances or sport shows and application is being submitted and permission is being received.

Section 25<sup>1</sup>. Lottery or gambling organizer identity's persons who are buying or changing for money game chips, counters or other funds for participating in the game which are equivalent Euro 1000 or more converted in Latvian Lats according to the exchange rate fixed by the Bank of Latvia and request from them following information:

name (names), surname;

Identity number (persons to whom identity number is not issued, issuing date of identity document, number of identity document and name of organization who issued the identity document).

(Wording of the Law of June 13, 2002, which come into force in July 01, 2002)

Section 25<sup>2</sup>. Lottery or gambling organizer is responsible for storing the information about interested person and documentary proof of transaction mentioned in the Section 25<sup>1</sup> for at least five years.

(Wording of the Law of April 10, 1997, which came into force in July 01, 1997)

## Chapter V

### The Issuing of the Permission

Section 26. (1) The special permission (license) of organizing lotteries or gambling entitles it's receiver to organize in the permission (license) mentioned lotteries or gambling within the territory of the Republic of Latvia, according to the restrictions mentioned in this Law.

(2) The special permission (license) of organizing lotteries and gambling are issued by the of Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance to indeterminate period.

(3) Issued permissions (licenses) of organizing lotteries and gambling every year till the date of issuing is reregistered in the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance.

(4) The regulation mentioned in the second part of this Section has no bearing on the special permission (license) for organizing express lotteries, if it is valid only for the period of organizing the specific lottery.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 26<sup>1</sup>. (1) To receive the special permission (license) of organizing lotteries and gambling, capital company submit an application for the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance where is attached:

annual report and resolution provided by the certified auditor with elucidation, that annual report is approved as well as duplicate of the report for past quarters of the current year, which are approved as provided for by the law;

information about credit liabilities of the capital company, the amount of the credit liabilities, the term of the credit payment and creditors';

the documentary proofed information about the origination of the paid stock capital of the capital company;

the plan of the evaluation of the capital company for next year, planned kinds of the gambling, expected income and expenditure amount and allocation, the amount of income and it's expenditure;

information about interested persons of capital company and shareholders registered in the register of shareholders - physical entities (name, surname, identity number (persons to whom identity number is not issued, issuing date of identity document, number of identity document and name of organization who issued the identity document)). If interested person is a legal entity – information about physical entities, which are the interested persons of this legal entity (shareholders);

information about the members of the council and members of the board, auditor (name, surname, identity number (persons to whom identity number is not issued, issuing date of identity document, number of identity document and name of organization who issued the identity document)) of the capital company;

the inquest from the bank about the amount of the paid stock capital as well as the resolution of the public experts about the value of the property investment of the share capital in accordance with the Commercial Law, if the new-established company requires the special permission (license).

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 26<sup>2</sup>. (1) The opening permission (license) of the casino, gambling halls and bingo halls entitle to open casino gambling hall or bingo hall in the address mentioned in the permission (license), and it is being issued to the capital companies, which have received the special permission (license) in accordance with this Law to organize the bingo, gaming machines, cards, dubs and roulette.

(2) To receive the permission (license) of the opening casino, gambling hall or bingo hall, the gambling organizer submits the application for the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance where is attached:

the duplicates of the documents, which acknowledge the proprietary rights of the submitter to the premises, where it is planned to open casino, gambling hall or bingo hall, or lease agreement (duplicate) about the premises where it is planned to open casino, gambling hall or bingo hall. If lessor is not the owner of the

premises, it is required to submit confirmation of the owner of the premises that he agrees of opening casino, gambling hall or bingo hall;

the plan of those stories in which is planed to open casino, gambling hall or bingo hall and marking out premises where gambling will be organized;

the evaluation plan for next year of the particular casino, gambling hall or bingo hall, specifying kinds of the gambling, number of the gaming-tables and number of the automatic games, expected income and expenditure amount and allocation;

permission with period of validity not less than 36 months to open casino, gambling hall or bingo hall and organize these gambling's in the particular premises, issued by the local municipality;

information about casino, gambling hall or bingo hall manager (administrator), specifying his (her) name, surname, identity number (persons to whom identity number is not issued, issuing date of identity document, number of identity document and name of organization who issued the identity document).

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 26<sup>3</sup>. (1) The permission (license) for opening totalizator or bet stakes reception desk is being issued to the capital companies, which in accordance with this Law have received the permission (license) to organize totalizator or bets, and it entitles to take in stakes for participation in the totalizator or bets in the place mentioned in the permission (license).

(2) To receive the permission (license) of the opening totalizator or bet stakes reception desk, the gambling organizer submits the application for the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance where is attached:

the duplicates of the documents, which acknowledge the proprietary rights of the submitter to the premises, where it is planned to open totalizator or bet stakes reception desk, or lease agreement (duplicate) about the premises where it is planned to open totalizator or bet stakes reception desk. If lessor is not the owner of the premisses, it is required to submit confirmation of the owner of the premises that he agrees of opening totalizator or bet stakes reception desk;

the plan of those stages in which is planed to open totalizator or bet stakes reception desk and marking out premises where gambling will be organized;

permission with period of validity not less than 36 months to open totalizator or bet stakes reception desk and organize these gambling's in the particular premises, issued by the local municipality.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 26<sup>4</sup>. (1) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance issues permissions in accordance with this Law and the regulations of the Cabinet of Ministers.

(2) Issuing permission, possible income from the lottery or gambling and it's allocation should be considered, as well as experience, knowledge and material resources of the license holder.

“(3) To prevent the legalization of the illegally acquired funds the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance is authorized to demand to particularize submitted information as well as demand extra information about:

interested persons of capital company and shareholders registered in the register of shareholders to evaluate their financial position;

members of the council and members of the board, auditor, casino, gambling hall or bingo hall manager (administrator);

credit liabilities of the capital company;

the funds or property invested into the stock capital of the capital company;

information provided in the plan of the evaluation.

(4) Time from the resending announcement till receiving an answer is not included into the term of the examination.

(5) (excluded with the Law of June 19, 2003)

(Wording with the modifications of the Law of September 28, 1995, which are made with the Law of April 10, 1997 and with the Law of June 19, 2003, which come into force in July 25, 2003)

Section 26<sup>5</sup>. (1) The gambling organizer is entitled to set up slot machines out of the casino or gambling halls, if in advance appropriate permission (license) is received.

(2) As from July 1, 2002, it is allowed to set up and exploit slot machines only within casino and gambling halls. Outside of the casino and gambling halls slot machines are set up and exploit only in the places, which were registered in the date base of the operational date about electronical game setting up of the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance till the June 30, 2002.

(3) The permission (license) for setting up slot machines outside of the casino and gambling halls is being issued by the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance to the gambling organizers, which in accordance with this Law have received the special permission (license) for organizing gambling with slot machines.

(4) To receive the permission (license) to set up slot machines outside of the casino and gambling halls, gambling organizers submit the application to the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance where is indicated the address where slot machines will be set up as well as information about the owner or lessor of the premises (legal entities – name, registration number, physical entities – name, surname, identity number) or agreement on service of the slot machines.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 26<sup>6</sup>. (1) To receive the special permission (license) to organize the state scale and local scale numerical lotteries, express lotteries and local scale single type lotteries (express lotteries), lotteries' organizer submits to the application for the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance where is attached:

lottery plan;

expected income and expenditure calculation;

information about the person responsible for the lottery, identifying it's name, surname, identity number (persons to whom identity number is not issued, issuing date of identity document, number of identity document and name of organization who issued the identity document).

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 26<sup>7</sup>. (1) If in the documents, which underlay for receiving the special permission (license) for organizing lotteries and gambling, for receiving the permission (license) for opening casino, gambling hall, bingo hall, for receiving permission (license) for setting up slot machines outside of the casino and gambling halls or for receiving the permission (license) for opening totalizator or bet stakes reception desk, have been done some changes, the lottery or gambling organizer within five working days after finding out these facts, informs the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance.

(2) If there is changed the stock capital of the capital company who organizes lotteries or gambling and who has received the special permission (license), the lottery or gambling organizer within five working days after these changes are registered in the Register of the Enterprises of the Republic of Latvia, informs the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 27. (1) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance takes decision to issue or refuse the issuing of the special permission (license) for organizing lottery or gambling within three months after all necessary documents and information is received.

(2) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance takes decision to issue or refuse issuing of the permission (license) for opening casino, gambling hall, bingo hall, totalizator or bet stakes reception desk within 30 days after all necessary documents and information is received.

(3) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance takes decision to issue or refuse issuing of the permission (license) for setting up slot machines outside of the casino and gambling halls within 15 days after all necessary documents and information is received.

(4) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of

Finance takes decision about reregistration of the special permission (license) for organizing lottery or gambling within 30 days after all necessary documents and information is received.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 27<sup>1</sup>. (1) Within 10 days after receiving decision about issuing of the special permission (license) for organizing lottery or gambling, it's receiver pays state tax for issuing of the special permission (license) for organizing lottery or gambling.

(2) The special permissions (licenses) for organizing lottery or gambling are issued only after state tax is being paid.

(3) When decision about reregistration of the special permission (license) for organizing lottery or gambling is taken, lottery or gambling organizer pays state tax for reregistration of the special permission (license) for organizing lottery or gambling till the date when mentioned permission (license) has been issued.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 28. (1) Capital companies included in the Register of the Enterprises of the Republic of Latvia can receive permission and can organize:

state scale lotteries, if the stock capital of the capital companies (statutory fund) is not less than 50 000 Latvian Lats;

local scale lotteries, if the stock capital of the capital companies (statutory fund) is not less than 10 000 Latvian Lats;

gambling, if the stock capital of these companies (statutory fund) is not less than 50 000 Latvian Lats.

(Wording of the Law of April 10, 1997, which come into force in July 01, 1997)

Section 29. (1) Issuing permission (license) for opening casino, gambling hall or bingo hall or permission (license) for organizing lottery, the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance approves the manager (administrator) of the casino, gambling hall or bingo hall, who is responsible for the legality of the gambling

process in the particular casino, gambling hall or bingo hall, or responsible person for the lottery.

(2) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance does not approve the manager (administrator) of the casino, gambling hall or bingo hall or responsible person for the lottery, if this person:

has incapacity;

is convict, person on trial or suspect in the criminal case for malicious crime;

is convicted for malicious crime even if exempt from judgment serving because of limitation period, pardon or amnesty;

who's criminal case for malicious crime is exempt terminated because of limitation period, pardon or amnesty.

(3) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance takes decision to approve or refuse approval of the manager (administrator) of the casino, gambling hall, bingo hall responsible person within 30 days after all necessary documents and information is received.

(4) The operations of the casino, gambling hall, bingo hall is forbidden as well as organizing of the lotteries if The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance has not approved the manager (administrator) or responsible person.

(5) The gambling organizer within three working days informs the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance about assignment of new manager (administrator) of casino, gambling hall, bingo hall or assignment of new person responsible for the lottery organizing as well as for dismissing the prior manager (administrator) or for dismissing the prior person responsible for the lottery organizing. The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance takes decision to approve or refuse approval of the manager (administrator) of the casino, gambling hall, bingo hall responsible person within 20 days after receiving correspondent announcement. In this case do not apply restriction mentioned in the fourth part of this Section.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 29<sup>1</sup>. The procedure of submitting documents to the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance for the reregistration of the special permission (license) are the same as procedure of submitting documents for receiving the special permission (license) – two months before the end of the reregistration term, including review about the organizing of lotteries and gambling about the period from the day when special permission (license) was issued or from the previous reregistration date as well as income and expenditure calculation for this period.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 30. The permission issuing organization according to it's competence is entitled to decide and define, if proposed lottery or gambling meet the standards of this Law.

Section 31. The permission receiver can found the subsidiaries, invest funds into the enterprises of the municipal authorities or business companies with foreign investments, which are engaged in the business of organizing and supporting lotteries and gambling, only with the permission of the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance.

(With the modifications which are made by the Law of April 10, 1997, which come into force in July 01, 1997)

Section 32. The amount of the state tax for the issuing of the permission as well as the tax for the lotteries and gambling regulates special law.

## Chapter VI

### Refusal to Issue the Permission and Abatement of the Permission

Section 33. The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance is entitled to refuse the allocation or reregistration of the special permission (license) if:

there in the capital company is established essential infringement of laws, regulations of the

Cabinet of the Ministers or infringement of the statutes;

capital company has debt to the state budget or to the budget of the local authority;

in the submitted documents provided information is false;

the stock capital of the capital company does not agree with the requirements of this Law;

the information demanded by the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance is not provided within 30 days;

the information disposable to the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance indicates, that funds invested into the stock capital of the capital company are acquired in improper manner or there is no documentary approved legal acquisition of these funds;

submitted evaluation plan do not correspond with the present state of the market and it is not economically justified;

the capital company is proclaimed as insolvent.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 34. The person whose interests are tampered with the decision of the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance can appeal in the Court.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 35. The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance is entitled to intermit the operation of the capital company or it's enterprises as well as exploitation of the equipment as approved for by the law till violation is eradicated, if there is established that capital company who has received the special permission (license) for organizing lotteries and gambling offends against the laws and regulations.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)



Section 35<sup>1</sup>. (1) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance is entitled to abate the special permission (license) if:

the information provided to receive this permission is false, but had essential influence on decision making;

the lottery or gambling organizer does not agree with the requirements of this Law;

the indebtedness of the lottery or gambling organizer exceeds its assets;

the eligibility provided by the special permission (license) have been handed on third party (other businessman organizes gambling in the name of the permission (license) receiver);

the gambling organizer in the place of gambling organizing has set up or has exploited unmarked slot machines;

the receiver of the permission (license) demands on it.

(2) The state tax paid for the receiving of the special permission (license) for organizing lotteries and gambling is not being repaid when this permission (license) is abated.

(3) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance abates the permissions (licenses) of opening casino, gambling hall, bingo hall, the permissions (licenses) for setting up slot machines outside of the casino and gambling halls, the permissions (licenses) for opening totalizator or bet stakes reception desk if:

the regulations of gambling have been broken in the particular place where gambling is organized;

the term of the permission (licenses) issued by the local authority runs out;

the receiver of the permission (license) demands on it.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 36. (Excluded with the Law of June 19, 2003 which come into force in July 25, 2003)

Chapter VII

The Lottery Plan and Gambling Provisions

Section 37. The lottery plan and gambling provisions should be available in the places where lotteries and gambling is organized and gambling organizer is responsible for providing these plans and provisions if interested person wants to acquaint with them.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 38. (1) Following information is included into lottery plan:

name, legal address and phone number of the lottery organizer;

title and type of the lottery (express lottery or numerical lottery);

the price of the lottery ticket or participation fee;

the total amount of the tickets of express lottery;

the prize fund, and its allocation according to the prize groups;

the procedure of winning tickets determination;

the procedure how to apply for the gain and how to issue the gain;

the date, till which the express lottery is being organized;

term when interested persons can apply for gain;

where interested person can turn into the case claim as well as procedure of claim consideration;

other relevant information.

(2) Following information is included into gambling provisions:

name, legal address and phone number of the gambling organizer;

title and type of the gambling;

the procedure how to interested person can participate in gambling;

participation fee;

conditions, beside which interested person get the gain as well as the amount of the gain (as well as gain proportion to the stake of participation fee);

the procedure how to apply for the gain and how to issue the gain;

the date, till which the express lottery is being organized;

where interested person can turn into the case claim as well as procedure of claim consideration;

other relevant information.

(3) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance do not approve the lottery plan or gambling provisions if:

there in the lottery plan or gambling provisions is no included proper information required in this Law;

they provide for organizing such type of lotteries or gambling, which does not agree with the requirements of this Law;

there is stipulated that gains can be received only then if definite number of interested persons are applied for the game or if amount of the sale has come to specific sum;

there is stipulated that pyramidal game is organized, where participation fees or invested values after a time period gives gain to the unspecified range of persons.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 38<sup>1</sup>. (1) (Excluded with the Law of June 19, 2003)

(2) On the lottery tickets or game cards following information there must be:

name of the capital company who organizes lottery or gambling;

address where gain can be received;

the final term of issuing gains;

lottery tickets or game cards price or games basic rate;

(Excluded with the Law of June 19, 2003);

index or serial or index and serial number.

(3) Before receiving permissions local scale and local scale single type lottery tickets and game cards must be registered in this field office of the State Revenue Service, where lottery organizer is registered as taxpayer. The samples of the registered tickets must be submitted in the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance.

(Wording with the modifications of the Law of April 10, 1997, which are made with the Law of November 11, 1999 and with the Law of June 16, 2003, which come into force in July 25, 2003)

## Chapter VIII

### Supervision and Control

Section 39. The supervision and control over permission receiver's compliance with this Law and other laws and regulations is being provided by the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance in the order established by the Cabinet of the Ministers, by the Law of State Revenue Service "Low on State Revenue Service" and by the Law of State Police "About Police".

(In the version of the Law of November 11, 1999, which come into force in January 1, 2000)

Section 39<sup>1</sup>. (1) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance is being established and it's statutes are being approved by the Cabinet of Ministers.

(2) Tasks of the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance are:

to realize the state policy according to the organizing lotteries and gambling;

licensing, supervision and control of the lotteries and gambling organizers;

to work out drafts of the laws and regulations connected to the organizing lotteries and gambling;

to ensure the systematic registration and statistics analysis of the lotteries and gambling market;

to register slot machines and equipment and provide relevant information to the governmental organizations and local authorities to they can manage the tax of the lotteries and gambling.

(Wording with the modifications of the Law of April 10, 1997, which are made with the Law of November 11, 1999 and with the Law of June 16, 2003, which come into force in July 25, 2003)

Section 40. (1) The permission receiver in the term and order fixed in the Section 66 of the law "On Companies' Annual Reports" submits the duplicate of the approved annual report, report and resolution provided by the auditor, if such exists, as well as explanation about time when annual report was approved.

(2) The permission receiver within 20 days after the end of the quarter in the order fixed by the Cabinet of Ministers submits report about organizing lotteries and gambling in the quarter of reference.

(3) The receiver of the special permission (license) does accounting according to the law "On Bookkeeping", low "On Companies' Annual Reports" and regulations of the Cabinet of Ministers, who regulates single order of accounting of lotteries and gambling organization.

(Wording with the modifications of the Law of April 10, 1997, which are made with the Law of November 11, 1999 and with the Law of June 16, 2003, which come into force in July 25, 2003 /look at "Transitional Provisins", point 8/)

Section 41. (Excluded with the Law of October 30, 2003)

#### Chapter IX

Using Telecommunication to Organize Lotteries and Gambling

(The heading of the chapter in the wording of the Law of June 19, 2003, which come into force in January 01, 2004 /look at "Transitional Provisions", point 8/)

Section 42. Gambling using telecommunications is gambling where interested persons participating in the game use or can use telecommunications to complete some of the required operations.

Section 43. (1) Within the Republic of Latvia it is allowed to organize lotteries, slot machines, roulette, cards, dibs, bingo, totalizator, bets and games of chance on the telephone (hereinafter – interactive games) using telecommunications.

(2) Within the Republic of Latvia it is allowed to sell lottery tickets (hereinafter – tickets) and to receive stakes for participation in the totalizator or bets (hereinafter - stake receive) using telecommunications.

Section 44. The total amount of the gains of roulette, cards or dibs, can not be lesser than 80 percent from total amount of the deposited stakes when using telecommunications.

Section 45. (1) After receiving appropriate permission (license) from the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance, it is allowed to organize interactive games, sell tickets and receive stakes using telecommunications.

(2) For organizing interactive games, selling tickets and receiving stakes using telecommunications, permission (license) is issued to the capital companies, which have received the special permission for organizing lotteries and gambling provided for by the law.

Section 46. (1) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance takes decision to issue or refuse the issuing of the permission (license) for organizing interactive games within 60 days after all necessary documents and information is received.

(2) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance takes decision to issue or refuse the issuing of the permission (license) for selling tickets and receiving stakes using telecommunications within 30 days after all necessary documents and information is received.

Section 47. (1) In the permission (license), which is issued for organizing interactive games, selling tickets and receiving stakes using telecommunications, is given:

number of the permission (license), place and date of issue;

permission's (license's) receiver's name, registration number, legal address;

what games permission's (license's) receiver is allowed to organize, or lottery, which tickets is allowed to buy or game, which stakes can be received using telecommunications;

web address, if the lottery or gambling is organized via internet, for organizing games, selling tickets and receiving stakes using telecommunications;

telephone numbers, if the game is organized using telephone.

(2) Permission (license) is signed by the head of the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance and the signature is authorized with the stamp of the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance.

Section 48. In the web page, which is used for organizing interactive games, selling tickets and receiving stakes, is given:

name, legal address of the gambling organizer and number of the permission (license) issued to the gambling organizer;

what games permission's (license's) receiver is allowed to organize, or lottery, which tickets is allowed to buy or game, which stakes can be received using telecommunications;

lottery plan or gambling provisions or address of the web page, where plans or provision can be acquainted;

embargo for persons, which are in the country or territory, where participation in the gambling is forbidden;

embargo for persons which are not 18 years old;

warning that person can become addicted from gambling.

Section 49. To receive the permission (license) for organizing slot machines, roulette, cards, dices or bingo using telecommunications, the gambling organizer submits the application for the Lotteries and Gambling Supervisory Inspection under the

supervision of the Ministry of Finance where is attached:

regulations of the specific gambling;

reference about opened account or accounts in the credit institution which is registered in the Republic of Latvia, which will be used for payments with the interested persons;

information about the programs used for gambling organizing;

conclusion of the independent and internationally approved laboratory about program testing results;

information about place, where equipment for gambling organizing will be placed as well as information about planned security measures which will be carried out, to prevent possible third parties influence to the results of the gambling;

information about planned security measures for protecting data of the physical entities;

address of the web page, if the gambling is organized via internet;

information about the person responsible for the lottery, identifying it's name, surname, identity number (persons to whom identity number is not issued, issuing date of identity document, number of identity document and name of organization who issued the identity document).

Section 50. To receive the permission (license) for organizing lottery or selling tickets using telecommunications, the gambling organizer submits the application for the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance where is attached:

the plan of the lottery, which is organized using telecommunications;

information about procedure how tickets can be bought to participate in the lottery which is organized using telecommunications (appendix to already existing lottery plan);

information about the programs used for lottery organizing or ticket selling;

the confirmation form the telecommunications provider about the safety of the used telecommunications;

information about place, where equipment for lottery organizing or ticket selling will be placed as well as information about planned security measures which will be carried out, to prevent possible third parties influence to the results of the lottery;

information about planned security measures for protecting data of the physical entities;

phone numbers used for selling tickets for the lottery;

information about the person responsible for the lottery, identifying it's name, surname, identity number (persons to whom identity number is not issued, issuing date of identity document, number of identity document and name of organization who issued the identity document).

Section 51. To receive the permission (license) for organizing games of chance on the telephone, the gambling organizer submits the application for the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance where is attached:

regulations of the specific gambling;

information about the programs used to organize games of chance on the telephone;

the confirmation form the telecommunications provider about the safety of the used telecommunications;

information about place, where equipment for gambling organizing will be placed as well as information about planned security measures which will be carried out, to prevent possible third parties influence on the results of the gambling;

information about planned security measures for protecting data of the physical entities;

phone numbers used for organizing games of chance on the telephone;

information about the person responsible for the lottery, identifying it's name, surname, identity number (persons to whom identity number is not issued, issuing date of identity document, number of identity document and name of organization who issued the identity document).

Section 52. (1) Information about programs used for organizing interactive games, selling tickets and receiving stakes using telecommunications about security measures and physical entities

data security have to be submitted according to Cabinet of Ministers established procedure.

(2) Cabinet of the Ministers approves the list of the independent and internationally approved laboratories, which are allowed to give conclusions about the program used for organizing interactive games.

Section 53. The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance is entitled to refuse the allocation of the permission (license) for organizing interactive games, if some of the cases mentioned in the Section 33 of this Law have occurred as well as if:

submitted gambling provisions or lottery plan, which does not agree with the requirements of this Law;

in the conclusion of the independent and internationally approved laboratory is said that programs used for gambling organizing do not provide the total amount of the gains as required by the Section 21, Chapter 3 and Section 44 of this Law;

planned security measures are not sufficient to prevent possible third parties influence on the results of the gambling;

there is received conclusion from the competent state institution, that planned security measures for protecting data of the physical entities and for secure gambling process are not sufficient.

Section 54. The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance is entitled to abate the permission (license) for organizing interactive games if some of the cases mentioned in the Section 35.1 Part 1 of this Law have occurred or lottery or gambling organizer in the payments with interested persons use bank accounts about which State Revenue Service and the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance is not informed.

Section 55. (1) Issuing permission (license) for organizing interactive games, selling tickets or receiving stakes using telecommunications, the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance approves the person who is responsible (also hereinafter – responsible person) for legitimacy of

organizing of the interactive games, selling tickets or receiving stakes using telecommunications.

(2) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance does not approve the responsible person if some of the cases mentioned in the Section 29 Part 2 of this Law have occurred.

(3) The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance takes decision to approve or not to approve responsible person within 30 days after all necessary documents and information is received.

(4) The organizing interactive games, selling tickets or receiving stakes is forbidden if the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance have not approved responsible person.

(5) The gambling organizer informs the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance about assignation of new responsible person within tree working days. The Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance takes decision to approve or not to approve responsible person within 20 days after announcement is received. In this case do not apply restriction mentioned in the fourth part of this Section.

Section 56. The organizer of the interactive games, excluding lotteries and games of chance on the telephone, provides:

the registration of each interested person, before to confer the rights to participate in the gambling, demanding data which identifies person;

control of the identity, to satisfy that payments which are done from the account which is opened in the credit institution which is registered in the Republic of Latvia belongs to the person which identity data are given at registration for a game;

special gambling account for each interested person. Before gambling interested person transfers to the account money which can be used only for punting and in this account his gains are transferred;

after interested person's demand transfer money from this account back to the account in the credit institution from which was transferred money for punting;

access without hindrance for employees of the Lotteries and Gambling Supervisory Inspection

under the supervision of the Ministry of Finance to the program used for gambling organizing and bookkeeping records, which are in connection with the organizing of interactive games.

Section 57. The organizer of the games of chance on the telephone provides:

registration of the interested persons;

registration of the winning persons, demanding data which identifies person and controlling the identity;

access without hindrance for employees of the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance to the program used for gambling organizing and bookkeeping records, which are in connection with the organizing of games of chance on the telephone.

Section 58. To sell tickets or organize lotteries using telecommunications, the organizer of the lottery provides:

registration of the interested persons;

registration and identification of the winning persons;

access without hindrance for employees of the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance to the program used for gambling organizing and bookkeeping records, which are in connection with the organizing of the interactive games or lottery and selling tickets using telecommunications.

Section 59. The organizer of the games of chance on the telephone provides:

the registration of each interested person, before to confer the rights to participate in the gambling, demanding data which identifies person;

control of the identity, to satisfy that payments which are done from the account which is opened in the credit institution which is registered in the Republic of Latvia belongs to the person which identity data are given at registration for a game;

special gambling account for each interested person. Before gambling interested person transfers to the account money which can be used

only for punting and in this account his gains are transferred;

after interested person's demand transfer money from this account back to the account in the credit institution from which was transferred money for punting;

access without hindrance for employees of the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance to the program used for gambling organizing and bookkeeping records, which are in connection with the receiving stakes using telecommunications.

Section 60. (1) Cabinet of the Ministers prescribes procedure of interested persons registration and control of identity as well as marginal requirements which should be taken into consideration to prevent further participation in the gambling persons who have dependence on the gambling.

(2) The organizer of the interactive games, the organizer of the lotteries, who sells tickets and totalizator or bet organizer, who receive stakes using telecommunications not later than 15 days after the end of the quarter of reference submit to the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance report on total amount of the received stakes and paid off gains in the quarter of reference as well as reference from the credit company about dealings in the account for mutual payments with interested persons.

Section 61. (1) The organizer of the interactive games for mutual payments with clients is allowed to use account which is opened in the credit company which is registered in the Republic of Latvia.

(2) If the lottery or gambling is organized by the telephone, interested person can take part in the lottery or gambling using telephone number which is registered in the Republic of Latvia.

Section 62. The organizer the interactive games are not allowed to transfer gain to the account from which was not deposited stakes for punting.

Section 63. The program and equipment used for organizing interactive games should be placed in the territory of the Republic of Latvia. In the case of force majeure it is allowed to use reserve

program and equipment which is outside of the territory of the Republic of Latvia which provide its operation, previously informing the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance.

#### Transitional Provisions

(Wording of the Law of April 10, 1997, which are made with the Law of June 13, 2002 and which come into force in July 01, 2002)

Until establishing the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance all functions of the Inspection function the Ministry of Finance.

(Excluded with the Law of October 30, 2003)

Amendments of Section 13, 15, 19 and 24 as well as Section 16<sup>1</sup>, 16<sup>2</sup>, 16<sup>3</sup>, 19<sup>1</sup> and 19<sup>2</sup> of this Law come into force in September 01, 2002.

(In the version of the Law of June 13, 2002, which come into force in July 01, 2002)

Term "Capital Company" in this Law is considered as "Business Company (Limited Liability Company and Joint stock Company).

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Capital Companies, which has received the special permissions (licenses) for a specified time period and its term of validity expire after amendments of the Law come into force, submit to the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance documents for prolongation of the term of the permission (license) to indeterminate period.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Until March 01, 2004, the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance approves those managers

(administrators) of casinos, gambling halls or bingo halls or persons in charge for lotteries, to which appropriate permissions (licenses) have been issued until the day of those amendments of the Law came into force.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Amendments of Section 28, Point 3 and Section 28 Point 4 of this Law come into force in January 01, 2013.

(In the version of the Law of June 19, 2003, which come into force in July 25, 2003)

Section 40 Part 3 and Chapter IX of this Law come into force in January 1, 2004.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Until January 01, 2007, the stock capital (statutory fund) of those Capital Companies who organize slot machines, bingo, roulette, cards and dibs can not be less than 150 000 Latvian Lats.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Until January 01, 2010, the stock capital (statutory fund) of those Capital Companies who organize slot machines, bingo, roulette, cards and dibs can not be less than 250 000 Latvian Lats.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Cabinet of the Ministers till January 01, 2004 issue regulations on:

single bookkeeping for gambling organizing;

procedure, how the organizer of the interactive games, lottery organizer, who sells tickets and organizer of the totalizator or bets, who receive stakes using telecommunications registers interested persons, control their identity as well as marginal requirements which should be taken into consideration to prevent further participation in the gambling persons who have dependence on the gambling;

procedure, how the organizer of the interactive games, lottery organizer, who sells tickets and organizer of the totalizator or bets, who receive stakes using telecommunications submit to the Lotteries and Gambling Supervisory Inspection under the supervision of the Ministry of Finance report on total amount of the received stakes and paid off gains in the quarter of reference.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

Cabinet of the Ministers till October 01, 2003 approve the list of those independent and internationally approved laboratories, which are allowed to give conclusions about the software used for organizing interactive games.

(Wording of the Law of June 19, 2003, which come into force in July 25, 2003)

This Law comes into force with the day it is announced.

This Law has been adopted by the Saeima on June 16, 1994.

*(g) Regulation of the Lotteries and Gambling Supervisory Inspection*

(prot. Nr.16 5.§)

Adopted pursuant to Paragraph 1 of Section 16 of the State Administration Structure Law

## I. General

1. Lotteries and Gambling Supervision Inspection (hereinafter referred to as the Inspection) is an authority of direct administration under supervision of the Ministry of Finance.

2. Purpose of the Inspection activities shall be implementation of the government functions within supervision of arrangement of draws, gambling and lotteries of goods and services (hereinafter referred to as the games), in order to ensure compliance with and performance of the statutory law requirements governing the said area.

3. Inspection is financed from the state main budget.

## II. Functions, tasks and scope of the Inspection



4. Functions of the Inspection:

- 4.1. to license the arrangement of games;
- 4.2. to take an account of and supervise automates and equipment of games of chance;
- 4.3. to monitor and to control the arrangement of games;
- 4.4. to perform other functions determined by the statutory law governing the supervision of the games of chance.

5. To ensure the performance of functions, the Inspection shall perform tasks assigned by the law "On Gambling and Lotteries" and Law on Lotteries of Goods and Services (Sales promotion), as well as shall:

5.1. evaluate documents and other information submitted for registration of fruits and equipment, to assign identification numbers of gambling automats and equipment and marking notes of each quarter, cancel entries in the registrar concerning assignment of the marking note and records in the register of assignment of marking note and records in the games of chance register and equipment register concerning assignment of the identification number;

5.2. issue reports on account of each slot machine counter for the games of chance, as well as arrange the registrar of reports;

5.3. receive and aggregate information concerning location of slot machines and equipment for the games of chance, form the data base, as well as submit the aggregated information to the State Revenue Service, in order the management of gambling and lottery fees and tax;

5.4. maintains the information system of casino visitors;

5.5. perform accounting and statistic analysis of gambling and lottery market on a systematic basis, as well as summarization of statistic information with regard to lotteries of goods and services;

5.6. develop and submit to the Ministry of Finance proposals concerning activities to be performed in the spheres of activities falling within the scope of inspection, as well as concerning elaboration of draft laws and regulations;

5.7. upon requirement from the Ministry of Finance give opinions regarding draft documents of policy planning and of laws and regulations

developed by other agencies falling within issues under the scope of Inspection;

5.8. carry out the transactions of private law on behalf of the state, required to ensure activities of the Inspection;

5.9. exercise cooperation with other government bodies pursuant to procedure provided by the laws and regulations;

5.10. communicates activities of the Inspection to the public;

5.11. perform other tasks specified by the laws and regulations governing the supervision over games of chance.

6. Inspection shall be entitled:

6.1. in cases specified by the statutory laws and regulations to require and to receive free of charge from entities the information and documents needed to perform the tasks of Inspection;

6.2. to carry out cooperation with foreign public government agencies, international and non-governmental bodies, representatives thereof and experts;

6.3. to implement other rights provided by the laws and regulations governing the supervision over games of chance.

III. Structure of Inspection and area of the officials' authority

7. Activities of the Inspection are managed by the Director of Inspection. Director of Inspection is appointed to and dismissed from office by the Minister of Finance after candidacy is approved by the Cabinet of Ministers.

8. Director of Inspection shall perform functions of the head of institution of direct administration provided by the State Administration Structure Law.

9. Director of Inspection may have deputies. Area of authority for deputies of the Director of Inspection, as well as structural units of Inspection directly subordinated to respective deputy Director shall be determined by the Director of Inspection.

10. Departments, units thereof and permanent units are structural units of the Inspection.

11. Functions and objectives of units of the Inspection are provided by rules of the Inspection.

12. Departments and permanent units are subordinated to the Director of Inspection or his deputy subject to the specified distribution of functions.

13. Officers of Inspection while performing their official duties shall have identity cards. Pattern and procedure of production of identity cards is approved by the Director of Inspection.

14. There is a ban for officers and employees of Inspection:

14.1. during performance of office and employment responsibilities as well as after termination of office and employment relations to disclose to third parties (with exception of the law enforcing bodies, having within their area of authority obtaining the relevant information) information become known thereto, while performing the official duties;

14.2. to disclose to third parties (with exception of the law enforcing bodies, having within their area of authority obtaining the relevant information) data of entities having provided to the Inspection an information concerning violations of statutes and other laws and regulations;

14.3. during performance of duties of office and employment, as well as within three years after termination of office and employment relations to participate in person or via third parties in trade activities of the entities arranging lotteries and games of chance.

15. Mandate of control and supervision shall be vested with the following officers of the Inspection: Deputy Directors of Inspection, Heads and Deputy Heads of structural units of the control and supervision, Chief Inspectors, Inspectors, Junior Inspectors, Senior Experts and Experts.

16. Officials stipulated by Clause 15 of the current regulations in accordance with area of authority and the specified mandate, upon performance of state supervision and control, shall be entitled to:

16.1. without prior notice, special permission, fee and other restrictions, on production of identity card, to visit any facility within the territory of Latvia without hindrance irrespective of holding or procedure of visiting thereof, provided that games are organized or planned to be organized, except institutions and territories of specific regime, visits where to shall be approved by administration of respective institution or administration of the territory;

16.2. to demand that the persons subject to control ensure the required work conditions in the facility for Inspectors;

16.3. to require and to receive free of charge from the game organizers, the administration and control agencies, as well as from municipal institutions the information needed for performance of tasks of the Inspection concerning entities engaged or planning to engage in the arrangement of games;

16.4. on site of organization of the games or in location of the organizer of games to examine bookkeeping documents and other documents related to organization of games of the organizer of games and to obtain the required explanations, certifications, as well as to receive documents or certified copies thereof under procedure provided by the laws and regulations;

16.5. to adopt decisions, to give opinions, to draw statements and protocols, to review materials relating to violations of laws and regulations entailing organization of games, as well as to exercise other activities provided by the laws and regulations.

IV. Mechanism to safeguard legitimacy for the Inspection activities and reports on the Inspection activities

17. Legitimacy of the Inspection activities are safeguarded by the Director of Inspection. Director of Inspection shall bear responsibility for establishment and operations of the system of interior control of the institution and of examination of the management decisions.

18. Director of Inspection shall be entitled to cancel illegitimate decisions of the Inspection officers and interior laws and regulations.

19. Director of Inspection shall make decision concerning administrative act issued by the Inspection officer disputed by a private person or actual action of the Inspection officer and employee, unless otherwise provided by the external laws and regulations.

20. Administrative acts issued and actual action by the Director of Inspection may be disputed by a private person under procedure provided by the Administrative Procedure Law.

21. At least once a year the Inspection shall provide to the Minister of Finance a report concerning compliance with the functions of Inspection and application of budgetary resources.

22. The Minister of Finance shall be entitled at any time to require the report on compliance with the functions of Inspection, as well as on activities of the Inspection.

V. Final point

23. To declare as invalid the Cabinet Regulation No 392 of 2 December 1997 "By-laws of the Lotteries and Gambling Supervisory Inspection of the Ministry of Finance" (Latvijas Vēstnesis, 1997, No 314; 1998, No 109/110; 1999, No 446/451; 2000, No 272/274).

*(h) Law on lotteries and gambling tax and fee*

Companies, which in accordance with the law have received a license to organize and run lotteries and games of chance, pay a lottery and gambling tax.

2. A state fee is payable for a special license to organize and run games of chance, the amount of which is:

for organization and operation of slot machines, bingo, roulette, cards and dice games:

for issuance of the special license –300 000 Latvian Lats,

for prolongation of the special license –25 000 Latvian Lats,

for yearly re-registration of the special license – 25 000 Latvian Lats for each year;

for permission to operate a casino –20 000 Latvian Lats for each year;

for permission to operate a gaming or bingo hall – 1 500 Latvian Lats for each year;

for organization and operation of totalizator and betting:

for issuance of a special license –30 000 Latvian Lats,

for prolongation of the special license –30 000 Latvian Lats,

for yearly re-registration of the special license – 30 000 Latvian Lats for each year;

for organization and operation of games of chance on the telephone:

for issuance of a special license –10 000 Latvian Lats,

for prolongation of a special license –10 000 Latvian Lats,

for yearly re-registration of a special license – 10 000 Latvian Lats for each year.

The yearly re-registration of the special license is to be done starting from the year after the issuance or prolongation of the license.

When receiving, prolonging or re-registering the special license, a check must be shown that certifies the paying of the state fee.

The state fee for permission to operate a casino, gaming or bingo hall is to be paid before receiving the permission or before the date when the permission was issued. (This part of the law comes into force on 01.01.2005)

(Wording of the law of 22.11.2001, with amendments done with the law of 18.09.2003)

3. The taxation object of the gambling tax is the gambling organizer – an enterprise, gambling venue location and gaming equipment. The tax is collected from each equipped or installed gambling venue for each calendar year in accordance with the following rates:

roulette (cylindrical game) - for each table that is connected to the rotating device of roulette - 19 800 Latvian Lats;

cards and dice games - for each table - 4 800 Latvian Lats;

bingo (up to 100 seats) - 11 000 Latvian Lats;

bingo (up to 200 seats) - 16 500 Latvian Lats;

bingo (up to 300 seats) - 22 000 Latvian Lats;

bingo ( more than 300 seats) - 33 000 Latvian Lats;

(excluded with the law of 18.09.2003);

video games and mechanic slot machines, that are in casinos and gaming halls – for the playing place of each machine – 840 Latvian Lats;

video games and mechanic slot machines, that are outside casinos and gaming halls – for the playing place of each machine - 1 140 Latvian Lats.

The tax on the game of chance via the telephone is 10 percent from the income from the organization of the said game.

The gaming tax for totalizator and betting is 30 000 Latvian Lats for each year and 10 percent from the income from the organization of the said games.

If games of chance are organized with the help of means of telecommunications, the gaming tax disregarding the type of game of chance organized with such means is 10 percent from all bets paid and accepted.

(As amended by the law of 4.03.97, law of 05.08.99, law of 22.11.01, law of 12.12.02 and law of 18.09.2003. Sub points 8. and 9. come into force on 01.01.2005)

4. (Excluded with the law of 22.11.2001, that comes into force on 01.01.2002)

5. The gambling tax shall be calculated each month for each gambling place of each slot machine and each game table in each place where gambling is carried out, including the month when the slot machine or game table was installed or dismantled, as 1/12 from the amount of taxes stated in Article 3.

If during the calendar month the slot machine or game table has been moved to an another gambling place where gambling is directly carried out, in that month the amount of the tax payable to the local municipality is calculated proportionally for every such place.

During a calendar month the video games and mechanic slot machines, which are located outside casinos and gaming halls, can not be moved to casinos and gaming halls.

(Wording of the law of 22.11.2001 with amendments of the law of 18.09.2003, that comes into force on 01.01.2004)

6. The lotteries organizer pays a state fee for the issuance of a special license in the following amount:

for national lotteries - for each calendar year - 10 000 Latvian Lats;

for local lotteries - for each calendar year - 500 Latvian Lats;

for national instant lotteries - for each draw - 6 000 Latvian Lats;

for local instant lotteries - for each draw - 500 Latvian Lats;

for single local lotteries - for each draw -25 Latvian Lats.

(Wording of the 28.11.1999 law as amended by the law of 05.08.99 and 22.11.2001 that comes into force on 01.01.2002)

7. The object of the lottery tax is the income from ticket sales.

The lotteries tax is calculated from ticket sales in accordance with the following rates:

lotteries - 8%;

instant lotteries - 10%.

(As amended with the law of 05.08.99, that comes into force on 01.10.99.)

8. Non-profit organizations, their associations and religious organizations are exempt from the state fee for the issuance of the special license and lotteries tax if they organize only single local lotteries as provided in the law.

9. Gambling that is organized in means of transportation of international routes is exempt from the gambling tax if only registered passengers can use the gambling hall.

10. The gambling tax is payable every month as 1/12 of the total yearly tax rate.

Gambling tax for games of chance on the telephone is payable every month in proportion with the income from the organization of the games of chance on the telephone.

Gaming tax - 10 percent from the income from the organization of totalizator and betting is payable every month in accordance with the income received from the organization of totalizator and betting in the respective month.

Lotteries tax is payable every month in proportion with the income from the sale of the tickets.

The lotteries and gambling tax for the relevant month is paid until the 15<sup>th</sup> of the next month (the 15<sup>th</sup> included).

Lotteries and gambling organizers within 15 days after the end of a quarter submit to the State Revenue Service the lotteries and gambling tax report with the calculated lotteries and gambling tax for the quarter in question. The Cabinet of

Ministers approves the report forms and order of their submittal.

(Wording of the 18.09.2003)

11. The tax is to be paid in Latvian lats (Ls).

12. Revenues from lotteries and gambling fee [payment for the special license] are paid in the state budget.

75% of revenues from the gambling tax are to be paid in the state budget mentioned, but 25% - in the budget of the local municipality in whose territory the gambling is organized.

Revenues from the national lotteries tax are to be paid in the state budget, but revenues from local lotteries tax – in the budget of the municipality in whose territory the lottery is organized.

(Wording of the 30.10.2003)

13. If the object of the lotteries and gambling tax is being hidden or false information is being provided, the State Revenue Service in accordance with the normative acts shall disputelessly recover the whole amount payable for the object as well as a 100% penalty from the payable amount for the central budget and in case these violations are repeated within 3 calendar years from the first violation - 250%.

(As amended with the law of 11.11.99, that comes into force on 01.01.2000)

14. If a company has delayed a tax payment term, then a delay penalty of 5% from the amount not paid shall be calculated for each day of delay. If the payment is delayed for more than 30 days, the State Revenue Service arrests company's operations in organizing and running lotteries and gambling and proposes to annul the license.

If the special license is annulled, the tax paid for its issuance shall not be refunded.

(Wording of the 28.09.1995 law, that comes into force on 25.10.95)

Transitional Provisions

In accordance with the order prescribed in the law "On lotteries and gambling" the re-registration of the special licence and the state fee mentioned in Article 2 of this law for the issuance of the special license is to be paid till 31. December of 1994.

Article 6. Point 5. does not apply to those enterprises, that until the date of entry into force of this law have received the special license for organization of single local lotteries, until this license is in force.

Amendments to sub points "b" and "c" of 1<sup>st</sup> point, first part of Article 2. and its sub points "d" and "e", amendments to 7. point of first part of Article 3. and its third and fourth part, amendments to second part of Article 5 and its third part, and the third and fourth part of Article 10. come into force on 01.01.2004.

The fourth part of Article 2, amendments to point 8. of first part of Article 3 and its point 9. come into force on 01.01.2005.

Enterprises whose special licence re-registration term is 31.12.2003 pay the following state fees:

for yearly re-registration of the special license – 25 000 Latvian Lats for each year;

for permission to operate a casino –20 000 Latvian Lats;

for permission to operate a gaming or bingo hall – 1 500 Latvian Lats.

From 01.01.2004 until 01.01.2005 the state fee for permission to operate a casino, gaming and bingo hall is to be paid before receiving the permission.

From 01.10.2003 until 01.01.2004 the gaming tax for video games and mechanic slot machines – for playing place of each machine is 600 Latvian Lats.

From 01.01.2004 until tax stated in sub points 8. and 9. of first part of Article 3 come into force the following tax for video games and mechanic slot machines is to paid;

video games and mechanic slot machines, that are in casinos and gaming halls– for the playing place of each machine - 720 Latvian Lats;

video games and mechanic slot machines, that are outside casinos and gaming halls– for the playing place of each machine - 1 020 Latvian Lats.

Starting from 01.01.2004, the Cabinet of Ministers stating the state fee payable for issuance of a

marking sign provides additional finances for the Ministry's of Finance Lotteries and Gambling Supervisory Inspection, to ensure control and supervision over organization of lotteries and gambling, using the newest technologies and methods of control and supervision.

## **8. Lithuania**

### **8.1. Law on Associations**

#### **Article 1. The Purpose of the Law**

1. This Law shall regulate the procedure for the establishment, management, activities, reorganisation, and liquidation of associations.

2. This Law shall not apply to those associations the activities whereof are regulated by separate laws.

#### **Article 2. The Concept of the Association**

1. An association shall be a voluntary union of legal and natural persons which performs managerial, economic, social, cultural, educational, scientific research tasks and functions which are established by the association members.

2. The objectives of the activities, main functions and tasks of the association must relate to the activities or needs of the association members and must be laid down in its statutes.

3. Legal and natural persons may unite into associations by the type of activities, consumption, functions, and area. A person may be a member of several associations.

#### **Article 3. The Status of the Association**

1. The association shall be a legal person from the day of its registration, having the seal with its name and a settlement account. The association shall be liable for its obligations to the full extent of its property and shall not be liable for the commitments assumed by its members.

2. The association shall be a non-profit organisation. It cannot distribute a gained profit among its members. A non-profit organisation shall be an entity possessing the rights of a legal person which has been set up in accordance with the procedure established by the laws and the

objective of activities whereof is not profit seeking.

3. The name of the association must contain the word "association". The name of the association must conform to the requirements of the Regulations of Firm Names which are approved by the Government.

4. The association shall enjoy the freedom of activities, initiative and decisions, granted by the Constitution of the Republic of Lithuania, this and other laws of the Republic of Lithuania, decrees of the Government, and the determined duties, and in its activities shall abide by the association statutes registered in accordance with the procedure established by this and other laws.

#### **Article 4. Association Members**

1. Legal and natural persons of the Republic of Lithuania and other states may be association members. Restrictions on membership of foreign legal and natural persons in the association may be set in the statutes.

2. The members must observe the association statutes. The person who pursues interests contrary to the objectives of the association may not be admitted to the association.

3. The list of all the members must be held in the association, and the list of the members who belong to an affiliate must be held in that affiliate. Each association member shall have the right to familiarise himself with these lists.

4. The association member shall have the right to:

1) make use of the services rendered by the association;

2) acquire the information concerning the activities of the association;

3) use the information collected by the association; and

4) dispute in court the resolutions of the general meeting of the members and the collective managing body, and the decisions of the administration.

5. The members shall have the right to withdraw from the association and the association shall have the right to expel the members. The rights of the members, who have withdrawn or who have been expelled from the association, to the part of the association property shall be exercised

according to the procedure established in the statutes.

6. If the member's rights or lawful interests in the association are violated, the member shall have the right to defend them judicially.

#### Article 5. Establishment

1. An association may be established on the initiative of legal and natural persons. The association shall consist of at least 3 members.

2. The initiators of establishment of the association must convene a constituent assembly in which the persons (representatives authorised by them) who have expressed in writing their desire to be the members of the association which is being established shall have the right to vote. The constituent assembly shall adopt the decision concerning establishment of the association, its statutes and shall elect managing bodies.

#### Article 6. The Statutes

1. The statutes shall be a legal document which governs the activities of the association.

2. The following must be stated in the statutes:

- 1) the name of the association;
- 2) the registered office (address) of the association;
- 3) the objectives, functions and tasks of the association;
- 4) the rights and duties of the association members;
- 5) the procedure and conditions of admitting, withdrawal and expulsion of the members from the association;
- 6) the procedure for forming the managing bodies, their competence, functions and responsibility, the procedure for removing of the elective managing bodies and their members, the procedure for the payment for work of the members of the elective managing bodies;
- 7) the procedure for establishing and liquidating affiliates;
- 8) the sources of the property and funds;
- 9) control of financial activities;

10) the procedure for amending and supplementing the statutes;

11) duration of the activities of the association; and

12) the procedure for reorganising and liquidating the association.

3. The statutes may also contain other provisions which are in compliance with the laws.

#### Article 7. Registration

Associations shall be registered, re-registered and removed from the register in accordance with the procedure established by the laws. Disputes concerning the registration of the association shall be settled in court.

#### Article 8. Affiliates

1. The association shall have the right to set up affiliates. They shall be set up in the procedure established in the statutes.

2. An affiliate shall be a subdivision of the association with a separate registered office. The affiliate is not a legal person and shall use the name of the association as a legal person. The affiliate shall operate in compliance with the association statutes and the powers granted by the general meeting of the members which must be specified in the statutes of the association and the regulations of the affiliate.

3. The affiliate shall be registered, re-registered and removed from the register in accordance with the procedure established by laws.

#### Article 9. The Union of Associations

1. In order to solve their general tasks associations may unite into unions (confederations). The unions (confederations) of associations shall be established and operate in the manner prescribed by this Law.

2. An association shall join the union (confederation) at the resolution of the general meeting (conference, congress) of the members, which is adopted in accordance with the established procedure.

3. Enterprises, provided that they are not the members of the associations which are the

members of the union, may be the members of that union (confederation).

Article 10. The Rights and Duties of the Association

1. In order to conduct the activities provided for in the statutes, the association may:

1) have a settlement account and a foreign currency account with the banks according to the established procedure;

2) possess and use the property and funds which belong to it, and dispose thereof;

3) conclude contracts and assume obligations;

4) set up enterprises and organisations. They shall be established and shall operate in accordance with the law on the enterprises or organisations of an appropriate type;

5) establish mass media facilities;

6) join the union (confederation) of associations and withdraw from it; and

7) join international organisations.

2. The association shall be prohibited from engaging in commercial activities.

3. The association shall conduct accounting, present financial accounting data to state institutions and pay taxes in accordance with the procedure established by the laws.

Article 11. The Property and the Sources of Income

1. The association may by the right of ownership own buildings, means of transportation, equipment and other kinds of property necessary for carrying out of the activities provided for in its statutes which may be acquired with the funds from the sources established in Paragraph 2 of this Article.

2. Income sources of the associations shall be as follows:

1) initial contributions of the members, membership fees and special-purpose contributions;

2) special-purpose funds of the State and local authorities;

3) funds and property donated by legal and natural persons;

4) legacies left to the association;

5) profit of the enterprises established by the association;

and

6) interest paid by credit institutions on the funds kept in them.

3. The receipts of the association from the activities which are not provided by the statutes, as well as the receipts generated or applied in violation of this Law, shall be transferred to the State Budget in the manner prescribed by laws.

Article 12. Managing Bodies

The managing bodies of the association shall comprise the general meeting (conference, congress) of the members, collective managing body (bodies) and the administration.

Article 13. The General Meeting of the Members

1. The general meeting (conference, congress) of the members shall be the supreme managing body of the association.

2. The meeting (conference, congress) shall have the power to:

1) adopt, amend and supplement the statutes;

2) set objectives and main tasks of the association;

3) establish the procedure for the formation of the collective managing bodies, elect their members and remove them from office;

4) fix the amount of contributions and taxes of the association members and the procedure of payment thereof; and

5) establish enterprises, mass media facilities belonging to the association, reorganise or liquidate the association.

3. The meeting (conference, congress) must be convened at the time established in the statutes. An extraordinary meeting must be convened provided that it is requested by no less than 1/5 of the association members, by the resolution



adopted by the collective managing body, or by the examiner (examination commission, auditor).

4. The meeting (conference, congress) shall be considered valid if no less than half of its potential participants attend it. Decisions shall be adopted by a simple majority vote. Votes of no less than 2/3 of the representatives present at the meeting shall be necessary in order to adopt resolutions on the issues specified in items 1 and 5 of Paragraph 2 of this Article. While voting each participant of the meeting (conference, congress), regardless of the amount of the contributions made by the respective participant or the association member whom he represents, and the number of the members represented, shall have one deciding vote.

5. If the meeting does not have a quorum, a repeat meeting must be called within one month according to the procedure established in the statutes which shall have the right to adopt resolutions on the items set in the agenda of the meeting which has not taken place, irrespective of the number of the members present.

6. Instead of a general meeting of the members, a conference or congress may be convened in accordance with the procedure established in the statutes.

#### Article 14. The Collective Managing Body

1. During the period between general meetings of the members a collective managing body (bodies) shall guide the activities of the association, which is elected in accordance with the procedure established in the statutes and for the set period of time.

2. The collective managing bodies may be: the Board, the Council, the Presidium. The association statutes shall establish which managing bodies are set up, the number of their members, functions and powers of the managing bodies.

3. Natural persons - association members or representatives of the collective members may be the members of the collective managing body. The statutes may contain additional requirements for a member of the collective managing body.

4. The meeting of the collective managing body shall be valid if it is attended by at least 1/2 of the members of the managing body, and the adopted decisions shall be considered lawful when no less than half of the members of the managing body vote for them. The members shall have equal voting rights. In case of a tie, the head's of the collective managing body vote shall be casting.

#### Article 15. The Administration

1. The operative activities of an association shall be organised and carried out by the administration.

2. The association must have the head of the administration and chief financier (book-keeper). One and the same person cannot hold both posts concurrently.

3. The head of the administration and chief financier shall be appointed and their official salaries shall be fixed by the collective managing body which concludes employment contracts with them.

4. The head of the administration shall:

1) direct the administration;

2) according to the granted powers enter into transactions on behalf of the association and represent the association in other institutions; and

3) take on a job and dismiss employees of the administration as well as fix their official salaries.

#### Article 16. Control of Financial Activities

1. The association must from time to time perform inspections of financial activities. The inspections must be performed by the examiner (examination commission, auditor) who is elected by the general meeting (conference, congress) of the members for the term established by the statutes. A natural person who has a qualification certificate or a legal person which has the right to provide audit services may be an examiner or auditor. A member of the collective managing body of the association, and an employee of the administration cannot be an examiner.

2. The examiner shall control the financial activities of the association. He must:

1) inspect annual accounts of the association and other financial accounting documents;

2) at the instructions of the general meeting of the members or the Board perform the financial accounting inspections of the association;

3) notify the next scheduled general meeting of the members or the sitting of the collective Managing body of the violations disclosed during the inspection.; and

4) present to the general meeting of the members an annual report on the inspection of financial activities of the association.

3. The administration and the collective managing body of the association must furnish to the examiner the financial accounting documents requested by him.

4. The examiner shall be liable under the laws for concealing deficiencies of the activities of the association.

5. The State Control shall have the right to inspect how the funds allocated by the State and local authorities are being used.

#### Article 17. Reorganisation

1. The association may be reorganised by the resolution of the general meeting (conference, congress) of the members. The association may be reorganised in the following ways:

1) by uniting with other associations; and

2) by dividing the association into several associations.

2. When reorganising the association, its property must be evaluated; the examiner or auditor must present in writing the conclusions concerning the property prior to the general meeting of the members at which the reorganisation of the associations shall be considered.

3. The associations that are in operation after the reorganisation shall take over the rights and liabilities of the reorganised association. The procedure and time limits of taking over the rights and liabilities shall be set by the general meeting of the members.

4. The reorganised associations shall be registered in the manner prescribed by laws.

#### Article 18. Liquidation

1. The association may be liquidated on the following grounds:

1) the time of the duration of the association as specified in the statutes has expired;

2) the resolution of the general meeting of the members;

3) the fact that there are less association members left than established by this Law; and

4) the court's decision to liquidate the association for the violations of law established by the laws.

2. The managing body or institution that has resolved (decided) to liquidate the association, shall appoint a liquidator, establish his powers, time limits of liquidation, procedure for stock-taking and taking over the property. The procedure for appointing the liquidator and granting him the powers in the case specified in item 3 of Paragraph 1 of this Article must be established in the statutes. After the liquidator is appointed, the association shall acquire the status of the association in liquidation: the managing bodies shall be divested of the powers to manage the association, and their functions shall be performed by the liquidator.

3. The liquidation or reorganisation must be announced publicly on two separate occasions in the manner prescribed by the statutes; the interval between the two occasions must be at least 30 days.

4. Upon liquidation of the association, the liquidator must draw up the act of liquidation, remove the association from the register, and return the certificate to the registrar who issued it.

5. When liquidating the association its property and funds which are left after paying debts shall be used in accordance with the procedure established in the statutes. Only initial contributions may be returned to its members.

#### Article 19. Final Provisions

The associations registered up till now must revise their statutes according to this Law and register them within one year from the promulgation of this Law.

### **8.2. Law on Foundations**

Law on charity and sponsorship funds

March 1996, No. I-1232

#### CHAPTER ONE

#### GENERAL PROVISIONS

## Article 1. Purpose of the Law

1. This Law shall regulate the establishment, management and activities of those legal persons who enjoy the legal status of a charity or sponsorship fund (hereinafter referred to as the "fund") as well as the peculiarities of their restructuring and dissolution (reorganisation and liquidation).

2. This Law shall not apply to credit institutions and insurance organisations which carry the name of a fund as well as to those funds which are established under separate laws or international treaties with other states and international organisations and which are governed by the terms and conditions of a treaty.

## Article 2. Concept of a Fund

1. A fund is a public legal person of limited civil liability having its own name and the objective of providing charity and/or sponsorship and other support, in accordance with the procedure laid down in the Law on Charity and Sponsorship of the Republic of Lithuania (hereinafter referred to as the "Law on Charity and Sponsorship") and this Law, to legal and natural persons in the fields of science, culture, education, arts, religion, sports, health care, social care and assistance, environmental protection as well as in other fields recognised as selfless and beneficial to society.

2. The name of the fund shall contain the words "charity" or "sponsorship" or "charity and sponsorship".

3. The registered office of the fund shall be situated in the Republic of Lithuania.

4. The fund shall maintain at least one bank account.

## Article 3. Basis for Fund Activities

The fund shall act in conformity with the Constitution of the Republic of Lithuania (hereinafter referred to as the "Constitution"), the Civil Code of the Republic of Lithuania (hereinafter referred to as the "Civil Code"), the Law on Charity and Sponsorship, this Law and other laws as well as Government resolutions and its own articles of association.

## CHAPTER TWO

### ESTABLISHMENT AND REGISTRATION OF FUNDS

## Article 4. Founders

1. The founders of a fund may be legal and natural persons who have concluded a memorandum of association and who have undertaken, prior to the fund's registration in the Legal Entities' Register, an obligation to make monetary or property contributions and provide services to the fund. Where the fund is established by a single person, he shall execute a founding act, instead of a memorandum of association, subject to the requirements applied to the memorandum of association.

2. Persons who cannot be the providers of sponsorship under the Law on Charity and Sponsorship may not be the founders of a fund.

3. The memorandum of association (founding act) of the fund shall be signed by all of its founders.

4. All founders of the fund shall become its stakeholders as of the date of the fund's registration in the Legal Entities' Register.

5. The founders of a fund shall draft, prior to the fund's registration in the Legal Entities' Register, its articles of association and convene a founding meeting to adopt the articles of association and set up at least one managing body.

6. A person specified in the memorandum of association (founding act) or authorised by the founding meeting shall act on behalf of the established fund.

## Article 5. Memorandum of Association

1. The following shall be indicated in the fund's memorandum of association (founding act):

1) the founders (full names, personal identification codes and addresses of natural persons, business names and identification codes of legal persons as well as their registered offices, full names or business names and personal identification codes (identification codes) of their representatives);

2) the name of the fund;

3) property and non-property obligations of the founders;

4) the fund's objectives;

5) the date of the memorandum of association (founding act).

2. The memorandum of association (founding act) may also specify:

- 1) the procedure of compensation of founding costs;
- 2) the procedure of settlement of disputes between the founders;
- 3) persons who have the right to represent the fund, their rights and powers;
- 4) the procedure for convening a founding meeting and the procedure of adopting decisions by the founding meeting;
- 5) other provisions that do not contravene this Law and other laws.

#### Article 6. Registration and Data in the Legal Entities' Register

1. The fund shall be registered in the Legal Entities' Register in accordance with the procedure laid down in legal acts.

2. The fund may be registered only after its memorandum of association (founding act) has been concluded, its founding meeting has been convened, its articles of association have been adopted, at least one of its managing bodies has been set up and other obligations stipulated in the memorandum of association (founding act) have been fulfilled.

3. The following documents shall be submitted to the Legal Entities' Register for the registration of a fund: memorandum of association (founding act) and articles of association of the fund as well as other documents specified in Article 2.64 of the Civil Code.

4. The fund shall be deemed to be established as of the date of its registration in the Legal Entities' Register.

5. In addition to the data listed in Article 2.66 of the Civil Code, the Legal Entities' Register shall also include the following information concerning the fund:

- 1) period of activity, if limited;
- 2) dates of the beginning and end of the financial year.

#### CHAPTER THREE

#### MANAGEMENT OF THE FUND

##### Article 7. Bodies of the Fund

1. The fund shall hold general meetings of stakeholders and shall set up a managing body (single-person and/or collegiate).

2. The fund may also set up other structural bodies.

3. The structure of the fund's bodies, the scope of their competence, the procedure of convening meetings and adopting decisions shall be set out in the articles of association.

4. Members of the fund's collegiate bodies stipulated in the articles of association, which are not its managing bodies, shall not be remunerated for their activities.

5. Minutes shall be made of all meetings of stakeholders and collegiate bodies .

##### Article 8. General Meeting of Stakeholders

1. The general meeting of stakeholders shall be the supreme governing body of the fund. Where the fund has only one stakeholder, his written decisions shall be equal to the decisions of a general meeting of stakeholders.

2. The general meeting of stakeholders shall:

- 1) amend the fund's articles of association;
- 2) make decisions on the removal of stakeholders from the fund and conferring stakeholder rights to supporters;
- 3) elect (appoint) and remove members of a collegiate managing body and single-person managing body, the chairman of a collegiate managing body and the auditor, unless otherwise provided by the articles of association;
- 4) elect (appoint) and remove members of other collegiate bodies, where such bodies are stipulated in the fund's articles of association and where the articles do not provide otherwise;
- 5) approve the annual financial accounts of the fund;
- 6) decide on the restructuring or dissolution (reorganisation or liquidation) of the fund;

7) decide on the establishment of other legal persons or becoming member of other legal persons, unless otherwise provided by the articles of association.

3. The general meeting of stakeholders shall also decide on other issues falling within the scope of its competence as prescribed by this Law and the articles of association, unless they fall within the scope of competence of other bodies of the fund or constitute, in substance, the functions of a managing body.

4. The general meeting of stakeholders shall not have the right to delegate the issues falling within the scope of its competence to other bodies of the fund, except for the cases referred to in subparagraphs 3, 4 and 7 of Article 2.

5. All of the stakeholders shall have the right to vote at the general meeting of stakeholders, each of the stakeholders having one vote. Where the fund has only one stakeholder, his written decisions shall be equal to the decisions of a general meeting of stakeholders.

6. Members of the managing bodies and other collegiate bodies of the fund, where they are not the fund's stakeholders, may attend a general meeting of stakeholders without the right to vote.

7. The general meeting of stakeholders shall be convened in accordance with the procedure laid down in the articles of association.

8. The general meeting of stakeholders may adopt decisions if more than ½ stakeholders of the fund are present, unless otherwise provided by the articles of association. A decision of the general meeting of stakeholders shall be deemed to have been adopted, except for the decisions referred to in subparagraphs 1 and 6 of paragraph 2 of this Article and also in those cases where members of collegiate bodies are elected, if the number of the votes in favour cast by the stakeholders participating in the vote is greater than the votes cast against (persons abstaining in a vote shall not be counted, i.e. they shall be considered as not participating in the vote), unless the articles of association provide for a higher majority. The decisions referred to in subparagraph 1 and 6 of paragraph 2 of this Article shall be adopted by at least 2/3 of the votes cast by the stakeholders present at the meeting. Where members of collegiate bodies are appointed (elected), decisions shall be adopted in accordance with the procedure laid down in the articles of association.

9. Where a general meeting of stakeholders fails to meet the quorum, the meeting shall be reconvened in accordance with the procedure laid down in the articles of association which shall have the right to adopt decisions on the issues

included into the agenda of the failed meeting irrespective of the number of stakeholders present at the meeting.

10. The general meeting of stakeholders may be convened by the decision of a court in the event that it was not convened in accordance with the procedure laid down in the articles of the association and a stakeholder or a managing body of the fund have applied to the court.

#### Article 9. Managing Bodies

1. The managing body shall act on behalf of the fund in respect of relations with other persons and it shall also conclude transactions on behalf of the fund.

2. In addition to performing the functions specified in Article 2.82 of the Civil Code, the managing body shall hire and dismiss employees, conclude employment contracts, prepare a report on the fund's activities and present it to the general meeting of stakeholders, allocate funds for charity and sponsorship, confirm the valuation of property contributions, analyse the results of the fund's activities, estimates of income and expenditure, the findings of audits, stocktaking and other inventory records, publish or arrange the publication of public information, organise voluntary work in accordance with the procedure established by the Government as well as deal with other issues within the scope of its competence as prescribed by this Law and the articles of association. The managing body shall also adopt decisions on the establishment of branches and representative offices as well as on the termination of their activities and shall approve their regulations, unless otherwise provided by the articles of association.

3. Where several managing bodies are set up within a fund, the articles of association shall determine the scope of competence for each such body.

4. Members of a managing body may be remunerated for carrying out its work.

5. Natural persons who are members of the fund and natural persons nominated by the fund's stakeholders who are legal persons may be members of a collegiate managing body. The articles of association of the fund may stipulate additional requirements for members of a collegiate managing body.

6. A collegiate managing body may adopt decisions if more than ½ members are present at the meeting.

#### Article 10. Control of Financial Activities

1. The fund shall inspect its financial activities at the intervals prescribed by its articles of association. The inspections shall be conducted by an examiner or auditor elected by the general meeting of stakeholders for a term set down in the articles of association. Legal or natural persons, except for the founders or stakeholders and except for members of a managing body or employees of the fund, may be examiners (auditors).

2. An examiner (auditor) shall:

1) inspect the annual accounts of the fund and other accounting records;

2) conduct inspections of the financial activities of the fund if instructed by the meeting of stakeholders or the managing body;

3) report about the violations identified during inspections at the next scheduled general meeting of stakeholders or the next scheduled meeting of the managing body.

3. The managing body of the fund shall supply the examiner (auditor) with the accounts and records requested by him.

4. The examiner (auditor) may be remunerated by the fund for the work performed. The amount of remuneration or the terms and conditions of payment shall be set forth by the general meeting of stakeholders.

#### Article 11. Reporting

1. The managing body specified in the articles of association shall prepare an annual report on the fund's activities for the previous financial year and present it to the general meeting of stakeholders within the term set down in the articles of association. The report shall be public. At the request of any legal or natural person, the fund shall make the report available at its registered office or in any other manner.

2. The report on the fund's activities shall include:

1) information about the fund's activities aimed at attaining the objectives specified in the articles of association;

2) the number of stakeholders at the end of the financial year;

3) the annual financial accounts of the fund;

4) the number of the fund's employees at the end of the financial year.

3. The report on the fund's activities may also include other information as prescribed by the general meeting of stakeholders.

### CHAPTER FOUR

#### ACTIVITIES OF THE FUND

#### Article 12. Rights and Duties of the Fund

1. The fund may have and acquire only such civil rights and duties that do not contravene the objectives of the fund indicated in the Civil Code, this Law and its articles of association.

2. The fund shall have the right to pursue economic and commercial activities which are not prohibited by the law and which do not contravene its articles of association or the purposes of its activity and which are necessary to attain the fund's objectives.

#### Article 13. Articles of Association

1. The articles of association of the fund shall be a document of its formation to be complied with by the fund in its activities.

2. The following shall be indicated in the fund's articles of association:

1) the name of the fund;

2) the legal status of the fund: charity or sponsorship fund;

3) the registered office of the fund;

4) the fund's objectives, defined clearly and in detail, specifying the fields and types of activity;

5) the rights and duties of stakeholders;

6) the procedure of stakeholders' resignation (removal) and the procedure of conferring the founder's rights to supporters;

7) the procedure of convening a general meeting of stakeholders and the scope of its competence;

8) managing bodies, the scope of their competence, the procedure of appointing/electing and removing members and chairman (president) of a collegiate managing body, if such is formed, and its term of office;

9) other collegiate bodies, if such are formed, the scope of their competence, the procedure of appointing/electing and removing members and chairman (president) of a collegiate body and its term of office;

10) the procedure of submitting documents and other information about the activities of the fund to its stakeholders if the articles of association do not provide for a separate document to approve such procedure;

11) the procedure of publishing statements and notices subject to which public information is published;

12) the sources of the fund's income and the procedure of use of the funds, income and assets;

13) the procedure of controlling funds and income as well as the procedure of controlling the fund's activities;

14) the procedure of amending the articles of association of the fund;

15) the procedure of establishing and liquidating branches and representative offices;

16) the period of the fund's activity, if limited;

17) the procedure of reorganising, restructuring and liquidating the fund.

3. The articles of association of the fund shall also contain other provisions concerning the fund's activities where such provisions do not contravene the Constitution, the Civil Code, this Law and other laws.

4. The articles of association of the fund shall be signed by a person specified in the memorandum of association (founding act) or authorised by the founding meeting. This person shall sign the articles of association not later than within three days after the founding meeting.

5. The amended articles of association of an established fund shall be signed by the managing body or a person authorised by the general meeting of stakeholders.

6. The amendments to the articles of association shall come into force as of the date of their registration in the Legal Entities' Register. Together with the amendments to the articles of association, the fund shall submit to the Legal

Entities' Register the whole text of the amended articles of association (new version).

7. The signatures of natural persons who have signed the articles of association shall not be verified by a notary.

#### Article 14. Stakeholders

1. The stakeholders of a fund shall be entitled:

1) to attend and vote at a general meeting of stakeholders;

2) have access to the documents of the fund and receive all information in the possession of the fund about its activities;

3) to resign from the fund at any point in time. In this case, the contributions made or other funds and assets transferred by the stakeholder into the fund's ownership shall not be returned;

4) to other rights prescribed by the legal acts and the articles of association.

2. Those stakeholders of the fund who have not fulfilled their obligations may be removed as stakeholders, while the supporters of the fund who have undertaken an obligation to allocate funds or provide services to the fund may be granted stakeholder rights. It is only the general meeting of stakeholders that may remove a stakeholder and confer stakeholder rights to a supporter. Where the stakeholder is a single person, he may renounce the status of a stakeholder and delegate his stakeholder rights to a supporter (supporters). Such renouncing of the status of a stakeholder and conferring it to a supporter (supporters) shall be executed in written form. The procedure of removing stakeholders and conferring stakeholder rights to supporters shall be laid down in the articles of association of the fund.

3. A stakeholder shall act in conformity with the articles of association of the fund.

#### Article 15. Restrictions of the Fund's Activities

1. The fund shall be allowed to transfer the assets and funds managed by the right of ownership or any other right, dispose of them by way of security for its obligations or restrict its right to the management, use and disposal of such assets and funds only in the event that this is done to attain the fund's objectives indicated in its articles of association (including the purposes of charity and sponsorship specified in the articles of association pursuant to the Law on Charity and Sponsorship).

2. The fund shall be prohibited, even for the purposes set down in paragraph 1 of this Article:

1) to transfer, free of charge, the fund's assets into the ownership of stakeholders, members of managing and collegiate bodies, persons employed by the fund on the basis of an employment contract or persons related to the said persons, or third persons, or to transfer such assets to the above mentioned persons under trust or loan for use contracts, except for the purposes of charity and sponsorship specified in the articles of association pursuant to the Law on Charity and Sponsorship);

2) to pay benefits to the founders or stakeholders of the fund in the form of profit participation or to transfer to them a share of the assets of the fund under liquidation where such a share exceeds the stakeholder's contribution;

3) to distribute in any manner, except as charity and sponsorship pursuant to the Law on Charity and Sponsorship, the fund's assets and funds, including profits, among the founders of the fund and/or members of its managing bodies, persons employed by the fund on the basis of an employment contract, excluding the payment of wages and salaries, other payments relating to an employment relationship, payments made under copyright contracts and remuneration for services rendered or goods sold;

4) to grant loans, mortgage the fund's assets (except for cases where such assets are mortgaged by way of security for the obligations of the fund), guarantee, warrant or secure in any other manner the fulfilment of obligations of other persons. This provision shall not apply where loans are borrowed from credit institutions and where the international treaties of the Republic of Lithuania, the laws of the Republic of Lithuania or the legal acts based on the said treaties and laws provide otherwise;

5) to borrow money on interest from the founders or stakeholders of the fund or persons related to them. This provision shall not apply where loans are borrowed from credit institutions;

6) to take on unreasonably high-interest loans from other persons;

7) to purchase goods and services for a manifestly high price, except for cases where charity is provided in this manner to a person who is a charity recipient pursuant to the Law on Charity and Sponsorship;

8) to sell the fund's assets for a manifestly low price, except for cases where charity is provided in this manner to a person who is a charity

recipient pursuant to the Law on Charity and Sponsorship;

9) to establish a legal person of unlimited civil liability in respect of its obligations or to be a member of such a legal person;

10) to perform public administration functions pertaining to the state or municipalities, state or municipal institutions, public officers and public servants, unless otherwise provided by other laws;

11) to perform the functions pertaining to trade unions and religious communities, associations and centres as well as to legal persons, credit unions and other legal persons of a different legal status established pursuant to the canons, statutes or other rules of such communities, associations and centres in order to attain the objectives of the same religion if the said functions may be performed only by legal persons of a specific legal status as indicated in the laws;

12) to participate in political activities, provide support to political parties and political organisations.

3. The person referred to in subparagraphs 1 and 5 of paragraph 2 of this Article who is related to a stakeholder shall be:

1) the stakeholder's, who is a natural person, close relative, spouse (cohabitee) or a close relative of the stakeholder's spouse (cohabitee);

2) a legal person having more than half of the votes in the fund's stakeholder which is a legal person;

3) a legal person in which the fund's stakeholder has more than half of the votes, a person specified in paragraphs 1 and 2 of this paragraph or both of the said persons.

4. The fund shall use the money received as sponsorship as well as other donated money and property for the purposes indicated by the person who donated the money or property if the said person has specified such purposes. The fund shall keep such money in a separate account and shall keep an estimate of expenditure where this is provided for in the legal acts or where the person who donated the money has so requested. The fund may not accept money or other property if the purposes indicated by the person who donated the money or property are other than provided for in the articles of association.

5. The fund shall refuse to accept funds or property from potential supporters if such supporters or a group of such supporters may use



this fact to influence the fund's activities for their own benefit or the benefit of other persons.

6. The fund's supporter may indicate an area where the funds (property) donated by him should be used, but only within the scope of activities specified in the articles of association. The fund must supply the supporter, at his request, with the information necessary to control the fund's compliance with the conditions set forth by the supporter.

7. The fund shall accumulate and keep its funds in banks or other credit institutions.

## CHAPTER FIVE

### RESTRUCTURING AND DISSOLUTION OF A FUND

#### Article 16. Restructuring and Dissolution of Funds

1. A fund shall be restructured and dissolved (they shall be restructured or liquidated) in accordance with the procedure laid down in the Civil Code.

2. A fund may not be reorganised and restructured at the same time.

3. A fund may not be restructured into a political party or political organisation.

4. The fund's assets and funds remaining after all of the claims by creditors and claims by stakeholders in respect of a specific share of the fund's assets which does not exceed a stakeholder's contribution to the fund have been satisfied shall be transferred, before the fund is removed from the Legal Entities' Register, to another public legal person or other public legal persons as determined by the meeting of stakeholders or the court which has passed the decision to liquidate the fund.

5. In addition to the duties specified in this Law and the Civil Code, the liquidator of the fund shall:

1) publish a notice about the liquidation of the fund in a daily newspaper specified in the fund's articles of association and submit to the Legal Entities' Register the documents attesting to the decision to liquidate the fund as well as the data concerning the liquidator;

2) to draw up an opening balance sheet for the liquidation;

3) to transfer the remainder of the fund's assets in accordance with the procedure laid down in this Law;

4) to draw up the fund's liquidation act. The act of liquidation shall describe the course of the fund's liquidation and confirm that all of the actions relating to liquidation have been carried out;

5) to deposit the documents for safekeeping in accordance with the procedure laid down in the Law on Archives;

6) to submit to the manager of the Legal Entities' Register the act of liquidation and other documents necessary to remove the fund from the register.

### 8.3. Law on NPO

### 8.4. Law on NGO

### 8.5. Law on Other Legal Forms

#### 8.5.1. Law on Public Institutions

July 3, 1996. No. I1428

#### ARTICLE 1. Purpose of the Law

1. This law establishes the procedure of founding, management, operation, reorganisation and liquidation of public institutions.

2. The law shall not apply to the state and municipal institutions financed from the budget.

#### ARTICLE 2. The Concept of a Public Institution

1. A public institution is a non-profit organisation, founded according to the procedure established by this law from the assets of partners (owner) engaged in social, educational, scientific, cultural, sport or any other analogous activities and public to the members of the community as regards to the services it provides.

2. A non-profit organisation is an entity with the rights of legal person, established in accordance with the procedure prescribed by laws for a purpose other than profit-making. Its profit can not be distributed to its founders, members, partners (owner).

#### ARTICLE 3. The Status of a Public Institution

1. A public institution shall have the freedom of action, freedom of initiative and freedom of decision-making granted by the Constitution of the Republic of Lithuania, this Law and other laws, and shall develop its activities pursuant to the bylaws registered in accordance with the procedure established by this Law and other laws.

2. The specific requirements for the activity of a public institution shall be regulated by the law on the appropriate sphere of activities engaged in by the public institution.

3. The name and symbols of the public institution must be in compliance with the requirements on the regulations, approved by the Government, concerning the names of firms, and legal acts on the appropriate sphere of activities wherein the public institution is engaged.

#### ARTICLE 4. The Rights and Obligations of a Public Institution

1. In order to perform the activities provided for in the bylaws, a public institution may:

1) hold bank accounts in accordance with the procedure established by laws;

2) purchase or otherwise acquire property, manage it, use it and dispose thereof in accordance with the procedure established by laws and institution bylaws;

3) conclude contracts and assume obligations;

4) provide paid services, perform contractual work and set the costs thereof;

5) provide and obtain charity and sponsorship;

6) establish branches;

7) reorganise, establish non-profit organisations and enterprises in accordance with the procedure established by laws;

8) use funds for the purpose of implementing the goals established in the bylaws;

9) announce public tenders for the purpose of implementing measures;

10) establish international connections, exchange experts, students and pupils; and

11) join non-profit organisation associations, including international associations, and take part in their activities.

2. A public institution shall conduct accounting, furnish state institutions with financial accounting

and statistical information and pay taxes in accordance with the procedure established by laws.

#### ARTICLE 5. The Founding of Public Institutions

1. The founders of public institutions shall be natural and legal persons who have concluded a public institution contract of founding, or a person who has concluded a contract of founding. Natural and legal persons of the Baltic Republic of Lithuania and foreign states may become founders of public institutions.

2. State and municipal institutions shall have the right to transfer state (municipal) property to a public institution only on a use basis.

3. The legal grounds for the establishment of a public institution shall be the contract of founding of an institution formed by legal or (and) natural persons in accordance with the procedure established by this Law. The number of founders shall be unlimited. Should one person become the founder of a public institution, a deed of founding rather than a contract of founding shall be drawn up, to which requirements of a contract of founding shall be applied.

4. The contract (act) founding of a public institution must indicate:

1) founders (forenames, surnames, names of legal persons) and their addresses;

2) name of public institution;

3) sphere of activities and objectives of public institution;

4) liabilities of founders;

5) compensation of founding expenses;

6) duration of activity of the public institution;

7) procedure of resolving the disputes among founders; and

8) founders by which the public institution may be represented.

5. The contract of founding of a public institution shall be signed by all of its founders or their authorised representatives. If at least one founder is a natural person, the contract of founding must be certified by a notary. If the founder is an enterprise or a legal person, the signature of the chief or authorised person shall be approved with a seal. A foreign legal person, not having a seal, shall be applied the procedure established for natural persons.

6. The founders of a public institution shall adopt the bylaws of the institution upon having formed the contract of founding.

7. If a state or municipal institution shall assign property to a public institution on a use basis, a contract shall be concluded specifying the terms and conditions and duration of such property use and the non-property and property rights of the property owner. The head of the institution shall sign the contract on behalf of the state or municipal institution. The contract of use of state or municipal property formed prior to the registration of the institution, shall be signed by the authorised representative of the founders.

8. Prior to the constituent meeting, the persons indicated in the contract of founding shall have the right to conclude transactions on behalf of the public institution being founded. These transactions shall create obligations for the institution upon being approved by the constituent meeting. If these transactions are not approved by the meeting, the founders shall be jointly liable for the obligations based upon these transactions.

9. The constituent meeting shall be applied the provisions, established by this Law, for the general meeting of a public institution. The founders shall have the right of a deciding vote in it.

#### ARTICLE 6. The Partners (Owner) of the Public Institution

1. The partner (owner) of the public institution shall be a natural or legal person, who according to the procedure established by this Law and bylaws of the public institution, shall hold a part of the capital of the public institutions partners. The founder of a public institution shall from the day of making a contribution become a partner (owner, if all of the contributions are made by one person) in the public institution.

2. The partner (owner) of the public institution shall have the following non-property rights:

1) to take part in the general meeting with a deciding vote;

2) to obtain information on the activities of the public institution;

3) to appeal in court the general meeting resolutions, the collective managing body (if such exists) and decisions of the administration if they are not in compliance with the laws and other legal acts; and

4) other non-property rights provided for in the public institutions bylaws.

3. The partner (owner) of a public institution shall have the following property rights:

1) to obtain according to the procedure established by Article 16 of this Law, a part of the property of the public institution under liquidation;

2) to bequeath as inheritance, sell or otherwise transfer, a part of his own property to other individuals in accordance with the procedure established in the bylaws.

#### ARTICLE 7. Public Institution Bylaws

1. The bylaws constitute a legal document which the public institution must base its activities upon.

2. The following must be stated in the bylaws of the public institution:

1) the name of the institution;

2) the registered office;

3) the spheres and objectives of the institutions activities;

4) the rights and obligations of the partner (owner), the procedure for granting and deprivation of the partners (owners) rights and the procedure for transferring a part of the capital belonging to the partner (owner), to other persons property;

5) the rights of the institution which has transferred property on a use basis;

6) powers of the general meeting of the public institution and the procedure for convening it and adopting resolutions;

7) the procedure of forming and revoking the collective bodies of management, their competence, functions and liability;

8) appointment procedure and powers of the head of the administration;

9) procedure for disposal of the institutions property;

10) sources of funds and procedure of fund utilisation;

11) control of financial activities;

12) procedure of amending and supplementing the bylaws;

13) procedure of establishing and liquidating branches;

14) procedure of reorganisation and liquidation of the institution; and

15) duration of the institutions activities.

3. The bylaws may also contain other provisions related to the specific character (specifics) of the public institution which are in compliance with the laws.

4. The bylaws of a public institution must be signed by all of its founders, and the signatures must be verified: those of natural persons must be certified by a notary, those of legal persons, by the head or an authorised representative, by signature and seal of a legal person.

5. The right of initiative to amend and supplement the bylaws shall be vested in the administration of the public institution, the collective body of the public institution and the general meeting of the public institution. The amended or supplemented bylaws shall be approved by the general meeting of the public institution.

6. The amendments and supplements of the bylaws shall become effective upon their registration in accordance with the procedure established by laws.

#### ARTICLE 8. Registration of Public Institutions

1. Public institutions shall be registered, only in accordance with the procedure established by laws and only after the contributions stipulated in the contract of founding have been made.

2. Public institutions shall be reregistered and stricken from the register in accordance with the procedure established by laws.

3. If the public institution receives from the state or municipality some property on a use basis, a contract of use shall be submitted in the course of registration of the public institution.

4. If, according to the procedure established by laws, a licence (permit) is required for the activities provided for in the bylaws of the public institution, the licence (permit) must be obtained prior to the registration of the public institution.

#### ARTICLE 9. The Branches of Public Institutions

1. A branch is a division of a public institution having an individual registered office and administration. The branch is not a legal person and shall operate in the name of the public institution as a legal person, in accordance with the bylaws of the public institution and powers granted by the head of its administration, which must be specified in the institution bylaws and

regulations of the branch. The number of branches of public institutions shall not be limited.

2. A branch shall be permitted to have its own sub-account. The property of the branch shall be recorded in the financial accounts of the public institution and in separate financial accounts of the branch.

3. A branch shall be registered and stricken from the register in accordance with the procedure established by laws.

#### ARTICLE 10. The Associations of Public Institutions

1. Public institutions may join associations of non-profit organisations.

2. The procedure for the establishment of associations and activities thereof shall be established by the Law on Associations.

#### ARTICLE 11. Management of Public Institutions

1. The managing bodies of a public institution shall be the general meeting and the administration. A collective managing body (council, board, etc.) may be established by the decision of the general meeting of the public institution.

2. The general meeting of the public institution shall be the supreme managing body of the public institution. At a general meeting, the partners (owner) of the public institution and the state or municipal institution, which has transferred to the public institution property on a use basis, shall have the decisive vote, if this has been stipulated in the contract of use. If the founder of a public institution is an individual person, his written decisions shall rank equally with the decisions of the general meeting.

3. The meeting shall have the following powers:

1) to amend and supplement the bylaws;

2) to establish mandatory tasks to be implemented through its activities;

3) to determine fees and charges for services, work and production, as well as rules of their calculation, if they are not fixed by the Government;

4) to appoint and dismiss from office the head of administration of a public institution and to establish his remuneration;

5) to establish remuneration of the members of the collective body of management and the inspector (auditor);

- 6) to certify the annual financial accounting;
- 7) to establish branches of a public institution, to reorganise and liquidate a public institution.

4. The administration must convoke a scheduled general meeting annually, within 3 months from the close of the business year.

5. The general meeting of a public institution may be convoked per court decision, if it had not been convoked in accordance with the procedure established by this Law and the bylaws of the public institution and for this reason, a partner, head of administration, inspector, auditor or some other interested person, has made an appeal in court.

6. The administration shall organise and implement the operations of the public institution. The administration shall base its work on the laws, bylaws of the public institution, its own labour regulations, department and office statutes and the resolutions adopted by other managing bodies of the public institution and the decisions of the head of the administration.

7. A public institution must have a head of administration and chief finance officer (accountant). This post may not be held by one and the same person or persons who are related by kinship or marriage (parents, adopted parents, spouses, brothers, sisters, children, as well as the brothers, sisters, parents and children of a spouse). The functions of a chief finance officer may be performed under contract by a legal person.

8. The head of administration shall establish the list of staff and shall employ and dismiss the employees from office. The powers and functions of the head of administration shall be established in the bylaws.

9. Collective managing bodies of a public institution (council, board) shall be formed by resolution of the general meeting. The number of members of a collective managing body, their duties, rights and liabilities, the procedure for its formation and removal, as well as payment of remuneration shall be established in the bylaws of a public institution. The work of only one member of the collective managing body may be remunerated.

#### ARTICLE 12. Control of the Financial Activities

1. The procedure of internal control of the financial activity of a public institution shall be established in the bylaws.

2. The State and municipal control institutions shall have the right to investigate the activities of

a public institution in accordance with the procedure established by laws.

3. The Administration of a public institution must furnish the state (municipal) control institutions and entities of financial activity control, provided for in the bylaws of an institution, with the documents of the public institution, requested by them.

#### ARTICLE 13. The Funds of a Public Institution

1. The sources of the funds of a public institution may be:

- 1) funds contributed by the partners (owner);
- 2) fees received for services and contract work;
- 3) special purpose allocations from state and municipal budgets;
- 4) allocation from the Lithuania Fund and foreign funds;
- 5) funds received from charity, sponsorship, gifts, and inheritance.
- 6) other legally acquired funds.

2. An estimate of expenditure must be made in order to use the funds obtained from the state and municipal budgets and funds. An estimate of expenditure shall be prepared for the funds obtained from other sources, if the entities providing the funds shall require this.

3. The public institution shall use the funds which are received as charity or from sponsors, as well as through inheritance, as directed by a charity donor (sponsor) or a testator for the activities provided for in the bylaws. Funds received as charity, or from sponsors and through inheritance shall be kept in the individual account of additional funds of a public institution.

4. The public institution shall keep the funds received from the state and municipal budgets in an individual account of a public institution.

#### ARTICLE 14. The Property of a Public Institution

1. The property of a public institution shall be comprised of the property transferred to it by the founders (partners, owner), also the property acquired through inheritance, financial resources and other legally acquired property. Property may be given to a public institution on a use basis.

2. The state or municipal property transferred to the public institution on a use basis shall be used

and administered in accordance with the procedure established by laws.

3. A public institution may sell, transfer, lease, exchange its long-term property and also warrant or guarantee the implementation by it of the obligations of other entities only by the resolution of the general meeting of the public institution. A detailed procedure, indicating voting regulations and voting rights of founders, must be established in the bylaws.

4. The contributions made by partners shall make up the partners capital of the institution. They shall be included in the documents of accounting of the public institution, while the partner (owner) shall be issued a document attesting to his share of the capital.

5. The capital of partners may be increased only through additional contributions and through reappraisal of the property of the public institution. The capital of partners shall be increased (decreased) due to reappraisal in proportion to his own part of public institution property, while the increase (decrease) of the partner capital is divided in proportion with the parts of the partners capital.

6. A public institution, having sold material assets that are not required for its activities, shall apply the proceeds according to the procedure established in its bylaws.

#### ARTICLE 15. The Reorganisation of Public Institutions

1. Reorganisation means the transformation of a public institution as a legal person, without the liquidation procedure. The successors to all the rights and liabilities of the reorganised public institutions shall be the public institutions that become newly-established in the process of reorganisation and continuing activities after the reorganisation.

2. Public institutions may be reorganised in the following ways:

1) by merger of public institutions;

2) by division of public institutions.

3. Reorganisation by merger of public institutions may be carried out by:

1) joining to a public institution which shall continue its activities, other public institutions (one or several) which shall terminate their activities as legal persons;

2) founding a new public institution from public institutions which shall terminate their activities as legal entities.

4. Reorganisation of public institutions by way of division may be carried out by:

1) parcelling out the public institution which shall terminate its activities, to other public institutions which shall continue their activities;

2) establishing new public institutions from a public institution which shall terminate its activities;

3) separating sections from a public institution which shall continue its activities and merging these sections with other public institutions from the separated sections.

5. A plan shall be drafted for the reorganisation of a public institution by merger or division. It shall indicate the name of each public institution being reorganised, its address, the initiator of the reorganisation, reorganisation method, justification of reorganisation, stock-taking procedure, valuation of assets, successors to obligations and documents and time limits for their acceptance, the rights conferred to the administration of public institutions and experts during the reorganisation period, and time limits of reorganisation. Concurrently with the reorganisation plan, draft bylaws must be prepared, of public institutions which will function after the reorganisation.

6. The reorganisation plan shall be approved by the general meeting of the public institution and general (founders) meeting of the public institutions that will function after the reorganisation. Experts for the examination of the reorganisation plan may be appointed by the resolution of the meeting that approves the reorganisation plan. The experts shall have the right to obtain from public institutions being reorganised, any of the information relative thereto.

#### ARTICLE 16. The Liquidation of Public Institutions

1. A public institution may be liquidated on the following grounds:

1) the duration of the public institutions activities as specified in its bylaws, has expired;

2) the resolution of the general meeting, passed in accordance with the procedure established in the bylaws;

3) court decision to liquidate a public institution for established law violations;

4) a decision by the court or creditors meeting to liquidate a bankrupt public institution. In this instance the public institution shall be liquidated in accordance with the procedure established by the Law on Bankruptcy.

2. The institution which decides to liquidate a public institution shall appoint a liquidator, determining the time limits of liquidation, stock-taking procedure and procedure of property take-over. The general meeting, collective managing body and the administration of a public institution shall be divested of their powers, as of the day of the liquidators appointment and their functions shall be performed by the liquidator.

3. Following the settlement of its debts by the public institution in liquidation, the partners (owner) may have only their, the partners part of the capital refunded to them, from the balance of its property and funds. In the event some property or funds remain not parcelled, these shall be given over to another or other non-profit organisations, registered in the Republic of Lithuania.

4. The documents of the liquidated public institution shall be kept in accordance with the procedure established by the Law on Archives.

5. When liquidating a public institution, its employees shall be dismissed from work in accordance with the procedure established by the Law on the Employment Contract.

6. The liquidation of a public institution shall be made public on two occasions, with an interval of at least one month in between, or by giving written notice to each creditor.

#### ARTICLE 17. The Powers of the Liquidator

1. The liquidator shall have the rights and obligations of the head of administration of a public institution. He shall represent the public institution being liquidated in the state power and government institutions, court, and in instances involving relations with other legal and natural persons.

2. The liquidator of a public institution shall:

1) draw up financial accounts as of the beginning of the liquidation period (the liquidation balance sheet);

2) settle the accounts with the state, municipalities and social insurance agency;

3) complete the discharge of liabilities resulting from damages caused and those under contracts concluded previously by the public institution and enter into new contracts within his powers;

4) transfer the remaining assets of the public institution to the partners (owner) and that of the institution, which had decided to liquidate the public institution, to the stipulated non-profit organisation or organisations;

5) draw up the liquidation act of the public institution;

6) have the liquidated public institution removed from the Register in accordance with the procedure established by laws.

3. The liquidator shall be liable to the public institution and third parties for the losses incurred through his fault.

#### ARTICLE 18. Final Provisions

1. The operating non-profit organisations (enterprises) shall be reorganised into public institutions in the following manner:

1) the highest authority of a non-profit organisation (enterprise) shall pass a resolution to reorganise a non-profit organisation (enterprise) into a public institution;

2) the bylaws shall be prepared pursuant to this law and a public institution shall be registered in accordance with the procedure established by laws.

2. If at least one of the founders of a non-profit organisation (enterprise) happens to be a state or municipal institution, it shall conclude a contract to convey to a public institution for use, the property transferred to a non-profit organisation (enterprise) during its founding. In this instance, when in the course of founding of a non-profit organisation, the state or municipal institution has transferred its funds for the formation of authorised capital of the non-profit organisation, in reorganising the non-profit organisation into a public institution, these funds shall be included within the capital belonging to the public institution.

#### 8.6. Other Laws

##### 8.6.1. Law on Charity and Sponsorship

Law on charity and sponsorship

3 June 1993, No. I-172

Article 1. Purpose of the Law

1. This Law establishes the framework for providing and receiving charity and sponsorship, the purposes of providing and receiving charity and sponsorship as well as the providers and recipients of charity and sponsorship; it also regulates charity and sponsorship accounting and control where the providers and/or recipients of charity and sponsorship are entitled to reliefs from taxes and customs duties prescribed by the laws.

2. Where the legal rules provided for by the international treaties of the Republic of Lithuania are other than those stipulated in this and other national laws, the legal rules laid down in the international treaties of the Republic of Lithuania shall apply.

#### Article 2. Concept of Charity and Sponsorship

1. Charity is a voluntary and gratuitous provision of charity items by the providers of charity to the recipients of charity as specified in this Law, which is conducted for the purposes and in a manner stipulated in this Law.

2. Sponsorship is a voluntary and gratuitous provision of sponsorship items (except where recipients may undertake the obligations referred to in Article 8 of this Law) by the providers of sponsorship to the recipients of sponsorship as specified in this Law, which is conducted for the purposes and in a manner stipulated in this Law, including cases where sponsorship items are transferred anonymously or in any other manner in the event that a specific provider of sponsorship cannot be identified.

#### Article 3. Purposes of Charity and Sponsorship

1. Charity items shall be provided to charity recipients indicated in this Law for the purposes of satisfying their minimal socially acceptable needs, ensuring health care, assisting in the liquidation of the consequences of war, natural disasters, fires, ecological catastrophes, outbreaks of contagious diseases and epidemics.

2. Sponsorship items shall be provided to sponsorship recipients indicated in this Law for the purposes of public benefit set down in paragraph 3 of this Article and stipulated in their articles of association or regulations or in the canons, statutes and other rules pertaining to religious communities, associations and centres, while in respect of budget financed institutions, sponsorship items shall be provided for the performance of the tasks and functions prescribed in their regulations.

3. Within the meaning of this Law, the following purposes shall be presumed to be for the public benefit: activities for the purpose of international cooperation, protection of human rights, integration of minorities, promotion of cultural, religious and ethical values, educational, scientific and vocational development, non-formal and civic education, sports, social security and labour, health care, national security and defence, law and order, crime prevention, adjustment of living environment and development of housing, protection of copyright and related rights, environmental protection as well as any activities in other fields recognised as selfless and beneficial to society.

#### Article 4. Items of Charity and Sponsorship

1. Charity and sponsorship items shall comprise:

- 1) monetary funds,
- 2) any other assets, including manufactured or purchased goods, and
- 3) services

provided or rendered by charity and sponsorship providers.

2. Charity and sponsorship items shall not include funds from state and municipal budgets of the Republic of Lithuania, the State Social Insurance Fund, the Health Insurance Fund, the Privatisation Fund and other state monetary funds, monetary resources of the Bank of Lithuania, other state and municipal monetary resources, tobacco and tobacco products, ethyl alcohol and alcoholic beverages as well as items of limited circulation.

#### Article 5. Providers of Charity and Sponsorship

1. In accordance with this Law, charity shall be recognised as such where it is provided by those charity and sponsorship funds, associations, public agencies, public organisations, religious communities, associations and centres, divisions (chapters) of international public organisations which are registered in the Republic of Lithuania if the provision of charity is stipulated in their articles of association or in the canons, statutes and other rules pertaining to religious communities, associations and centres as well as in the legal acts regulating their activities and if they are entitled to receive sponsorship subject to the provisions of this Law. Monetary funds, assets (including manufactured or purchased goods) and services transferred or supplied by associations, public organisations or organisations operating on



a membership basis for the benefit of their own members shall not be recognised as charity.

2. In accordance with this Law, sponsorship shall be recognised as such where provided by:

1) legal and natural persons of the Republic of Lithuania, except for political parties, political organisations, state-owned and municipal enterprises, budget financed bodies, state and municipal institutions, and the Bank of Lithuania. In accordance with this Law, sponsorship shall be recognised as such if it is provided by enterprises in which the State or municipality has ownership of the shares carrying over 50 percent of voting rights at a general meeting of shareholders and if the said enterprises do not have any tax arrears to the state budget and/or municipal budgets of the Republic of Lithuania or to the funds administered by the State Tax Inspectorate, arrears to the State Social Insurance Fund, liabilities under loan contracts and other instruments of debt signed by the Ministry of Finance or under contracts covered by a state guarantee;

2) foreign states, foreign legal and natural persons, and international organisations.

#### Article 6. Recipients of Charity

1. The following persons may be the recipients of charity:

- 1) the disabled;
- 2) the sick;
- 3) orphans and children deprived of parental care;
- 4) non-working pensioners whose income comprises only pensions and other social benefits;
- 5) the unemployed;
- 6) persons who have been recognised as having the legal status of victims in accordance with the procedure set out in the laws of the Republic of Lithuania;
- 7) families (persons) whose income fails to meet their minimal socially acceptable needs the extent of which is established by local municipalities;
- 8) persons recognised as victims of war, natural disasters, fires, ecological catastrophes, epidemics, and outbreaks of contagious diseases in accordance with the procedure established by municipalities.

2. Persons indicated in paragraph 1 of this Article shall be recognised as such in accordance with separate laws and other legal acts.

#### Article 7. Recipients of Sponsorship

1. The following entities registered in the Republic of Lithuania may be the recipients of sponsorship:

- 1) charity and sponsorship funds;
- 2) budget financed institutions;
- 3) associations;
- 4) public organisations;
- 5) public agencies;
- 6) religious communities, associations and religious centres;
- 7) divisions (chapters) of international public organisations;
- 8) other legal persons whose activities are regulated by special laws and which participate in not-for-profit activity, while the profit received may not be allocated to their founders and/or stakeholders, and/or members.

2. The legal persons indicated in paragraph 1 of this Article shall become sponsorship recipients and shall obtain the right to receive sponsorship only after having been granted the status of a recipient of sponsorship in accordance with the procedure laid down in this Law.

3. The recipients of sponsorship may be Lithuanian communities abroad, other Lithuanian bodies or organisations as well as international charitable organisations indicated in the list approved by the Government of the Republic of Lithuania or an institution authorised by it.

#### Article 8. Obligations of the Recipient of Sponsorship

Where sponsorship is provided, the recipient of sponsorship may undertake certain obligations in respect of the provider of sponsorship in accordance with the procedure established by the Government of the Republic of Lithuania or an institution authorised by it.

#### Article 9. Providing Charity and Sponsorship

Charity and sponsorship shall be provided:

- 1) by transferring monetary funds or any other assets (including manufactured or purchased goods) and by rendering services free of charge;
- 2) by providing assets as loan for use;
- 3) by bequeathing any assets by will;
- 4) in any other manner not prohibited by the laws and international treaties of the Republic of Lithuania.

#### Article 10. Use of Sponsorship

1. The recipients of sponsorship may use the sponsorship received in accordance with this Law for the purposes of public benefit set down in paragraph 3 of Article 3 of this Law and stipulated in their articles of association or regulations or in the canons, statutes and other rules pertaining to religious communities, associations and centres as well as for charitable purposes (where they have the right to provide charity under this Law), while budget financed institutions may use such sponsorship for the performance of the tasks and functions stipulated in their regulations.

2. In accordance with this Law, the funds and other assets received as sponsorship shall not be:

- 1) used to support the activities of political parties and political organisations or political campaigns;
- 2) transferred as a contribution to any enterprise, institution or organisations whose founder, shareholder, stakeholder or member is the recipient of sponsorship.

#### Article 11. Taxation of Providers and Recipients of Charity and Sponsorship

The providers and recipients of charity and sponsorship in the Republic of Lithuania shall be taxed in accordance with the laws on taxation.

#### Article 12. Charity and Sponsorship Accounting

1. The providers of sponsorship, except for legal and natural persons indicated in paragraph 2 of this Article, shall keep accounts for sponsorship provided in accordance with this Law, indicating the data concerning specific recipients of sponsorship, items of sponsorship and their value. The providers of sponsorship shall submit annual

reports on sponsorship to the State Tax Inspectorate subject to the terms and procedure established by the Government of the Republic of Lithuania or an institution authorised by it.

2. Legal persons entitled to receive sponsorship subject to the provisions of this Law shall keep separate accounts, on the one hand, for sponsorship received in accordance with this Law (indicating the providers of sponsorship if it was not received anonymously, the value and use of sponsorship, i.e. indicating specific providers where the funds or assets received as sponsorship have been transferred to another person) and, on the other, for sponsorship and/or charity provided by themselves (indicating the data concerning specific recipients of sponsorship and/or charity, items of sponsorship and/or charity, and their value) and shall submit, subject to the terms and procedure established by the Government of the Republic of Lithuania or an institution authorised by it, their annual reports to the State Tax Inspectorate about the sponsorship they have received and its use, sponsorship and/or charity provided by themselves as well as their activities relating to the achievement of purposes beneficial to the public as specified in paragraph 3 of Article 3 of this Law. The Government of the Republic of Lithuania or an institution authorised by it shall set forth the procedure of keeping accounts for the sponsorship received anonymously.

3. The State Tax Inspectorate shall submit the information presented in the reports referred to in paragraphs 1 and 2 of this Article to the Department of Statistics under the Government of the Republic of Lithuania subject to the terms and procedure established by the Government of the Republic of Lithuania or an institution authorised by it.

4. Religious communities, associations and centres shall keep accounts for sponsorship received in accordance with this Law and for sponsorship and/or charity provided by themselves in accordance with their canons, statutes and other rules. Traditional religious communities, associations and centres in Lithuania shall have the right, when submitting reports, not to account for the sponsorship received anonymously and for its use, while in the event that only such sponsorship was received and used during the reporting period, they shall have the right not to submit a report for the said period. Requirements laid down in paragraph 3 of this Article in respect of annual reports shall not apply to those traditional religious communities, associations and centres in Lithuania which received only anonymous sponsorship during the calendar year.

#### Article 13. Charity and Sponsorship Control

1. The State Tax Inspectorate shall exercise control over the provision, receipt and use of charity and sponsorship to the extent related to tax reliefs.

2. Other state and municipal institutions and agencies shall exercise control over the provision, receipt and use of charity and sponsorship within the scope of their competence where prescribed by the laws and other legal acts.

3. Where controlling authorities (state tax inspectorate and/or customs authority) establish violations in respect of the provision, receipt and use of charity and sponsorship, they shall cancel tax reliefs and impose statutory sanctions.

#### Article 14. Import and Export of Assets for Sponsorship

1. Where assets are imported for sponsorship, a letter from the provider of sponsorship attesting that such assets are intended for sponsorship shall be submitted for customs inspection together with the customs declaration. Where medicinal or medical products are imported, they shall be accompanied by additional documents in accordance with the procedure established by the Ministry of Health.

2. Assets shall be exported as sponsorship only in the event that they are intended, in conformity with this Law, for Lithuanian communities abroad, other Lithuanian bodies or organisations as well as international charitable organisations indicated in the list approved by the Government of the Republic of Lithuania or an institution authorised by it.

#### Article 15. Status of Sponsorship Recipient

1. Persons indicated in paragraph 1 of Article 7 of this Law may apply to the manager of the Legal Entities' Register for the status of a recipient of sponsorship. The status of a recipient of sponsorship must be granted where the articles of association (regulations) of such persons provide for:

1) activities beneficial to society as specified in paragraph 3 of Article 3 of this Law (this requirement shall not apply to budget financed institutions);

2) receipt of sponsorship.

2. The Government of the Republic of Lithuania shall establish the procedure for granting the status of a recipient of sponsorship, including repeated granting of such status.

3. The manager of the Legal Entities' Register shall revoke the status of a recipient of sponsorship on the proposal of a controlling authority or at the request of the recipient of sponsorship himself. An institution shall apply to the manager of the Legal Entities' Register to revoke the status of a recipient of sponsorship after having established, within the scope of its competence, that the said person:

1) has committed a malicious violation of taxation laws as specified in the Law on Tax Administration;

2) has committed a violation of the Law on the Prevention of Money Laundering;

3) has failed to prepare a report referred to in paragraph 2 of Article 12 of this Law in accordance with the procedure established by the Government of the Republic of Lithuania or an institution authorised by it within a period of two months after being notified thereof;

4) persistently violates the requirements for providing, receiving and using charity and sponsorship and for this reason the controlling authority has already cancelled tax reliefs in respect of the said person.

4. A legal person whose status of a recipient of sponsorship has been revoked for committing at least one of the violations specified in paragraph 3 of this Article may reapply for the said status to the manager of the Legal Entities' Register not earlier than one year after the day of its repeal. The status of a recipient of sponsorship shall be granted again if the legal person has paid all of the taxes, fines and late-payment interest and where no malicious violations of the law and no violations of the Law on the Prevention of Money Laundering have been identified during a period of one year.

5. Traditional religious communities, associations and centres in Lithuania shall enjoy the status of a recipient of sponsorship. Provisions of paragraphs 1, 2, 3 and 4 shall not apply to the said entities.

#### Article 16. Liability for Violation of this Law

Providers and recipients of charity and sponsorship shall be liable for violating this Law in accordance with the procedure set out in the laws of the Republic of Lithuania.

## Article 17. Settlement of Disputes

Any dispute relating to charity and sponsorship shall be settled in accordance with the procedure set out in the laws of the Republic of Lithuania.

### 8.6.2. Procedure for Transferring up to 2% of Income Tax Amount

#### PROCEDURE FOR TRANSFERRING UP TO 2 PER CENT OF INCOME TAX AMOUNT TO LITHUANIAN ENTITIES ENTITLED TO SPONSORSHIP

Under the law on charity and sponsorship of the republic of lithuania

1. This procedure contains provisions for transferring a sum (up to 2 per cent) of the income tax payable by a permanent resident of Lithuania to Lithuanian entities (hereinafter referred to as sponsorship beneficiaries) which are entitled to sponsorship under the Law on Charity and Sponsorship of the Republic of Lithuania (Official Gazette, 1993, No. 21-506; 2000, No. 61-1818) (hereinafter referred to as the Law on Charity and Sponsorship).

2. At the end of the taxing period, a permanent resident of Lithuania shall have the right to submit an application to the tax administrator asking to transfer a part of the income tax payable by them (up to 2 per cent) to the sponsorship beneficiaries specified in the Law on Charity and Sponsorship (hereinafter referred to as Application).

3. Where under the provisions of the Law on Residents' Income Tax of the Republic of Lithuania (Official Gazette, 2002, No. 73-3085) at the end of a taxing period a permanent resident of Lithuania must make an annual income tax return, the application shall be submitted together with the annual income tax return.

4. Where under the provisions of the Law on Residents' Income Tax of the Republic of Lithuania a permanent resident of Lithuania is not obliged to make an annual income tax return at the end of the taxing period, the application shall be submitted, from the end of the taxing period and before May 1 of the following month, to the local tax administrator in whose area of activity the resident of Lithuania has a permanent place of residence.

5. A permanent resident of Lithuania who is not obliged to make the annual tax return at the end of the taxing period under the provisions of the Law on Residents' Income Tax, shall have the right to submit an application at the end of the

taxing period through a person to whom he/she is related by employment relations or relations of similar nature upon the consent of the latter. In such case individuals related to residents by employment relations or relations of similar nature through whom applications are submitted, shall, before May 1 of the corresponding year, forward these collected applications to the locations where a declaration of income tax deducted from the earnings of class A must be submitted under the procedure established by the central tax administrator. A permanent resident of Lithuania shall submit the application to the person to whom he/she is related by employment relations or relations of similar nature in a sealed envelope approved with a signature on the sealing line making it impossible to unseal the envelope without affecting the integrity of the signature.

6. The form of the application shall be established by the central tax administrator. The application shall indicate:

6.1. reporting taxing period;

6.2. first name and surname, permanent place of residence and personal number of the permanent resident of Lithuania;

6.3. name/-s, office address/-es, identification code/-es of a legal person designated pursuant to the law, number/-s of settlement account/-s, bank code/-s of the sponsorship beneficiary/-ies, and the part of the income tax requested to be transferred to each sponsorship beneficiary (in percentage).

7. The tax administrator, upon receipt of the application of a permanent resident of Lithuania, shall register the application under the corresponding procedure. The tax administrator shall examine whether the application indicates all the evidence required under this procedure. Applications missing any of the evidence required under this procedure, shall not be placed under consideration, and the permanent resident of Lithuania who has submitted the application shall be notified thereof and shall have the right to provide a supplemented application before July 1 of the current calendar year. If the application is submitted by a permanent resident of Lithuania who, under the provisions of the Law on Residents' Income Tax, is obliged to make an annual income tax return at the end of the taxing period, and who has not made the said tax return, such application shall not be placed under consideration and the permanent resident of Lithuania submitting such application shall be notified thereof.

8. Upon accepting the application for consideration the tax administrator shall be obliged to:

8.1. check whether the sponsorship beneficiary/-ies specified on the application are entitled to sponsorship pursuant to the Law on Charity and Sponsorship and have the status of the sponsorship beneficiary after the coming into effect of the corresponding provisions of the Law on Charity and Sponsorship;

8.2. compute the part of the income tax amount transferable to sponsorship beneficiaries indicated on the application.

9. The computed sums transferable to specific sponsorship beneficiaries smaller than 10 Litās shall not be transferred to sponsorship beneficiaries.

10. Parts of the income tax amount paid that are indicated in the applications of permanent residents of Lithuania and are requested to be transferred to sponsorship beneficiaries, shall be transferred to them under the procedure established by the central tax administrator not later than before November 15 of the calendar year when the application was submitted.

11. In the event it turns out that the actual amount transferred to the sponsorship beneficiary/-ies is bigger than could be transferred under the provisions of the Law on Residents Income Tax, the overpaid amount shall be exacted from the sponsorship beneficiary/-ies in a manner provided by law. Unjustified amounts transferred shall be exacted from sponsorship beneficiaries in a manner provided by law.

8.6.3. Law on Value Added Tax (excerpts)

5 March 2002, No IX-751

#### CHAPTER ONE GENERAL PROVISIONS

##### Article 1. Purpose of the Law

This Law establishes the imposition of the value added tax (hereinafter referred to as VAT) and the obligations of taxable persons, VAT payers and other persons incidental to the payment of the tax.

##### Article 2. Definitions

For the purposes of this Law:

5. "Economic activities" shall mean activities seeking to obtain any income (regardless of whether or not the activity is aimed at making a profit). The following activities, however, shall not be considered as economic activities:

3) holding of shares (interests, member shares) and other securities, even though income (interest, dividends, etc) is obtained therefrom on a continuing basis. The said exception shall not cover sale or any other transfer of shares (interests, member shares) even though income accrued from the holding thereof is obtained due to such sale or transfer;

4) keeping of a bank deposit, bank account or bank card account, even though income is obtained therefrom on a continuing basis;

5) transactions carried out on an occasional basis, i.e. not inter-connected transactions giving no grounds to believe that they are or will be carried out on a continuing basis. Where the transactions which are carried out are not uniform, this fact by itself does not give ground to treat them as being carried out on an occasional basis, where other circumstances give grounds to believe otherwise.

20. "Non-profit-making legal persons" shall mean legal persons established for other than profit-making purposes, whose generated profit under the legal acts regulating their activities shall not be distributable to their founders and/or members.

27. "Standard rate of VAT" shall be 18 %.

#### CHAPTER IV SUPPLIES, EXEMPT FROM VAT

##### Article 20. Goods and Services Related to Health Care

1. Personal and public health care services provided by health care institutions within the meaning of relevant laws, as well as natural persons who have acquired, according to the procedure established by legal acts, the right to provide the above services shall be exempt from VAT.

2. Supplies of goods by the persons specified in paragraph 1 of this Article as well as supplies by the said persons of services other than those referred to in paragraph 1 of this Article shall be exempt from VAT provided all the following conditions are met:

1) the goods and services are supplied to the users of services referred to in paragraph 1 of this Article;

2) the supply of the above goods and services is linked to the supply of services referred to in paragraph 1 of this Article.

3. The Government of the Republic of Lithuania shall have the right to lay down the conditions of and impose restrictions on the application of provisions of paragraph 2 of this Article.

4. Therapeutic substances of human origin and human milk, also dental prostheses supplied by dentists and dental technicians shall be exempt from VAT.

5. The supply of transport services for sick or injured persons or other persons in need of medical aid in vehicles specially designed for the purpose shall be exempt.

#### Article 21. Social Services and Connected Goods

1. Exempt from VAT shall be the supply of social services by children and young people care institutions, by old people's homes and/or by the care/guardianship institutions for the disabled or by other non-profit making legal persons.

2. The supplies of goods and services other than those specified in paragraph 1 of this Article by the persons referred to in paragraph 1 of this Article shall be exempt from VAT provided the following conditions are met:

1) the goods and services are supplied for the users of services specified in paragraph 1 of this Article;

2) the supply of the above goods and services is linked to the supply of services referred to in paragraph 1 of this Article.

3. The Government of the Republic of Lithuania shall have the right to lay down the conditions of and impose restrictions on the application of provisions of paragraph 2 of this Article.

#### Article 22. Education and Training Services

1. Pre-school education, primary, general, secondary, tertiary and higher education, additional training of children and young people (in art, music, other spheres), studies at higher educational establishments, vocational training shall be exempt from VAT if provided by legal persons who are qualified under laws to provide the above services, also exempted shall be in-service training and retraining, where the services are supplied by non-profit making legal persons who have acquired the right to supply the services

according to the procedure prescribed by legal acts.

2. Supplies of goods by the persons specified in paragraph 1 of this Article as well as supplies by the said persons of services other than those referred to in paragraph 1 of this Article shall be exempt from VAT provided all the following conditions are met:

1) the goods and services are supplied to the users of services referred to in paragraph 1 of this Article;

2) the supply of the above goods and services is linked to the supply of services referred to in paragraph 1 of this Article.

3. The Government of the Republic of Lithuania shall have the right to lay down the conditions of and impose restrictions on the application of provisions of paragraph 2 of this Article.

4. Scientific research carried out by the institutions of science and studies referred to the paragraph 1 of this Article, the type whereof is linked to the supplied services of higher education and/or studies shall be exempt from VAT.

5. Tuition given by natural persons shall be exempt from VAT provided their syllabi correspond to the general, secondary and higher education syllabi in the respective subject.

#### Article 23. Cultural and Sports Services

1. Cultural services supplied by non-profit making legal persons shall be exempt from VAT. For the purposes of this Article, the following shall be considered as cultural services:

1) activities of museums, zoological and botanical gardens, circus;

2) various cultural events (theatre performances, choreographic performances, cultural events for children and young people, art exhibitions and exhibitions of folk art, etc.), film production (including ancillary activities - dubbing, subtitling, etc.), film rent and demonstration;

3) services in the field of bibliography and information supplied by libraries.

2. Supplies of goods by the persons specified in paragraph 1 of this Article as well as supplies by the said persons of services other than those referred to in paragraph 1 of this Article shall be exempt from VAT provided all the following conditions are met:

1) the goods and services are supplied to the users of services referred to in paragraph 1 of this Article;

2) the supply of the above goods and services is linked to the supply of services referred to in paragraph 1 of this Article.

3. The Government of the Republic of Lithuania shall have the right to lay down the conditions of and impose restrictions on the application of provisions of paragraph 2 of this Article.

4. Supply of services linked to physical education and sport by non-profit making legal persons shall be exempt from VAT. For the purposes of this Law, the following services shall be considered linked to physical education and sport:

1) granting of the right to participate in a cultural or sport event. The provisions of the subparagraph shall not be applicable to the sale of tickets to physical education or sporting events;

2) supply of services to the participants in physical education or sporting events directly linked to their participation, i.e. the granting of the right to use special premises, territories and/or inventory for physical education and sport, the services of training of participants and other similar services. The services relating to provision of accommodation, catering and transport shall not be attributable to the above-mentioned services.

Article 24. Activities of Non-profit Making Legal Persons, Not Specified in Articles 20, 21, 22 and 23

1. Services supplied to their member by political parties, trade unions and other non-profit making legal persons set up and operating on the membership basis shall be exempt from VAT provided that the services conform to the aims of the legal person determined in the bylaws/regulations thereof and no consideration is obtained for the above services in addition to membership fees. The provisions of this paragraph shall be applied to the activities of non-profit making legal persons only where the payment of members' fee may be linked to the specific service supplied for the benefit of a specific member.

2. Supply of services by religious communities, societies and centres for the benefit of their members if the services conform to the aims provided in the canons, statutes and other norms of the said persons and, save for donations, no additional consideration is received for the services, shall be exempt from VAT. The

provisions of this paragraph shall be applied to the activities of the above-mentioned legal persons only where the donations may be linked to a specific service supplied for the benefit of a specific member.

3. Supply of services by a non-profit making legal person whose regulations (bylaws, statutes, canons and other norms) provide for the activities indicated in Articles 20, 21 or 22 of this Law shall be exempt from VAT if the non-profit making legal person supplies another person with staff, required for the supply of certain services indicated in Articles 20, 21 or 22 of this Law.

4. Supplies of goods and/or services by non-profit making legal persons during charitable and sponsorship events organised by the said persons (including sale of tickets to the events) shall be exempt from VAT if the balance of the collected funds remaining after covering the expenses related to the organisation of the event are to be allotted only for charity and/or community service engaged in by the above persons. The provisions shall be applicable to not more than 12 charitable and sponsorship events organised by a specific legal person in the course of a calendar year. If more than 12 events are organised during a calendar year, each subsequent event and related supplies of goods and/or services shall be subject to VAT according to the procedure laid down in this Law. For the purposes of this Law, a cultural event (theatrical, musical, choreographic, etc.), a fair or a similar event shall be considered a charitable or sponsorship event provided it is indicated during the preparatory stage of the event (on the tickets, posters or otherwise) that after covering the organisational expenses, the total balance of the funds collected during the event will be allotted for charity and/or community service performed by the legal person organising the event. For the purposes of this Law, charity and community service shall be interpreted in accordance with the definition of the terms in the Law of the Republic of Lithuania on Charity and Sponsorship.

5. If it is established that due to the application of provisions of paragraph 4 of this Article the goods and/or services supplied by non-profit making legal persons have gained unjustified competitive advantage over the goods and/or services supplied by other taxable persons which are or may be competitive, the Government of the Republic of Lithuania or an institution authorised by it shall have the right to establish limitations of the value and types of goods and services supplied at charitable and sponsorship events, to which the provisions of paragraph 4 of this Article are applicable.

Article 26. Radio and Television

1. Supply to the public of public information services by non-profit making legal persons - radio and/or television broadcasters shall be exempt from VAT.

2. The provisions of paragraph 1 of this Article shall not be applicable to the sale of broadcasts, advertising services and other commercial activities.

CHAPTER V IMPORTS, EXEMPT FROM VAT

Article 40. Special Cases of Exemptions on Importation

1. The following shall be exempt from import VAT:

10) goods for charitable institutions;

2. Concrete conditions, procedure and limitations of application of provisions of paragraph 1 of this Article shall be established by the Government of the Republic of Lithuania or an institution authorised by it.

CHAPTER VI CASES OF APPLICATION OF ZERO-RATE OF VAT TO SUPPLIES OF GOODS AND SERVICES

Article 49. Goods and Services Purchased with Certain Funds

1. Zero-rate of VAT shall be charged on purchases of goods and/or services that are paid for with the technical assistance funds, also funds received under the international agreement of the Republic of Lithuania where the funds received under the agreement may not be used for the payment of VAT.

2. The procedure for implementing the provisions of paragraph 1 of this Article shall be established by the Government of the Republic of Lithuania or an institution authorised by it.

Article 50. Goods Supplied to Recipients of Sponsorship

1. Zero-rate of VAT shall be applicable to the supply of goods to the recipients of sponsorship

registered in the Republic of Lithuania, who are specified in the Law of the Republic of Lithuania on Charity and Sponsorship, if the goods are exported as sponsorship by the above-mentioned recipients of sponsorship to organisations functioning abroad which themselves are entitled to receive sponsorship donations under the Law of the Republic of Lithuania on Charity and Sponsorship.

2. The provisions referred to in paragraph 1 of this Article shall be implemented by refunding to the recipients of sponsorship registered in the Republic of Lithuania the amount of the VAT which they paid for the goods purchased and exported abroad. The procedure of application of the above provision shall be established by the Government of the Republic of Lithuania or an institution authorised by it.

8.6.4. Law on Income Tax of Individuals

2 July 2002, No IX-1007 (excerpt)

CHAPTER IV PROCEDURE FOR THE CALCULATION OF TAXABLE INCOME

Article 16. Procedure for the Calculation of Taxable Income

1. Unless otherwise provided in this Article, for the purpose of calculating taxable income the following shall be deducted from income in accordance with the procedure prescribed by this Law:

1) tax-exempt income;

2) income received from activities conducted under a business certificate;

3) allowable deductions related to the receipt of income from individual activities, in accordance with the procedure prescribed by Article 18 of this Law;

Article 17. Tax-exempt Income

1. The following income shall be exempt from tax:

3) benefits by non-profit entities to their members paid out from the funds accumulated from membership fees, with the exception of benefits that are paid to individuals connected with those entities through employment relations or corresponding relations and that are not indicated in the other subparagraphs of this paragraph;



18) income received as charity in accordance with the procedure prescribed by the Law of the Republic of Lithuania on Charity and Sponsorship (hereinafter referred to as the Law on Charity and Sponsorship);

19) income received by inheritance, which is subject to tax under legal acts of the Republic of Lithuania on estate tax;

29) scholarships to students and pupils of educational establishments financed from the funds of non-profit entities established in accordance with the procedure prescribed by laws of the Republic of Lithuania and foreign countries, provided the payment of scholarships is provided in legal acts regulating activities of those entities and a recipient of a scholarship is not a member, employee of the entity paying the scholarship or a member of the family of a member or employee of that entity, as well as provided that scholarship is not related to the work carried out or intended to be carried out, or the services provided or intended to be provided for those entities by a recipient of that scholarship;

37) funds for the maintenance of the clergy, attendants at religious ceremonies and support staff (except for persons carrying out construction, repair and restoration works) of religious communities, denominations and centres (higher church authorities);

2. The relief laid down in subparagraphs 29, 37 of paragraph 1 of this Article shall not apply if the respective income of an individual is received from foreign entities registered or otherwise organised in target territories, or from individuals whose permanent place of residence is in a target territory.

#### Article 18. Allowable Deductions Related to the Receipt of Income from Individual Activities

1. Unless otherwise provided by this Article, allowable deductions of a resident of Lithuania engaged in individual activities shall be the expenses incurred by such a resident of Lithuania in the normal course of business and related to the income from individual activities actually received during the tax period. Allowable deductions related to the receipt of income of a resident of Lithuania from individual activities and the procedure for the calculation thereof shall be established by the Government of the Republic of Lithuania or an institution authorised by it.

2. Unless otherwise provided by this Article, allowable deductions of a non-resident of Lithuania engaged in individual activities through the fixed base shall be the expenses incurred by

such a non-resident of Lithuania in the normal course of business and related to the income from individual activities actually received during the tax period. Allowable deductions related to the receipt of income of a non-resident of Lithuania from individual activities through the fixed base and the procedure for the calculation thereof shall be established by the Government of the Republic of Lithuania or an institution authorised by it.

4. The amount of allowable deductions shall not exceed the income actually received from individual activities during that tax period.

5. Expenses shall be supported with documents bearing all the obligatory particulars of accounting documents required by the Law of the Republic of Lithuania on Accounting and other legal acts of the Republic of Lithuania, and satisfying the established requirements where appropriate requirements with respect to the forms of documents are established by the Government of the Republic of Lithuania. In addition to the said particulars, the documents supporting the expenses shall indicate:

1) name, surname and personal number of a supplier of goods or services (where a supplier of goods or services is a natural person);

2) name, surname and personal number of a purchaser of goods or services (individual), unless otherwise provided by the Government of the Republic of Lithuania or an institution authorised by it.

#### CHAPTER VI OBLIGATIONS AND LIABILITY

##### Article 34. Obligations of the Tax Administrator

3. Upon a request of a resident of Lithuania, the tax administrator must, at the close of the tax period and in accordance with the procedure established by the Government or an institution authorised by it, transfer up to 2% of the amount of income tax paid on the income of the said resident of Lithuania for the respective tax period to Lithuanian entities which, in accordance with the Law on Charity and Sponsorship, are entitled to support.

##### 8.6.5. Law on Lotteries

1 July 2003, No IX-1661

#### CHAPTER ONE

##### GENERAL PROVISIONS

#### Article 1. Purpose of the Law

1. This Law shall regulate the conditions and procedure for operating lotteries in the Republic of Lithuania. The purpose of this Law shall be as follows:

1) to ensure the fulfilment of obligations undertaken by lottery operators in respect of players;

2) to ensure the protection of the rights of players and lottery operators.

2. This Law shall not be applied in respect of those events where a person may win an additional prize by purchasing a specific product or service.

#### Article 2. Definitions

1. "National lottery" means a lottery the operator of which possesses a licence granting the right to distribute lottery tickets across the whole territory of the Republic of Lithuania and the face value of all tickets in the lottery is not limited.

2. "Controller of a legal person" means a natural or legal person who:

1) has the right to elect (appoint) more than half of members of the supervisory council (board of directors) and/or the head of the administration;

2) exercises actual control over the decisions made by a legal person: has the right of ownership to all or part of the assets of a legal person or the right of disposal in respect of all or part of such assets, or enjoys other rights enabling to influence the decision making of the management bodies or the personnel structure of a legal person.

3. "Lottery" means a game conducted in accordance with the established rules where the player purchases tickets to win money or goods.

4. "Lottery ticket" means a document or recording (numbers and/or symbols chosen by the player, time of recording, the player's telephone number and/or code), which is identifiable (providing evidence of participation in a lottery) in the database of a lottery's computer system. Prizes paid out or delivered only upon the presentation of a lottery ticket.

5. "Lottery prize fund" means the total amount of prizes allocated to lottery winners.

6. "Drawing of a lottery" means the drawing of lottery tickets to determine the winning tickets.

7. "Local lottery" means a lottery the operator of which possesses a licence issued in compliance with the requirements of this Law by an executive body of the municipality in the territory of which the lottery is operated when lottery tickets are distributed and the lottery is conducted during a sporting, cultural or any other public event and prizes are presented before the event ends and where the face value of all tickets in the lottery does not exceed LTL 100 000.

8. "Face value of lottery tickets" means the total selling price of all tickets in the lottery.

9. "Player" means a natural person who has entered a lottery, i.e. a person who has obtained a lottery ticket.

#### Article 3. Types of Lotteries

1. According to their scale, lotteries are subdivided into:

1) national lotteries;

2) local lotteries.

2. According to their nature, lotteries are subdivided into:

1) numeric lotteries where a correct choice of numbers and/or other symbols leads to winning a prize, while the prize and its amount are predetermined by the sum paid for the lottery ticket and the selection of numbers and/or other symbols chosen by the player matches the winning selection in a lottery. The price of a numeric lottery ticket shall be fixed or the player may choose the ticket price;

2) instant lotteries where prizes and their amount become known immediately after the player purchases a lottery ticket and checks it in accordance with the procedure set out in the lottery rules. The price of an instant lottery ticket shall be fixed;

3) classic lotteries where prizes are won by choosing a lottery ticket with printed numbers and/or symbols unknown to the player, while the prize and its amount is predetermined by the number of numbers and/or other symbols printed on the lottery ticket that matches those drawn in a lottery. The price of a classic lottery ticket shall be fixed;

4) sports lotteries where a correct choice of numbers and/or other symbols which specify the result of a sporting event leads to winnings a prize, while the prize and its amount are predetermined by the number of correct numbers

and/or symbols chosen by the player which depends on the result of the sporting event. The price of a sports lottery ticket shall be fixed.

3. According to the manner of distributing lottery tickets, data processing and paying out prizes, lotteries are subdivided into:

1) remote communication computer lotteries where lottery tickets are sold and prizes are paid out through remote communication computer network terminals located in different places of the Republic of Lithuania and linked by way of telecommunication with the central host computer which ensures a centralised recording of lottery ticket sales and prize pay-outs;

2) offline lotteries where lottery tickets are sold and prizes are paid out without the use of remote communication computer network terminals;

3) telephone lotteries where the information required for entering a lottery is transmitted to the lottery's computer database by telephone and a recording is made in the database evidencing participation in the lottery. The player shall pay for entering the lottery through a telephone network operator;

4) online lotteries where the information required to enter a lottery is transmitted to the lottery's computer database by the Internet and a recording is made in the database evidencing participation in the lottery. The player shall pay for entering the lottery through telecommunication service systems of credit institutions.

## CHAPTER TWO

### REQUIREMENTS FOR OPERATING LOTTERIES

#### Article 4. Licensing Authorities

1. National lottery operating licences shall be issued by the State Gaming Control Commission.

2. Local lottery operating licences shall be issued by an executive body of the municipality in the territory of which the lottery will be conducted.

#### Article 5. Types of Lottery Operating Licences

Licences may be issued to operate:

1) national lotteries;

2) local lotteries.

#### Article 6. Lottery Operators

The right to operate a lottery shall belong to the following persons:

1) in respect of national lotteries, only to enterprises of the Republic of Lithuania and those foreign enterprises with a registered branch which act in conformity with the procedure established by the laws of the Republic of Lithuania, comply with the requirements of this Law and which have been issued a licence to operate a major lottery;

2) in respect of local lotteries, to legal persons of the Republic of Lithuania and those foreign legal persons with a registered branch which act in conformity with the procedure established by the laws of the Republic of Lithuania, comply with the requirements of this Law and which have been issued a licence to operate minor lotteries.

#### Article 7. Fundraising for Charitable or Sponsorship Purposes

Lottery operators shall allocate 8 percent of the face value of all tickets distributed in a lottery for charitable or sponsorship purposes to the beneficiaries specified in the Law on Charity and Sponsorship.

#### Article 8. Distribution of Lottery Tickets

Lottery operators may distribute lottery tickets themselves or under contracts with legal or natural persons in accordance with the procedure laid down in the laws and other legal acts.

#### Article 9. Lottery Prize Fund

The lottery prize fund shall account for not less than 50 percent of the face value of lottery tickets.

#### Article 10. Prize Pay-Out and Accounting

1. Lottery prizes shall consist of money or goods.

2. Monetary prizes in a national lottery shall be paid (or prizes in goods shall be delivered) not later than within 30 calendar days after they are

claimed by the winner from the lottery operator. Monetary prizes in a local lottery shall be paid (or prizes in goods shall be delivered) immediately or before the event ends and after the winning ticket is presented to the lottery operator.

3. Monetary prizes in excess of LTL 5 000 shall be paid only by a bank cheque or by transfer to an account with a credit institution as specified by the winner. Monetary prizes that are not in excess of LTL 5 000 shall be paid out in cash at the request of the winner.

4. The operator of national and local lotteries shall register lottery winners in accordance with the procedure established by the State Gaming Control Commission.

5. The lottery operator shall issue the winner, at his request, a certificate in the form established by the State Tax Inspectorate under the Ministry of Finance attesting to the prizes paid out (delivered) to the said winner.

6. The lottery operator shall keep documents and information concerning the winners referred to in paragraph 4 of this Article, except for the cases provided for in paragraph 3 of Article 13 of this Law, for a period of five years in accordance with the procedure established by the State Gaming Control Commission and shall submit them only to the State Gaming Control Commission, pre-trial investigation officers, the court and other institutions in accordance with the procedure established by the law.

#### Article 11. The Right of Lottery Operators to Engage in Other Economic or Commercial Activities

1. The operator of national lotteries shall not have the right to engage in other economic or commercial activities, except for activities related to the distribution of lottery tickets (conclusion, in accordance with the procedure laid down in the laws and other legal acts, of contracts with legal and natural persons on the distribution of lottery tickets), the conduct of its own lottery (advertising, publication and sale of newspapers and magazines about lotteries, creation and production of television films, television and radio broadcasts about its own lottery) and the lease of remote communication computer lottery system. Where a licence to operate a major lottery is issued to a lottery operator engaged in other economic or commercial activities, the lottery organiser shall comply with the said requirement within 60 days from the date of receipt of the licence and notify the State Gaming Control Commission thereof.

2. Where the requirement specified in paragraph 1 of this Article is not complied with, the licence to operate a major lottery shall be cancelled.

3. The operator of local lotteries shall have the right to engage in other economic or commercial activities.

#### Article 12. Requirements for Persons Involved in Lottery Operation and Licensing Authorities

1. Persons with a non-spent or valid conviction for serious and grave crimes or crimes against property, property rights and property interests, the economy and business practice or the financial system may not be participants of the lottery operator, members of the supervisory council and the board of directors, heads of the administration and their deputies, chief accountants (accountants), and controllers of such a legal person.

2. Prior to issuing a licence, the licensing authority must receive the conclusions of the Special Investigation Service, the Police Department under the Ministry of the Interior, the Financial Crime Investigation Service under the Ministry of the Interior, and the State Security Department in respect of persons specified in paragraph 1 of this Article and lottery operators.

3. A lottery operating licence shall not be issued in the event that negative conclusions are received from the institutions referred to in paragraph 2 of this Article in respect of persons specified in paragraph 1 of this Article or lottery operators. Where negative conclusions are received from the institutions referred to in paragraph 2 of this Article in respect of persons specified in paragraph 1 of this Article or lottery operators after a lottery operating licence has been issued, the licence may be cancelled or suspended in accordance with the procedure established by the Government.

#### Article 13. Requirements for Lottery Tickets

1. Printed lottery tickets shall be numbered and each lottery ticket shall be allocated a unique number. The recording in a lottery's computer database shall indicate the numbers and/or symbols chosen by the player, the time of recording, the player's telephone number and/or code.

2. A printed lottery ticket shall show the following information: the price of the ticket, the name of the lottery, the name of the lottery operator, its legal status, code, address of the head office,

telephone number, the register wherein data concerning the lottery operator are stored, the address where prizes may be received, a space for writing the full name of the winner, and the prize fund in percent. No corrections shall be made in a printed lottery ticket.

3. The lottery operator shall keep, in accordance with the procedure established by the State Gaming Control Commission, the tickets of national and local lotteries, extracts from the lottery's computer database on the basis whereof prizes were paid out (delivered). Where a licence is cancelled, the unsold national and local lottery tickets shall be collected from all the places of their distribution and destroyed in accordance with the procedure established by the State Gaming Control Commission within 60 calendar days after the decision to cancel the licence.

4. National instant lottery tickets must have at least 5 security features, while local instant lottery tickets must have at least 2 security features. The lottery's computer database wherein recordings concerning the players are stored may not be duplicated. The lottery operator shall bear responsibility for data security.

5. The operator of national and local lotteries shall, not later than 3 working days before the distribution of printed lottery tickets, present the licensing authority with the conclusions of the Service of Technological Security of State Document under the Ministry of Finance concerning compliance of printed lottery tickets with security requirements. Such conclusions shall be presented by the said institution within 30 calendar days from the date of receipt of the lottery operator's application and description of the security features of a lottery ticket.

#### Article 14. Amount of Capital or Financial Guarantees relating to Lottery Operators

1. The equity capital of an operator of national lotteries shall be at least LTL 500 000.

2. The equity capital of an operator of local lotteries shall be at least LTL 50 000.

3. Where an operator of local lotteries does not have equity capital under the law, it shall have a financial guarantee issued by a credit institution. The amount of the guarantee shall be at least LTL 50 000.

4. A lottery operator shall comply with the requirements specified in paragraphs 1, 2 or 3 of this Article before filing the documents to receive a licence.

#### Article 15. Requirements for the Arrangement of Drawings of Numeric and Classic Lotteries

A commission shall be present at the drawing of numeric and classic lotteries. The number of members of the commission and the procedure of setting it up shall be set forth by the State Gaming Control Commission.

#### Article 16. Rights of Players

1. A player shall have the right:

1) prior to entering a lottery, to have the licence issued to a lottery operator (or a copy of such licence certified by the head of a lottery operator) and the lottery rules made available to him;

2) to receive, after presenting the lottery ticket, the prize in accordance with the procedure laid down in the lottery rules;

3) to request that a lottery ticket be replaced by another lottery ticket if the purchased ticket is impaired or damaged;

4) to submit claims regarding the conduct of a lottery in accordance with the procedure laid down in the lottery rules;

5) after winning a prize, to request that his personal data are not published, except for the cases provided for in paragraph 6 of Article 10 of this Law.

2. A player shall have the right to appeal, in accordance with the procedure established by the law, to a licensing authority or other institutions in respect of the actions of a lottery operator or his failure to act.

#### Article 17. Prohibitions and Restrictions relating to the Operation of Lotteries

1. It shall be prohibited to operate lotteries not indicated in this Law or to operate them in violation to the procedure established by this Law.

2. The following persons shall be prohibited from participating (either directly, through another person or authorised by another person) in a lottery conducted by the lottery operator: the participants of the lottery operator, members of its supervisory council and the board of directors, heads of the administration and their deputies,

chief accountants, ticket distributors, and controllers of such a legal person.

3. It shall be prohibited to pay out prizes in lottery tickets, securities, alcoholic beverages, tobacco products and other articles in restricted circulation.

4. The minimum value of a lottery prize shall be worth at least the price of a lottery ticket.

5. A lottery operating licence may not be sold or transferred in any other way to other legal or natural persons.

6. It shall be prohibited to provide information about the winners of a lottery without the consent of such persons, except for the cases provided for in paragraph 6 of Article 10 of this Law.

7. Other prohibitions and restrictions set out in this Law and other legal acts shall apply in respect of operating lotteries.

#### Article 18. Special Features relating to Accounting Records

1. Lottery operators shall keep internal accounting records that provide information about the number and value of all tickets sold in any lottery.

2. Lottery ticket distributors (legal persons) may be remunerated on the basis of data from remote communication computer lotteries and data from telephone or internet lottery's central host computer as published in documents bearing the requisites specified by the laws and other legal acts.

#### Article 19. Lottery Rules

1. The operator of national and local lotteries may start distributing tickets in each lottery only after the approval of the lottery rules.

2. The lottery rules shall specify:

- 1) the type and name of the lottery;
- 2) the location where the lottery is conducted;
- 3) the nature of the lottery;
- 4) the procedure of determining lottery winners;
- 5) the description of a lottery ticket;

6) the price of a lottery ticket or the price of an identification recording in a lottery's computer system;

7) the number of lottery tickets to be distributed (where a local lottery is conducted);

8) the procedure of numbering lottery tickets or identification recordings in a lottery's computer system (series and numbers of lottery tickets are specified);

9) the description of security features of a printed lottery ticket as coordinated with the Service of Technological Security of State Document under the Ministry of Finance;

10) the specimen (draft) of a printed lottery ticket;

11) types of prizes, their amounts, number and the total amount of prizes;

12) the total prize fund in percent;

13) the intended time of the conduct of lottery;

14) the procedure of distributing lottery tickets or identification recordings in a lottery's computer system;

15) the procedure of checking lottery tickets;

16) the procedure of receiving prizes;

17) the rights and duties of lottery players;

18) the procedure of submitting and examining claims;

19) the description of a television game and its rules (where a television game is conducted).

3. National lottery rules and amendments thereto shall be approved by the lottery operator after coordination with the State Gaming Control Commission.

4. Local lottery rules and amendments thereto shall be approved by the lottery operator after coordination with an executive body of the municipality in the territory of which lotteries are operated.

#### Article 20. Reporting

The operator of a national lottery shall submit lottery reports to the State Gaming Control Commission after the end of each quarter of the calendar year but not later than the 25th day of

the first month of the next quarter and within 4 months after the end of each calendar year. The State Gaming Control Commission shall establish the form of such reports and the procedure of filling them out.

## CHAPTER THREE

### OPERATION OF MAJOR AND MINOR LOTTERIES

#### Article 21. Validity of National and Local Lottery Operating Licence

A national and local lottery operating licence shall be issued for an unlimited period of time.

#### Article 22. National and Local Lottery Licensing Rules

The Government shall approve major and minor lottery licensing rules.

## CHAPTER FOUR

### STATE SUPERVISION AND CONTROL OF THE OPERATION OF LOTTERIES

#### Article 23. Supervisory and Controlling Authorities

1. The activities of national lottery operators shall be supervised and controlled by the State Gaming Control Commission, while the activities of local lottery operators shall be supervised and controlled by an executive body of the municipality in the territory of which local lotteries are operated (hereinafter referred to as the "supervisory and controlling authorities").

2. The supervisory and controlling authorities shall have the main objective of supervising and controlling, in accordance with the procedure established by legal acts, the operation of lotteries to ensure the protection of the interests and rights of players and lottery operators.

3. Other state institutions shall exercise supervision and control over the operators of national and local lotteries in accordance with the procedure laid down in the laws and other legal acts.

#### Article 24. Main Functions of Supervisory and Controlling Authorities

When implementing the provisions of this Law, the supervisory and controlling authorities shall:

- 1) examine the documents necessary to issue lottery operating licences;
- 2) issue, suspend and cancel lottery operating licences;
- 3) control compliance of lottery operators with the requirements of the laws and other legal acts regulating the operation of lotteries;
- 4) draft laws and legal acts regulating the operation of lotteries.

#### Article 25. Rights of Supervisory and Controlling Authorities

1. When implementing the functions assigned to it, the supervisory and controlling authorities shall have the right to:

- 1) obtain information necessary to perform its supervisory functions from lottery operators;
- 2) check compliance of lottery operators with the requirements of this Law and other legal acts at the point of conduct of lotteries and distribution of lottery tickets;
- 3) check the financial activities of lottery operators, related to the operation of lotteries;
- 4) request that lottery operators submit explanations regarding the operation of lotteries;
- 5) determine the type of lottery where a game does not conform to all of the features of a specific type of lottery or where it conforms to the features of several types of lotteries;
- 6) establish the form of reports to be submitted by a lottery operator;
- 7) impose sanctions on lottery operators as set out in the laws and other legal acts regulating the operation of lotteries: cancellation and suspension of licences, etc.

2. When performing the tasks assigned to them, public servants and other employees of supervisory and controlling authorities shall also have the rights granted by other laws and other legal acts.

3. Public servants and other employees of supervisory and controlling authorities may use information related to the operation of lotteries and obtained in the course of performance of their official duties only for supervisory purposes and shall submit such information only to pre-trial investigation officers, the court and other institutions in accordance with the procedure established by the law.

#### Article 26. Audit

Within 4 months after the end of the financial year, the operator of national lotteries shall submit the annual financial report audited by an audit company together with the auditor's opinion to the State Gaming Control Commission and shall publish the balance sheet as well as the profit and loss account.

### CHAPTER FIVE

#### FINAL PROVISIONS

#### Article 27. Entry into Force and Application

1. This Law, except for Article 29, shall enter into force on 1 January 2004.

2. Lottery operators that have been issued licences of limited duration to operate monetary as well as monetary and non-monetary lotteries before the entry into force of this Law shall carry out their activities until such licences expire. Lotteries shall be conducted in accordance with the regulations approved by the Gaming Commission under the Ministry of Finance. Amendments to these regulations shall be approved by the State Gaming Control Commission.

3. Lottery operators that has been issued licences of unlimited duration to operate monetary as well as monetary and non-monetary lotteries before the entry into force of this Law shall, in accordance with the procedure laid down in the National and Local Lottery Licensing Rules, restructure their activities subject to the provisions of this Law.

4. Lottery organisers possessing licences issued before the entry into force of this Law shall pay taxes in accordance with procedure established by the Law on Lottery and Gaming Tax and other legal acts.

#### Article 28. Liability for Violations of this Law

Persons shall be liable for violating this Law in accordance with the procedure established by the laws of the Republic of Lithuania.

#### Article 29. Proposals to the Government

The Government shall approve by 1 November 2003:

- 1) National and Local Lottery Licensing Rules;
- 2) amounts of state fees for the issue of lottery operating licences.

#### 8.6.6. Gaming Law

##### Gaming Law

17 May 2001, No IX-325

### CHAPTER ONE

#### GENERAL PROVISIONS

#### Article 1. Purpose of the Law

This Law establishes the conditions and procedure for the operation of gaming in the Republic of Lithuania.

#### Article 2. Definitions

1. "Gaming" means the playing of a game or mutual betting in accordance with established regulations where the participants seek to win money by voluntarily risking a stake and where winnings or losses depend on chance, an occurrence of any event or the outcome of a sporting event.

2. "Gaming device" means a gaming machine as well as any other electronic or mechanical device designed and manufactured for gaming purposes, the use of which results in winning or losing money by chance.

3. "Gaming machine" (hereinafter referred to as the "machine") means an electronic device designed and manufactured for gaming purposes, the use of which results in winning or losing money by chance:



1) "Category A gaming machine" means a gaming machine with unlimited winnings where the maximum single winning is not limited;

2) "Category B gaming machine" means a gaming machine with limited winnings where the maximum single winning does not exceed LTL 200, the maximum amount of a stake made per game does not exceed LTL 1 and the duration of a single game is not less than 3 seconds.

4. "Gaming establishment (casino)" means a place where table games (roulette, card or dice games) as well as games by gaming machines of category A are operated in accordance with approved gaming regulations.

5. "Gaming machine hall" means a place where games by gaming machines of category B are operated in accordance with approved gaming regulations.

6. "Bingo hall" means a place where bingo is operated in accordance with approved gaming regulations.

7. "Player" means a natural person participating in gaming.

8. "Winnings fund" means the sum of money earmarked for winning players.

9. "Controller of a legal person" means a natural or legal person which:

1) has the right to elect (appoint) more than half of members of the supervisory council (board of directors) or the head of the administration;

2) exercises actual control over the decisions made by a legal person: has the right of ownership to all or part of the assets of an economic entity or the right of disposal in respect of all or part of such assets.

10. "Remote communication system" means a system which is used for placing stakes and paying out winnings through remote communication computer network terminals located in different places of the Republic of Lithuania and linked by way of telecommunication with the central host computer which ensures a centralised recording of the stakes placed and the winnings paid out.

11. "Betting intermediary" means a natural person who acts as an intermediary between persons making bets: sets the betting ratio, records the bets, collects and pays out money.

12. "Betting station" means a place where bets are accepted from the participants of betting.

13. "Totalisator station" means a place where bets are accepted from totalisator players.

14. "Maximum single winning" means the permitted maximum amount that may be won by a player in a single game which is equal to the product of multiplication of the amount staked and the maximum winning ratio fixed by the gaming machine software.

15. "Duration of a single machine game" means the period of time from the beginning of the game (pressing of the button) to the presentation of the result.

### Article 3. Types of Gaming

#### 1. Machine gaming:

1) games by gaming machines of category A are played when tokens are inserted into the gaming machine and the winnings are paid out in tokens by the machine. The result of the game and the amount of winnings are determined by the gaming machine;

2) games by gaming machines of category B are played when coins and (or) tokens are inserted into a gaming machine and the winnings are paid out in money or tokens. The result of the game and the amount of winnings are determined by the gaming machine.

2. Bingo is a game which is played with cards bearing numbers and a scoreboard; the amount of winnings depends on the total amount of stakes and the combination of numbers selected at random. The total bingo winnings fund shall comprise at least 50 percent of the total amount of stakes.

#### 3. Table games:

1) roulette is a game which is played by guessing in which slot a ball dropped on a spinning wheel will stop; the amount of winnings depends on the total amount of stakes and the winning ratio fixed in advance;

2) card or dice game is played when the winner and the amount of winnings is determined on the basis of symbols of the cards dealt or the score of dice.

4. Totalisator is a game which is played by guessing the result of a sporting event where the amount of winnings depends on the ratio between the bet size fixed in advance by totalisator operators and the winnings fund. The total totalisator winnings fund shall comprise at least 50 percent of the total amount of the bets made.

5. Betting means mutual betting on the outcome of an event based on guessing where the amount of winnings depends on the amount of the bet made and the betting ratio fixed in advance by the betting intermediary.

## CHAPTER TWO

### REQUIREMENTS FOR THE OPERATION OF GAMING

#### Article 4. Licensing Authority

1. Gaming licences shall be issued by the State Gaming Control Commission (hereinafter referred to as the "Control Commission").

2. Prior to issuing a gaming licence, the Control Commission must receive the conclusions of the State Security Department, the Financial Crime Investigation Service under the Ministry of the Interior, the Special Investigation Service and the Police Department under the Ministry of the Interior.

#### Article 5. Types of Gaming Licences

1. Licences may be issued to operate:

- 1) table games and category A machine gaming;
- 2) category B machine gaming;
- 3) bingo
- 4) totalisator;
- 5) betting.

2. A single company may be issued all types of licences.

#### Article 6. Validity and Cancellation of Licence

1. A gaming licence shall be issued for an unlimited period of time.

2. The licence shall be cancelled if:

- 1) the licence holder submits an application to cancel the licence;
- 2) a company in liquidation or re-organisation ceases to operate;

3) (not valid since 25 July 2003);

4) false data were submitted to obtain a licence;

5) a company which was warned about a possible cancellation of the licence has failed to eliminate violations of the conditions of licensed activity;

6) on other grounds provided for in legal acts.

3. The licence shall be cancelled by the institution which has issued it.

#### Article 7. Gaming Licensing Rules

The Government shall approve gaming licensing rules.

#### Article 8. Gaming Entities

Gaming shall be operated by public and private companies (hereinafter referred to as "companies") which act in accordance with the procedure established by the Company Law and which have obtained a licence to carry out this activity and permits to open gaming machine halls, bingo halls and gaming establishments (casinos) or when the Control Commission approves totalisator or betting regulations.

#### Article 9. Locations of Gaming Establishments (Casinos)

Gaming establishments (casinos) shall be set up with the consent of a local municipality council.

#### Article 10. Prohibitions and Restrictions relating to the Operation of Gaming

1. It shall be prohibited to operate gaming which is not provided for in this Law or to operate it in violation of the procedure established in this Law.

2. The operation of gaming shall be prohibited in the following locations:

1) residential houses, except those where non-residential premises located on the ground floor have been adapted for other activity according to the design and use of the building and which have a separate entrance from the street, which does not coincide with the stairwell entrance;

2) pre-school establishments;

- 3) general education schools;
- 4) vocational training establishments;
- 5) higher schools;
- 6) higher educational establishments;
- 7) additional and non-formal educational establishments;
- 8) health care establishments;
- 9) children's sanatoriums;
- 10) cultural establishments;
- 11) libraries;
- 12) theatres;
- 13) museums and exhibition halls;
- 14) credit and other financial institutions;
- 15) shops, except for betting and totalisator stations in shopping centres which are designated not only for shop activities and which, according to the building layout plan, have separate premises;
- 16) state and municipal institutions and establishments;
- 17) cinemas, railway and bus stations, airports, seaports, except for machine gaming where it is operated in separate premises which are not related to the direct functions of such establishments;
- 18) post offices, except for betting and totalisator stations established therein.

3. The following persons shall be prohibited from participating (either directly, through another person or authorised by another person) in the games operated by their company: the founders, shareholders and controllers of the gaming company, members of its supervisory council and board of directors as well as all of its personnel. Public servants and officials who exercise supervision and control over the operation of gaming may participate in gaming in accordance with the procedure established by the Control Commission only when exercising such control.

4. A gaming company shall be prohibited from ensuring the fulfilment of the obligations undertaken by other entities as well as from granting any kind of loans to other persons.

5. It shall be prohibited to use bank (debit, credit) cards for payment and install ATM machines in premises where gaming is operated.

6. Economic and commercial activities other than catering, sale of drinks, concert activity and currency exchange shall be prohibited on the premises where machine gaming, bingo, and table games are operated.

7. It shall be prohibited to operate gaming devices which do not have a certificate or which are not marked with a special mark as provided for in paragraphs 1, 5 and 6 of Article 16 of this Law.

8. It shall be prohibited to use gaming devices for purposes other than the operation of gaming, except for personnel training to work with gaming devices where the organiser of training has been issued a training licence by a Government authorised institution.

9. The advertising of gaming shall be prohibited in the territory of the Republic of Lithuania, except where it contains only the name of a gaming company, gaming establishment (casino), bingo or machine hall, totalisator or betting station, the address of places at which gaming is operated, types of gaming and the number of gaming devices in a gaming establishment (casino), bingo or machine hall.

10. Persons who are under 18 years of age shall be prohibited from participating in gaming. Persons who are 21 years of age and over may participate in the games operated in gaming establishments (casinos). Persons under 21 years of age shall be refused entrance to gaming establishments (casinos). Persons carrying arms shall be prohibited from entering a gaming establishment (casino), except for persons guarding such establishments (casinos) or officers performing their official duties in accordance with the procedure established by the law. The gaming operator must ensure compliance with the above requirements.

11. All of the shares of a gaming company shall be registered shares.

12. The shareholders of a gaming company who have transferred all or part of their shares to other persons shall within 30 days notify the Control Commission thereof in the manner laid down by it. Should the shareholder die, the person who inherits his shares shall within 30 days of coming into the inheritance notify the Control Commission thereof in the manner laid down by the Control Commission. In such cases, the Control Commission shall resolve the question regarding the re-registration of a gaming licence.

13. A gaming company shall be prohibited from manufacturing, assembling from parts or repairing gaming devices, developing new or modifying the existing gaming algorithm programmes.

14. A gaming company may not be the founder or shareholder of other companies.

15. A gaming licence may not be sold or transferred in any other way to other companies.

16. Other prohibitions and restrictions regarding the operation of gaming which are provided for in this and other laws of the Republic of Lithuania may also be applied.

17. It shall be prohibited to link category B gaming machines into a jackpot system.

18. Restrictions provided for in paragraphs 4, 11 and 14 of this Article shall also be imposed on companies which have submitted an application for a gaming licence.

Article 11. Requirements for Gaming Operators as well as Members, Public Servants and Employees of the Control Commission

1. Persons, or their close relatives and family members, in respect of whom an operational investigation is under way regarding the maintenance of an illegal gaming establishment (casino) or illegal operation of gaming or belonging to a criminal association as well as persons with a non-spent or valid conviction for serious or grave premeditated crimes or crimes against property, property rights, property interests, the economy and business practice or the financial system may not be the founders (shareholders) of a gaming company or its controllers, members of its supervisory council and board of directors, heads of the administration and their deputies, chief financiers, heads of the administration of a gaming establishment (casino), bingo hall or gaming machine hall and their deputies, chief financiers, staff members providing services to the players as well as members, public servants and employees of the Control Commission.

2. The gaming operator shall be responsible for the competence and professional skills of the personnel providing services to the players.

Article 12. Gaming Location

1. Gaming shall be operated in:

1) gaming machine halls: games by gaming machines of category B;

2) bingo halls;

3) gaming establishments (casinos): table games and games by gaming machines of category A.

2. Machine gaming, bingo and casino gaming may be operated only in those premises which are indicated on the permit to open gaming machine halls, bingo halls and gaming establishments (casinos).

3. At least 10 gaming machines shall be installed in a gaming machine hall.

4. Only bingo shall be operated in a bingo hall.

5. Roulette, card or dice games and games by gaming machines of category A may be operated in a gaming establishment (casino). At least 3 gaming tables, including at least one roulette table, and at least 30 gaming machines of category A must be installed in a gaming establishment (casino).

Article 13. Requirements for the Authorised Capital of Gaming Companies

1. The paid-up authorised capital indicated in the articles of association of a company operating bingo, totalisator and betting shall be at least LTL 1 mln and that of a company operating a horse-race totalisator shall be at least LTL 0.5 mln.

2. The paid-up authorised capital indicated in the articles of association of a company operating games by gaming machines of category B shall be at least LTL 1 mln and that of a company operating games at a gaming establishment (casino) shall be at least LTL 4 mln.

3. The paid up authorised capital indicated in the articles of association of a company operating several types of gaming shall be not less than the maximum authorised capital set for a specific type of gaming.

4. At the time of the submission of documents to obtain a licence, the equity capital of companies indicated in paragraphs 1, 2 and 3 of this Article shall comply with the requirements of paragraph 3 of Article 38 of the Law on Companies.

5. The minimum sum of money which, subject to an investment procedure set forth by the Control Commission, a gaming company must invest in government securities, keep in bank accounts, its own cash register and/or gaming machine cash

boxes and which is designated solely for paying out the winnings shall be as follows:

- 1) LTL 40 thousand per gaming table;
- 2) LTL 25 thousand per gaming machine of category A;
- 3) LTL 300 per gaming machine of category B;
- 4) at least 25% of the required minimum authorised capital in respect of companies operating bingo, totalisator, betting and horse-race totalisator.

#### Article 14. The Right of Gaming Companies to Engage in other Economic and Commercial Activities

Companies operating games in gaming machine halls, bingo, table games, totalisator and betting shall not have the right to engage in other economic and commercial activities, except for the rent of premises at which the company operates gaming for economic and commercial activities specified in paragraph 6 of Article 10 of this Law.

#### Article 15. Requirements for Gaming Machine Halls, Bingo Halls and Gaming Establishment (Casino) Premises

1. Gaming establishments (casinos) and bingo halls shall be set up in isolated premises having a separate entrance. The premises shall be equipped with:

- 1) a device to guarantee constant illumination and a continuous, uninterrupted gaming process;
- 2) a digital video recording system to operate continuously in gaming (if gaming is operated in a gaming establishment (casino), the digital video recording system shall be installed above each table). The gaming operator shall keep video recordings for 180 days and shall submit them only to the Control Commission, players who have filed claims in writing, pre-trial investigation officers, prosecutors or the court in accordance with the procedure established by the law;
- 3) a separate cash register to exchange money for tokens and vice versa;
- 4) built-in fire protection system;
- 5) separate premises allotted by the administration of the gaming establishment

(casino) for public servants and officials who exercise supervision and control over the operation of gaming.

2. Gaming machine halls shall be set up in isolated premises having a separate entrance. The premises of such halls shall comply with the requirements laid down in subparagraphs 1, 3 and 4 of paragraph 1 of this Article.

#### Article 16. Requirements for Gaming Devices

1. Only new and never previously used gaming devices shall be permitted for operation in the Republic of Lithuania, provided that they have been manufactured by a properly-licensed (certified) manufacturer and provided that their types have been approved by an institution authorised by the Government to exercise supervision and included in the Lithuanian Register of Gaming Devices in accordance with the procedure set forth by the Government.

2. The winnings fund of category A gaming machines shall comprise at least 90 percent of the total amount of stakes and the winnings fund of category B gaming machines shall comprise at least 80 percent of the total amount of stakes.

3. All gaming devices shall be owned by the gaming company or may be acquired under leasing contracts.

4. Each gaming device shall comply with the requirements of this Law and also with the requirements set forth and approved by the Control Commission.

5. Each gaming device must have a certificate issued by accredited agencies (laboratories) attesting that the gaming device is in compliance with the requirements prescribed by this Law and the Control Commission. Certificates issued by foreign accredited agencies may be recognised by a decision of an institution authorised by the Government of the Republic of Lithuania.

6. Each gaming device with a certificate shall be marked with a special mark in accordance with the procedure established by the Control Commission.

7. A company may change or start using new gaming devices only after having complied with the requirements specified in paragraphs 5 and 6 of this Article and after having received a permit of the Control Commission in accordance with the procedure established in this Law.

8. Record books shall be kept for gaming devices. The Control Commission shall establish the form and manner of filling them out.

#### Article 17. Requirements for Cards and Playing Cards

1. Bingo, totalisator and betting cards shall be numbered and each card shall be allocated a unique number.

2. Before starting to operate bingo, totalisator or betting, companies shall register bingo, totalisator or betting cards with a territorial state tax inspectorate, except where they are distributed through remote communication system.

3. Playing cards must have the logo of a gaming establishment (casino) imprinted on the back.

#### Article 18. Gaming Regulations

1. Gaming shall be operated according to gaming regulations which shall indicate:

- 1) name of the game;
- 2) gaming location;
- 3) gaming rules;
- 4) amount of a stake required for participation in the game;
- 5) maximum amount of winnings;
- 6) groups of winnings;
- 7) procedure for setting up and winning the cumulative fund (if such is formed);
- 8) types of gaming cards, procedure of their numbering, acquisition and return (if bingo is operated), except where bingo cards are distributed through remote communication system;
- 9) procedure for paying out winnings;
- 10) procedure for the submission and settlement of claims.

2. Gaming regulations and amendments thereto shall be approved by the Control Commission.

3. At the player's request, the gaming operator shall make the gaming regulations available to him.

#### Article 19. Payment of Gaming Winnings

1. In gaming establishments (casinos), gaming machine halls and bingo halls, winnings shall be paid out only in cash immediately where the winnings do not exceed LTL 100 thousand or they shall be paid out not later than within 24 hours where the winnings exceed LTL 100 thousand. At the player's request, winnings shall be paid out in cash or by a bank cheque, or by transfer to the winner's bank account.

2. A portion of gaming machine winnings or bingo winnings may be paid out in the form of a cumulative fund. A cumulative fund shall be won by linking the tables located in the same gaming establishment (casino) or automatically by a single gaming machine, or by linking the gaming machines located in the same gaming establishment (casino), or by linking the gaming machines located in the gaming establishments (casinos) which belong to the same operator. In those cases where the cumulative fund is won by linking several gaming machines or tables, the following must be displayed in an area visible to the player:

- 1) number of linked tables or gaming machines and location where they are operated;
  - 2) special screen where the total amount of the cumulative fund is constantly on view;
  - 3) percentage which will be deducted from each game to the cumulative fund.
3. Totalisator and betting winnings shall be paid out only in cash immediately upon the presentation of the winning card.

#### Article 20. Establishing the Identity of Players

1. The gaming operator shall register, in accordance with the procedure established by the Government, persons who either exchange cash for tokens or make a stake, or collect a winning in excess of LTL 3 500 or an equivalent amount in foreign currency.

2. The gaming operator shall issue the winner, at his request, a certificate in the form established by the State Tax Inspectorate to be used for the declaration of assets.

3. The gaming operator shall keep documents and information concerning the persons referred to in paragraphs 1 and 2 of this Article for a period of 10 years and submit them only to the Control Commission, pre-trial investigation officers,

prosecutors or the court in accordance with the procedure established by the law.

4. The gaming operator shall, in accordance with the procedure established by the Government, notify the territorial state tax inspectorate about the winnings and losses in excess of the amount specified in Article 2 of the Law on the Declaration by the Residents of the Republic of Lithuania of the Acquisition of Valuable Property or other Acquired and Transferred Funds and adjusted to the consumer price index.

### CHAPTER THREE

#### ISSUE OF PERMITS TO OPEN GAMING MACHINE HALLS, BINGO HALLS AND GAMING ESTABLISHMENTS (CASINOS), AMENDMENTS THERETO AND CANCELLATION THEREOF

##### Article 21. Issue of Permits to Open Gaming Machine Halls, Bingo Halls and Gaming Establishments (Casinos)

1. The Control Commission shall issue permits to open gaming machine halls, bingo halls and gaming establishments (casinos).

2. Permits to open gaming machine halls, bingo halls and gaming establishments (casinos) shall be issued to companies licensed to operate specific games or such permits shall be issued together with a relevant licence.

3. A company that wishes to receive a permit for opening a gaming machine hall, a bingo hall or a gaming establishment (casino) shall submit an application to the Control Commission indicating its name, code, address of the head office, telephone and fax numbers, the address and telephone number of the place at which gaming will be operated, types of gaming to be operated, the date of issue of the gaming licence and its number (if the permit is issued to a licensed company), the official position and full name of the head of the company or a person authorised by him who has filled out and signed the application, and the date of filing the application.

4. The following documents and data shall be submitted together with the application to open a gaming machine hall, a bingo hall or a gaming establishment (casino):

1) gaming regulations;

2) description of gaming devices (type, modification, manufacturer, date and month of manufacture) and documents attesting the right

of ownership of the requesting company to such gaming devices or leasing contracts concluded in respect of them;

3) number of gaming devices;

4) certificates referred to in paragraph 5 of Article 16 of this Law;

5) information prescribed by the Control Commission concerning the gaming location;

6) documents attesting the right of ownership to the premises at which gaming will be operated or a copy of a lease or leasing contract in respect of such premises;

7) rules setting entrance fees to gaming machine halls, bingo halls or gaming establishments (casinos) and the procedure of their payment (provided that a fee is charged);

8) list of full names and personal numbers of the head of administration of the gaming machine hall, bingo hall or gaming establishment (casino), his deputies, chief financiers and staff members providing services to the players.

5. The Control Commission shall have the right to request additional documents and information required for making a decision concerning the issue of permit, and also to request an explanation or additional information regarding the submitted data.

6. Public servants of the Control Commission shall check if the premises intended for operating a gaming machine hall, a bingo hall or a gaming establishment (casino) are in compliance with the prescribed requirements. An application for a permit to open gaming premises shall be examined within 30 calendar days of its receipt. If additional documents and information is requested, the 30-day period shall be calculated anew from the date of filing additional information or explanations and corrections. The overall time period for granting a permit shall not exceed 60 calendar days from the day when all the necessary documents and data were first filed.

7. The permit to open a gaming machine hall, a bingo hall or a gaming establishment (casino) shall specify the name, code and address of the head office of the gaming company, its telephone number, the address of the place at which gaming will be operated, types of gaming to be operated, the number of gaming devices, and the date of issue of the permit.

8. After having issued a gaming licence and a permit to open a gaming machine hall, a bingo hall or a gaming establishment (casino), the Control Commission shall, within 5 working days

after the issue of licence (permit), forward such information to the Financial Crime Investigation Service under the Ministry of the Interior, territorial state tax inspectorates and territorial police agencies in the territory of which gaming is to be operated, specifying the name, code and address of the head office of the company which has been issued a licence (permit), its telephone and fax numbers, type and number of licence, permit number, the address of the place at which gaming will be operated, types of gaming to be operated, and the number of gaming devices.

9. A permit to open a gaming machine hall, a bingo hall or a gaming establishment (casino) shall be issued upon the payment of a prescribed state fee and shall be valid for an unlimited period of time.

Article 22. Refusal to Issue a Permit for Opening a Gaming Machine Hall, Bingo Hall or Gaming Establishment (Casino)

1. The Control Commission may refuse to issue a permit to open a gaming machine hall, a bingo hall or a gaming establishment (casino) if:

1) false data have been deliberately supplied in the application for a permit or in other documents;

2) the company refuses to submit the documents, data or explanations specified in paragraphs 3, 4 and 5 of Article 21 of this Law or the submitted documents are not in compliance with the prescribed requirements;

3) the premises where gaming machines, bingo or table games are to be operated do not comply with the prescribed requirements;

4) the gaming devices do not comply with the requirements prescribed by this Law and the Control Commission;

5) persons specified in subparagraph 8 of paragraph 4 of Article 21 do not comply with the requirements laid down in Article 11 of this Law.

2. The applicant shall be notified in writing of the decision to refuse a permit to open gaming premises.

3. A refusal to issue a permit to open a gaming machine hall, a bingo hall or a gaming establishment (casino) may be appealed against in accordance with the procedure established by the law.

Article 23. Supplements to and Change of Permit to Open a Gaming Machines Hall, Bingo Hall or Gaming Establishment (Casino)

1. Where a company possessing a gaming licence and a permit to open a gaming machine hall, a bingo hall or a gaming establishment (casino) wishes to install additional gaming devices on the said premises, it shall have to obtain the consent of the Control Commission. Such a consent shall be documented as a supplement to the permit.

2. Where a company wishes to supplement the permit, it shall submit to the Control Commission an application indicating its name, code, address of the head office, telephone and fax numbers, the address and telephone number of the place at which gaming is operated, types of gaming to be operated additionally, the number of gaming devices, the official position and full name of the head of the company or a person authorised by him who has filled out and signed the application, and the date of filing the application. The application shall be submitted together with the data and documents specified in subparagraphs 1, 2, 3 and 4 of paragraph 4 of Article 21 of this Law.

3. The application to supplement a permit shall be examined within 10 calendar days of its receipt.

4. The Control Commission may refuse to supplement a permit if the gaming devices do not comply with the requirements prescribed by this Law and the Control Commission.

5. Where a company possessing a gaming licence and a permit to open a gaming machine hall, a bingo hall or a gaming establishment (casino) wishes to reduce the number of gaming devices or replace them with others, it shall file an application to the Control Commission indicating the address of the place at which gaming is operated and the number of gaming devices it wishes to reduce or the devices it wishes to replace.

6. The Control Commission shall change the permit within 10 days of receipt of the application, indicating therein the number and types of remaining gaming devices.

7. After having supplemented or changed the permit, the Control Commission shall, within 5 days after the permit is supplemented or changed, notify the Financial Crime Investigation Service under the Ministry of the Interior, territorial state tax inspectorates and territorial police agencies in the territory of which gaming is operated about the change in the number of gaming devices and specify the name and code of the company whose permit has been supplemented or changed, the address of its head



office, telephone and fax numbers, permit number, the address of the place at which gaming is operated, types of gaming to be operated, and the number of gaming devices.

Article 24. Cancellation of Permit to Open a Gaming Machine Hall, Bingo Hall or Gaming Establishment (Casino)

1. A permit to open a gaming machine hall, a bingo hall or a gaming establishment (casino) shall be cancelled if:

1) requested by the company possessing the permit;

2) within one year after the issue of permit, gaming activities are not pursued in the indicated premises;

3) a gaming licence is cancelled or it is not re-registered;

4) it becomes known that false data have been deliberately supplied in the application for a permit or in other documents;

5) premises where gaming is operated do not comply with the prescribed requirements;

6) the lease contract in respect of the premises where gaming is operated expires or the lease contract is terminated.

2. The Control Commission, after having decided to cancel the permit, shall forward the decision to the licence holder within 5 working days of its adoption.

3. The decision to cancel a permit to open gaming premises may be appealed against in accordance with the procedure established by the law.

Article 25. Operation of Totalisators and Betting

1. A company possessing a licence to operate totalisators or betting may start the operation thereof only after the Control Commission approves gaming regulations.

2. The Control Commission shall set forth the working procedure for betting intermediaries and the procedure for the establishment of betting and totalisator stations.

CHAPTER FOUR

STATE SUPERVISION AND CONTROL OF THE OPERATION OF GAMING

Article 26. Control Commission

1. The activities of entities that operate gaming shall be supervised and controlled by the Control Commission. The Control Commission shall comprise 6 persons. The President of the Republic of Lithuania, the Chairman of the Seimas and the Prime Minister shall each appoint 2 persons to the Control Commission for a term of five years and shall dismiss the persons appointed by them.

2. The same person may be appointed to the Control Commission for not more than two successive terms. The chairman of the Control Commission shall be elected by the Control Commission from among its members for a term of five years. The chairman of the Control Commission shall appoint one member of the Control Commission as deputy chairman and one member of the Control Commission as secretary of the Control Commission. The chairman and members of the Control Commission shall be citizens of the Republic of Lithuania.

3. After their powers expire, members of the Control Commission shall continue to perform their duties until new members are appointed.

4. Member of the Control Commission may be dismissed before the end of his term in office if he:

1) resigns at his own request;

2) loses citizenship of the Republic of Lithuania;

3) does not work for more than 120 successive days or for more than 140 days in a period of twelve months due to sick leave or if a medical commission or a commission to determine disability decides that he cannot perform his duties;

4) after conviction by a final judgement for serious and grave premeditated crime or crime against property, property rights, property interests, the economy and business practice or the financial system;

5) it becomes known that he does not comply with the requirements laid down in Article 11 of this Law.

5. The President of the Republic of Lithuania, the Chairman of the Seimas or the Prime Minister shall appoint, for a term of five years, new persons to the position of those members of the

Control Commission who are dismissed before the end of their term in office.

6. Member of the Control Commission may not hold any other office, except for scientific research or pedagogical activity.

7. Members of the Control Commission shall be liable, given incentives and protected by social and other guarantees in accordance with the procedure provided for in the Labour Code of the Republic of Lithuania and other legal acts. Members of the Control Commission shall be remunerated in accordance with the Law on the Remuneration of State Politicians, Judges and Public Officials.

8. An administration comprised of public servants and employees shall be established to perform the functions of the Control Commission. Its structure and personnel shall be approved by the chairman of the Control Commission without exceeding the funds allocated for remuneration.

9. The Government shall approve the regulations of the Control Commission.

10. The Control Commission shall have the objective of supervising and controlling, in accordance with the procedure established by legal acts, the operation of gaming to ensure the protection of the interests and rights of players and gaming operators.

Article 27. Establishment and Maintenance of the Control Commission

1. The Government shall be the founder of the Control Commission.

2. The Control Commission shall be maintained from state funds.

Article 28. Main Functions of the Control Commission

When implementing the provisions of this Law, the Control Commission shall:

1) examine the documents necessary to issue gaming licences;

2) examine the documents necessary for issuing permits to open gaming machine halls, bingo halls and gaming establishments (casinos);

3) issue and cancel gaming licences;

4) issue permits to open gaming machine halls, bingo halls and gaming establishments (casinos), and also supplement, change and cancel such permits;

5) control compliance of gaming operators with the requirements of the laws and other legal acts regulating the operation of gaming;

6) draft legal acts regulating the operation of gaming;

7) administer the Register of Gaming Devices of Lithuania.

Article 29. Rights of the Control Commission

When implementing the functions assigned to it, the Control Commission shall have the right to:

1) obtain information necessary to perform its controlling functions;

2) check compliance of gaming operators with the requirements of this Law and other legal acts at the gaming locations;

3) check the financial activities of gaming companies;

4) request that gaming operators submit explanations regarding the operation of gaming;

5) establish the procedure for investing a part of the authorised capital of gaming companies into government securities;

6) set forth the procedure for marking gaming devices;

7) set forth the requirements for gaming devices;

8) establish the form of record books filled out in respect of gaming devices and the procedure of filling them out;

9) determine the type of gaming where a game does not conform to all of the features of a specific type of gaming or where it conforms to the features of several types of gaming;

10) specify the financial accounts to be submitted by a gaming company and the procedure of submitting them;

11) impose sanctions on gaming companies as set out in this Law and other legal acts regulating the operation of gaming.

#### Article 30. Audit

Within 4 months after the end of the business year, the gaming company shall submit the opinion of a certified auditor and the annual financial report to the Control Commission and shall publish the financial statements audited by a certified auditor.

#### CHAPTER FIVE

#### FINAL PROVISIONS

#### Article 31. Taxation of Gaming Companies

Gaming companies shall pay taxes in accordance with the procedure established by the Law on Lottery and Gaming Tax and other legal acts.

#### Article 32. Liability for Violations of this Law

Violations of this Law shall incur liability in accordance with the procedure established by the law.

#### Article 33. Entry into Force

This Law, except for Article 34, shall enter into force on 1 July 2001.

#### Article 34. Proposals to the Government

By 1 June 2001, the Government shall:

- 1) approve the rules for the licensing of gaming;
- 2) approve the amounts of state fees for the issue of gaming licences and permits to open gaming machine halls, bingo halls and gaming establishments (casinos);
- 3) establish the Control Commission and approve its regulations.

#### 8.6.7. Law on Lottery and Gaming Tax

17 May 2001, No IX-326

#### CHAPTER ONE

#### GENERAL PROVISIONS

#### Article 1. Purpose of the Law

This Law shall regulate the taxation of lotteries and gaming (hereinafter referred to as the "lottery and gaming tax").

#### Article 2. Payers of Lottery and Gaming Tax

Lottery and gaming tax shall be paid by legal persons that operate lotteries in accordance with the Law on Lotteries and gaming in accordance with the Gaming Law.

#### Article 3. Taxable Period

The taxable period in respect of lottery and gaming tax shall be one quarter of a calendar year.

#### CHAPTER TWO

#### LOTTERY AND GAMING TAX

#### Article 4. Lottery and Gaming Tax Base

The lottery and gaming tax base shall be:

- 1) in respect of lotteries, the total face value of the tickets distributed in a lottery;
- 2) in respect of bingo, totalisator and betting, the total amount of proceeds less the amount of prizes actually paid out;
- 3) in respect of machine gaming and table games, a fixed amount for each gaming device (gaming machine, roulette, card or dice table).

#### Article 5. Lottery and Gaming Tax Rate and Amount

1. When operating lotteries, a tax rate of 5% shall be imposed on the lottery and gaming tax base.
2. When operating bingo, totalisator and betting, a tax rate of 15% shall be imposed the lottery and gaming tax base.
3. When operating machine gaming and table games, a fixed tax amount shall be imposed on each gaming device:
  - 1) LTL 1 800 per gaming machine of category A for each taxable period;
  - 2) LTL 600 per gaming machine of category B for each taxable period;

3) LTL 12 000 per roulette, card or dice table for each taxable period.

## CHAPTER THREE

### LOTTERY AND GAMING TAX ASSESSMENT AND PAYMENT

Article 6. Lottery and Gaming Tax Assessment and Payment

1. Legal persons operating lotteries, bingo, totalisator and betting shall assess the lottery and gaming tax on the basis of the tax rate specified in paragraph 1 or 2 of Article 5 of this Law and shall pay it to the budget after the end of each taxable period before the 15<sup>th</sup> day of first month of the next taxable period.

2. Legal persons operating table games (roulette, card and dice games) and machine gaming shall assess the lottery and gaming tax for each installed roulette, card or dice table and gaming machine on the basis of the amounts specified in paragraph 3 of Article 5 of this Law and shall pay it not later than within 5 days after the beginning of a taxable period. The first taxable period of lottery and gaming tax per gaming device shall be a quarter of the calendar year, during which a permit to open a gaming machine hall, a bingo hall or a gaming establishment (casino) has been issued or amended. The lottery and gaming tax per gaming device shall be assessed and paid during the first taxable period not later than within 5 days after the day when the permit to open a gaming machine hall, a bingo hall or a gaming establishment (casino) was issued or amended.

3. A special mark shall be attached, in accordance with the procedure established by the State Gaming Control Commission, to gaming devices in respect of which a fixed amount of lottery or gaming tax is paid after the said tax has been paid for each taxable period.

4. Lottery and gaming tax shall be paid to the local tax administrator in the territory of which the enterprise is registered.

Article 7. Terms and Procedure for Filling Out and Submitting Lottery and Gaming Tax Returns

1. Legal persons operating lotteries and gaming shall, after the end of each quarter of the calendar year but not later than the 15<sup>th</sup> day of the first month of the next quarter, file lottery and gaming tax returns with the local tax administrator in the territory of which the said legal person has been registered.

2. The form of lottery and gaming tax returns and the procedure of filling them out shall be established by the central tax administrator.

## CHAPTER FOUR

### ENTRY INTO THE BUDGET

Article 8. Entry into the Budget

1. Lottery and gaming tax paid by legal persons operating national lotteries in accordance with the Law on Lotteries and gaming in accordance with the Gaming Law shall be entered in the state budget.

2. Lottery and gaming tax paid by legal persons operating local lotteries in accordance with the Law on Lotteries shall be entered in the budget of the municipality which has issued a lottery operating licence.

## CHAPTER FIVE

### FINAL PROVISIONS

Article 9. Liability for Violations of this Law

Violations of this Law shall incur penalties and late-payment interest in accordance with the procedure established by the Law on Tax Administration.

## 9. Malta

### 9.1. Law on Associations

### 9.2. Law on Foundations

### 9.3. Law on NPO

### 9.4. Law on NGO

### 9.5. Law on Other Legal Forms

*(a) Voluntary Organisations Act (draft)*

## PART 1

Preliminary Short title and commencement.

1. (1) The title of this Act is the Voluntary Organisations Act, 2005.

(2) This Act shall come into force on such date as the Minister responsible for social policy may appoint by notice in the Gazette and different dates may be so appointed for different purposes and provisions of this Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires:

“administrator” means an officer or a person who is appointed to control and administer an organisation, including a governor, a director, a trustee or a committee member and any person who carries out such functions even if under another name;

“Board of Appeal” means the Board established in terms of the First Schedule to the Civil Code and enjoying jurisdiction for the purpose of this Act;

“charitable purpose” means any social purpose;

“charitable trust” means a trust as defined by the Trusts and Trustees Act (Cap. 331) which is established for a social purpose;

“the Commissioner” means the person appointed in virtue of article 5 of this Act;

“controlled by the State” means that the Government of Malta has the power, directly or indirectly, to nominate or remove the majority of the administrators of an organisation;

“the Court” means the Civil Court in its voluntary jurisdiction;

“the Minister” means the Minister responsible for social policy;

“non-profit making” is used in respect of an organisation where:

(a) the statute contains an express exclusion of the purpose to make profits;

(b) there is express provision in the statute defining the purposes of the organisation which do not include the promotion of private interests,

other than a private interest which is a social purpose;

(c) no part of the income, capital or property is available directly or indirectly to any promoter, founder, member, administrator, donor or any other private interest: Provided that administrators may receive a reasonable honorarium for services rendered, unless the statute provides otherwise, or a refund of expenses incurred by them, insofar as the payment of such honorarium does not materially prejudice the achievement of the purposes of the voluntary organisation: Provided further that the refund of reasonable expenses to persons supporting the purposes of the organisation shall not be prohibited: Provided further that such an organisation shall continue to be deemed as non-profit making notwithstanding that:

(i) it obtains a pecuniary gain from its activities when such gain is not received or credited to its members but is exclusively utilised for its established purpose;

(ii) it buys or sells or otherwise deals in goods or services where such activities are exclusively related to its principal purposes;

(iii) it is established for the general entertainment, past-time, education or other similar benefit only of its members; or

(iv) it is established for the promotion of the social role, ethics, education and values of a trade or profession provided it does not promote the private interests of its members;

“organisation” means a foundation, a trust or an association of persons;

“pious foundation” comprises:

(a) an autonomous pious foundation, that is, an aggregate of things destined for pious or religious purposes and established as juridical persons by the competent ecclesiastical or other religious authorities;

(b) non-autonomous pious foundations, that is, temporal goods given in any way to a public juridical person established by the competent ecclesiastical or other religious authorities and carrying with it a long term obligation, such period to be determined by the relevant canon or other religious law or rule and where the obligation consists of binding the juridical person, from the annual income, to celebrate Masses or other religious ceremonies, to perform other determined ecclesiastical functions, or in some other way to fulfil the pious or religious purposes as defined by the applicable religious laws or rules;

"pious or religious purposes" means purposes which are understood to be those which concern acts of piety, of the apostolate or of charity, whether spiritual or temporal;

"philanthropic" means for the relief of poverty, pain and suffering, and other humanitarian needs including the eradication of ignorance;

"prescribed" means prescribed by rules or regulations issued by virtue of this Act;

"promoter" means a person who promotes the establishment of an organisation or holds himself out to third parties as such;

"public agency" means any department, institute, foundation, trust or company or other entity which is established by and controlled by the State;

"public collection" means an appeal to the public, or to a part or section of the public, whether by means of visits from house to house, or by an overt act in a street or other public place, or by means of an advertisement, whether oral or printed, or in any other manner whatsoever, to give, whether for consideration or not, money or other property to an organisation, but does not include:

(a) the selling of articles in any street or public place when the articles are sold in the ordinary course of fund raising;

(b) the rendering of services in the ordinary course of fund raising;

(c) collections made in a church in the normal course for the upkeep, maintenance or improvement of such church or services held therein;

(d) collections for purposes declared to be benevolent by the local or international authorities of the church;

(e) collections made or organised for a bona fide political party; or

(f) other collections declared by notice of the Minister to be excluded from this definition:

Provided that for the purposes of this Act, the term "public" within the context of collections means the general public and shall not include existing founders, members or donors of an organisation and their families, even if in large numbers, nor shall it include a group of less than fifty persons taken on one or more occasions within an annual period;

"Registrar of Legal Persons" means the Registrar referred to in the Second Schedule to the Civil Code responsible for the registration of organisations;

"social purpose" means any charitable or philanthropic purpose, and without prejudice to the generality of the aforesaid, includes in particular:

(a) the advancement of education, including physical education and sports;

(b) the advancement of religion;

(c) the advancement of health;

(d) social and community advancement;

(e) the advancement of culture, arts and national heritage;

(f) the advancement of environmental protection and improvement, including the protection of animals;

(g) the promotion of human rights, conflict resolution, democracy and reconciliation;

(h) the promotion or protection of the interests of other social purpose organisations, including federations of such organisations; or

(i) any other purpose which may be designated by the Minister by means of regulations;

"statute" means the constitutive instrument of an organisation and includes a will which provides for the setting up of an organisation;

"voluntary organisation" shall have the meaning ascribed to it by article 3 of this Act;

"Voluntary Organisations Fund" means the foundation established by article 28 of this Act.

(2) Unless otherwise expressly defined in any other law or the context requires otherwise, the terms "charity", "charitable", "non-profit", "non-profit making",

"philanthropic", "social purpose" and "voluntary organisation", and variations or derivatives thereof when used in other laws, shall have the meaning ascribed to them by this Act.

(3) The registration of a voluntary organisation as a legal person in terms of the Second Schedule to the Civil Code shall not imply enrolment of the organisation in terms of this Act.

(4) Enrolment of a voluntary organisation under this Act shall not imply:

- (a) that the organisation has legal personality; or
- (b) that its status and powers as an unregistered entity, as defined in article 17 of the Second Schedule to the Civil Code, or that the liability of its administrators is affected in any manner.

## PART 2

### Voluntary Organisations

#### Definition of Voluntary organisation.

3. (1) A voluntary organisation is an organisation which:

- (a) is created or established exclusively for a social purpose and is non-profit making; or
- (b) is established for any other lawful purpose as a non-profit making organisation, whether it is registered or registrable as a legal person or not and whether it is enrolled in the Register of Voluntary Organisations in terms of this Act or not.

(2) For the purposes of this Act, an association of persons may not be a limited liability company or any other entity established under the Companies Act (Cap. 386) or other similar legislation relating to entities with commercial purposes.

(3) Trusts established or recognised in terms of the Trusts and Trustees Act shall qualify as voluntary organisations only when established as charitable trusts.

#### Privileges of voluntary organisations.

4. (1) Every voluntary organisation may be enrolled with the Commissioner and, subject to the observance of applicable provisions of law, may enjoy the privileges contemplated by this Act and any regulations promulgated hereunder.

(2) A voluntary organisation which:

(a) is registered as a legal person in terms of the Second Schedule to the Civil Code; and

(b) is enrolled in terms of this Act and is in possession of a valid certificate as provided hereunder, may make public collections. Organisations which are not enrolled in terms of this Act may not engage in public collections and the promoters or administrators of any organisation acting in breach of this position shall be personally liable to return such funds as may be collected in breach of this article to the donors or to the Voluntary Organisation Fund if the donors cannot be identified.

(3) An enrolled organisation may:

(a) receive or be the beneficiary of grants, sponsorships or other financial aid from the Government or any entity controlled by the Government;

(b) receive or be the beneficiary of exemptions, privileges or other entitlements in terms of any law;

(c) be a party to contracts and other engagements, whether against remuneration or not, for the carrying out of services for the achievement of its social purpose at the request of the Government or any entity controlled by the Government:

Provided that the prior written consent of the Minister is required if the Government or any entity controlled by the Government intends to carry out any act involving the actions in this sub-article in relation to any voluntary organisation which is not enrolled.

(4) The following organisations may be entitled to enjoy the privileges under this Act although not registered in terms of the Civil Code or enrolled in terms of this Act:

(a) pious foundations, unless they receive 50% or more of their annual income through grants, donations, sponsorships or other financial aid from:

(i) the public, other than proceeds of collections in churches or religious activities, advances from the authorities of the church or other pious foundations;

(ii) the Government or entities controlled by the Government; or

(iii) other social purpose or non-profit making organisations;

(b) public agencies;

(c) international organisations established by international treaty which are exempted by any special law from being subject to enrolment;

(d) any other organisations which are declared by the Minister as entitled to the privileges under this Act by notice published in the Gazette.

(5) The Government, all government departments and public agencies and all statutory bodies shall act upon a certificate of enrolment of an organisation issued in terms of article 10 of this Act as evidence of the status of an organisation as a voluntary organisation and shall not require any further evidence of its existence or status when dealing with such an organisation.

### PART 3

#### The Commissioner for Voluntary Organisations

##### Appointment of Commissioner.

5. (1) There shall be a Commissioner for Voluntary Organisations who shall be appointed by the Minister for that purpose. The Commissioner shall, for all purposes of applicable law, be deemed a public officer and shall perform the duties and exercise the powers imposed and conferred on him by this Act and by any regulations issued there under.

(2) The Minister may also appoint Deputy Commissioners to assist the Commissioner in the performance of his functions.

##### Functions of the Commissioner.

6. (1) The functions of the Commissioner shall be to implement the provisions of this Act and without prejudice to the generality of the foregoing shall include the following functions:

(a) to provide voluntary organisations with information about the benefits and the responsibilities deriving from registration as legal persons under the Civil Code and of enrolment under this Act;

(b) to provide enrolment facilities for organisations which are eligible for enrolment in terms of this Act;

(c) to provide information and guidelines to persons performing voluntary work and members of voluntary organisations, for the better performance of their role and for the better achievement of the objectives of the voluntary organisations in which they serve;

(d) to make recommendations to the Minister on policies in support of voluntary organisations and voluntary work;

(e) to monitor the activities of voluntary organisations in Malta in order to ensure that they observe the provisions of this Act;

(f) to investigate complaints by the public regarding activities of voluntary organisations or by persons receiving funds or services provided by voluntary organisations, or persons or organisations purporting to be voluntary organisations, and to take such action as is in his power to redress any justified grievance that may come to his notice;

(g) to monitor the promotion of voluntary organisations and to monitor the behaviour of administrators of such organisations to ensure the observance of high standards of accountability and transparency and general compliance with law;

(h) to co-ordinate and communicate with the Registrar of Legal Persons in relation to voluntary organisations and to facilitate registration and enrolment processes;

(i) to co-operate with and support the National Council for the Voluntary Sector to develop policies which will be of benefit to the sector in general and in its particular categories;

(j) to perform any other function or duty that is assigned to him under this Act as well as such other functions as may be assigned to him under any other law.

(2) The Commissioner shall assist all Ministries, Government Departments and all public corporations, statutory bodies and companies the shareholding of which is fully or in its majority owned or otherwise controlled by the Government in preparing and reviewing policies relating directly or indirectly to voluntary organisations which are registered in terms of the Civil Code and enrolled in terms of this Act.

(3) Subject to the provisions of the Data Protection Act, (Cap.440) the Commissioner shall compile and maintain information relating to voluntary organisations which have not enrolled under this Act and shall monitor their activities so as to ensure that the purposes of this Act are attained.



(4) The Commissioner shall endeavour to co-ordinate efforts by organisations with similar purposes so as to achieve greater concentration of resources and to achieve the benefits of economies of scale and for the avoidance of duplication of efforts.

(5) The Commissioner shall establish systems for communication with, and the support of, citizens of Malta who may be volunteers overseas, and the Minister shall have the power to make such regulations as may be appropriate from time to time to regulate and support such activity.

(6) The Commissioner shall seek to encourage an environment where the credibility and good reputation of voluntary organisations is continually enhanced through high standards of operation of such organisations and their administrators, of transparency and public awareness and generally of proper accountability.

Public statements.

7. The Commissioner may publish, by advertisement or otherwise, any information about an organisation, whether enrolled in terms of this Act or not, or about any person purporting to act on behalf of a voluntary organisation, when it appears to him to be in the interest of the public or of the organisation itself: Provided that, except in cases which in the opinion of the Commissioner are urgent or may involve fraud, before publishing such information he shall notify in writing the administrators of the organisation with the proposed text. The administrators shall have five days from receipt of such notice to discuss the same with the Commissioner and unless there is agreement between the Commissioner and the administrators on such remedial action as may be required to be taken in the circumstances, either party may apply to the Board of Appeal to confirm, amend or refuse the advertisement, as the case may be, and the decision of the Board shall be final.

#### PART 4

##### Register of Voluntary Organisations

8. (1) There shall be a Register of Voluntary Organisations (hereinafter referred to as the "Register") which shall be maintained by the

Commissioner and shall contain the following information, supported by the documentation referred to in paragraphs (f) to (h) as the same may be amended or updated from time to time:

(a) the name of the organisation;

(b) the address of the organisation;

(c) the registration number of the organisation if registered as a legal person, whether in Malta or overseas;

(d) the names and addresses of the administrators;

(e) in case of foreign or international organisations, the name of the local representative of such organisation;

(f) a copy of the constitutive deed and any amendments thereto;

(g) annual reports;

(h) annual accounts.

(2) The Register and supporting documentation shall be available to the public.

(3) The Register shall be divided into two parts:

(a) Part A shall include all voluntary organisations which satisfy the Commissioner that they have been established for a social purpose and are non-profit making; and

(b) Part B shall include all other voluntary organisations which are established for any other lawful purpose, not being a private purpose, and being non-profit making.

(4) Organisations shall be classified in each Part of the Register according to their principal purposes in such a manner as the Commissioner may deem appropriate.

(5) On enrolment, the Commissioner shall allocate a unique number to the voluntary organisation preceded by the letters "VO" and followed by either the letter "A" or "B" in accordance with the Part of the Register in which the organisation is enrolled and that number shall at all times be quoted by the organisation on any published materials, letters, notices, advertisements and other documents issued by the organisation.

Application to enrol.

9. (1) Every voluntary organisation may apply for enrolment in the established form and it shall be accompanied by such documents as are required by this Act or as may be prescribed by any regulations made thereunder.

(2) In considering any application, the Commissioner may request the applicant to provide all information reasonably available about:

(a) the promoters, the founders, the administrators, the donors and the beneficiaries;

(b) the assets and liabilities;

(c) the past, if any, present and intended activities of the organisation; and

(d) the purposes of the organisation.

(3) In considering such application, the Commissioner shall conclude:

(a) whether the applicant is eligible for enrolment;

(b) in which Part of the Register an applicant is eligible to be enrolled;

(c) the classification of the organisation's purposes, and shall notify the applicant in writing of his preliminary conclusion and provide the applicant with at least ten days notice to make written representations on his conclusions prior to determining the application according to this article.

(4) The Commissioner shall give due regard to all representations made and in the absence thereof shall proceed with the determination of the application.

(5) The Commissioner shall seek to determine all applications within three months of the date of submission, including the completion of the preliminary process referred to in sub-article (3) of this article, and failure to so determine shall be deemed to mean that enrolment has been refused. The applicants shall enjoy a right of appeal against such decision in terms of article 18 of this Act.

(6) The Commissioner shall not enrol any voluntary organisation the administrators of which are persons who do not qualify to be administrators of organisations in terms of applicable law.

Enrolment and certification.

10. (1) Upon being satisfied that the organisation is eligible for enrolment in terms of this Act, the Commissioner shall:

(a) enter such particulars in the Register;

(b) issue a certificate of enrolment with the identification number of the organisation; and

(c) specify its legal form and enrolment classification.

(2) Certificates of enrolment are deemed to be public instruments and shall be surrendered to the Commissioner on simple demand in writing.

(3) The certificate of enrolment in terms of this article shall not determine the fiscal status of an organisation or the taxability or otherwise of its income and transactions.

Refusal to enrol.

11. (1) The Commissioner may refuse to enrol an organisation if it appears to him that the requirements of this Act are not satisfied and in so doing he shall state the reasons for such refusal in writing.

(2) The Commissioner may also refuse enrolment if the name of the organisation is already used by another organisation, even if not enrolled, or if the proposed name is offensive or is likely to deceive.

Organisations in difficulty.

12. (1) In carrying out his duties, the Commissioner may also recommend the winding up of any voluntary organisation and may, on the specific request of the administrators of an organisation which may be in financial difficulty, appoint external administrators on a temporary basis in order to review the circumstances and make recommendations to him on the future of such organisation.

(2) In the case of enrolled voluntary organisations, the Commissioner shall seek to assist the organisation to implement solutions or achieve compliance prior to issuing any

recommendation or order in accordance with this article, article 13 and article 14 of this Act.

Suspension of activities of an organisation.

13. (1) The Commissioner may order the suspension of activities of a voluntary organisation for periods of thirty days by the issue of a suspension order in those cases where the Commissioner has sufficient grounds to suspect that an organisation:

(a) is not pursuing the social purposes for which it was established and in so doing it is misleading the general public;

(b) is carrying out unlawful or immoral activities;

(c) is materially failing to comply with the provisions of its statute or of this Act or any regulations issued thereunder;

(d) is misapplying funds, or is using funds or benefits received for purposes other than those for which such funds or benefits were granted;

(e) appears to have continued operating after it has been formally dissolved; or

(f) has not functioned for a period which exceeds twelve consecutive months.

(2) In those cases where a suspension order is issued, the Commissioner shall meet or communicate with the administrators of the organisation as soon as possible to review the situation and to obtain information which may assist him in his considerations.

(3) In the suspension order, the Commissioner may make any appropriate ancillary orders relating to the activities of the organisation.

Cancellation of enrolment.

14. (1) If the Commissioner is satisfied that an enrolled organisation has committed any one of the defaults mentioned in sub-article (1) of article 13, he shall have the power to cancel the enrolment of an organisation by issuing a cancellation order which shall have effect within thirty days from the date of notification of the order to the administrators, or any of them, unless an appeal is filed within such period, in

which case it shall have effect from the date established by the Board of Appeal.

(2) The Commissioner shall notify a copy of the cancellation order to the administrators of the organisation at the address provided to the Commissioner.

(3) Until a cancellation order has become final after the lapse of the period stated in sub-article (1) of this article, or pending the determination of any appeal in terms of article 18 of this Act, the affairs of the organisation shall continue to be administered by the administrators who shall carry out only acts of ordinary administration.

(4) Cancellation orders which have become final shall be published in a local newspaper.

Effects of suspension

or cancellation of

enrolment.

15. (1) In the event of suspension or cancellation of enrolment of an organisation, the administrators shall forthwith surrender to the Commissioner the enrolment certificate of the organisation. Any person failing to surrender such certificate within the time stated in a demand in writing by the Commissioner, shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine (multa) of one hundred liri and a fine (multa) of five liri for every day of default.

(2) In the event of suspension or cancellation of enrolment of an organisation, all privileges, benefits, advantages or entitlements granted to the organisation by virtue of enrolment, shall cease to have effect from the date when the decision to suspend or to cancel becomes final: Provided that such loss of benefits shall not apply to the acts required to liquidate and dissolve the organisation, including any transfers of property to other organisations as required by the statute of the organisation or the provisions of applicable law.

(3) Cancellation for the reasons mentioned in subparagraphs (a) to (d) of subarticle (1) of article 13 of this Act shall entitle the Commissioner to demand the refund of, or fair compensation for, any benefits unjustly received by the organisation or any other person by virtue of its enrolment under this Act.

(4) In the event of suspension of an organisation which has not been enrolled, such organisation shall suspend its activities, except those which are urgent and necessary to preserve assets or rights upon notice to the administrators or any one of them, or in their absence such person who appears to the Commissioner to be carrying on activities, and this until a final decision is taken as to whether it may continue to act or otherwise. Any person failing to cease activities within three working days from the receipt of the request made to him by the Commissioner to that effect, shall be guilty of an offence against this Act and, on conviction, shall be liable to a fine (multa) of one hundred liri and a fine (multa) of five liri for every day of default.

Powers of the Commissioner

in case of abuse of certificate.

16. (1) Without prejudice to the provisions of any other law, in those cases where a person is found by the Commissioner to have made an abusive use of a certificate issued under article 10 of this Act or to have made or made use of a forgery thereof, the Commissioner shall have all the necessary powers to:

(a) prohibit such person from using such certificate;

(b) issue public statements on the facts to warn the public about any abuse;

(c) take action to seize any funds raised by such person and return them to the donor thereof, or if it is not possible to locate donors within one year from such seizure, pay such funds into the Voluntary Organisations Fund.

(2) Except in cases considered urgent by the Commissioner, prior to any of the aforesaid action being taken, the Commissioner shall notify in writing any person who appears to him prima facie to have abused a certificate under this Act of his findings and of the actions he intends to take and such person shall be entitled to:

(a) make submissions to the Commissioner within such reasonable time as the Commissioner may determine; and

(b) file an appeal within five days of notification of the decision of the Commissioner, which appeal shall suspend any of the aforesaid actions on the Commissioner's part until final determination.

Powers of the Commissioner in

case of abuse by organisations.

17. Without prejudice to the provisions of any other law, in those cases where any voluntary organisation, whether enrolled or not, or any of its administrators, is found by the Commissioner to have acted in breach of the provisions of article 16 of this Act, the Commissioner shall have all the necessary powers to:

(a) issue public statements on the facts to warn the public about any abuse;

(b) take action to seize any funds raised by the organisation or by any person on behalf of the organisation and return such funds to the donor thereof, or if it is not possible to locate donors within one year from such seizure, pay such funds into the Voluntary Organisations Fund;

(c) take such other action as is necessary to prohibit any further activities by such organisation;

(d) demand the issue of a disqualification order by the Board of Appeal in terms of sub-article (5) of article 9 of the Second Schedule to the Civil Code in relation to any person acting as an administrator or purporting to so act.

## PART 5

Dispute Resolution

Right of appeal.

18. (1) Any person or organisation aggrieved by any decision of the Commissioner may appeal from the decision within thirty days of receipt thereof or in the circumstances specified in sub-article (5) of article 9 of this Act after four months from the date of application.

(2) Appeals shall be lodged with the Board of Appeal in the manner as may be prescribed or, until such time as such regulations are issued, appeals may be made in writing without the need of any further formality.

(3) An application to the Board of Appeal may also be made by the Commissioner, any founder, administrator, member, donor or beneficiary of a

voluntary organisation in his individual capacity having an interest in the affairs of the organisation for an order on the affairs of the said organisation on the grounds that the organisation is not being administered in accordance with this Act or as provided in its statute.

(4) The Board of Appeal shall give reasons for its decisions and shall cause such decisions to be made public omitting, if it deems it appropriate for reasons of confidentiality, the names of the persons involved.

(5) In determining an appeal under this article the Board may dismiss the appeal or annul, revoke or substitute the decision of the Commissioner or any administrator or general meeting of an organisation.

Support relating to disputes.

19. (1) The Commissioner may, on becoming aware of a dispute involving a voluntary organisation or persons connected therewith, provide assistance in the resolution of such disputes through:

(a) assistance to the parties to refer disputes to mediation and, where necessary, impose mandatory reference to mediation as provided herein;

(b) assistance to the parties in the dispute to make reference to arbitration in accordance with the provisions of Part IV of the Arbitration Act; or

(c) the facility of advisory opinions.

(2) The Commissioner may organise information, educational and training events in relation to alternative dispute resolution systems for the benefit of voluntary organisations.

(3) The Commissioner may, from time to time, make rules governing the giving of advisory opinions and the drawing up of panels of persons to give such advisory opinions (hereinafter in this Part referred to as "Advisory Panels"). The Panels shall be composed of persons who, in the opinion of the Commissioner, are qualified to carry out the duties of advisors in matters relating to voluntary organisations.

(4) For the purposes of this Part, a dispute involves a voluntary organisation if it relates to any of the following:

(a) a dispute between members of an association or between members and one or more

administrators relating to the affairs of the organisation, including the payment of membership fees, the expulsion of members and like issues;

(b) a dispute between the founders and the administrators of a foundation or the settlors of a trust and the trustees relating to the affairs of the organisation or trust as the case may be;

(c) a dispute between administrators of an organisation;

(d) a dispute between two voluntary organisations relating to activities, events and related matters;

(e) a dispute between a voluntary organisation and a donor, a sponsor, a beneficiary or other person who has relations with the voluntary organisation, other than purely commercial relations for the supply of goods or services;

(f) a dispute between a volunteer and an organisation;

(g) without prejudice to any law relating to employment, a dispute between an employee of an organisation and the organisation;

(h) a dispute between the Government and a voluntary organisation in relation to any management or other contract entered into for the rendering of services.

Mediation.

20. (1) The Commissioner shall generally encourage and assist parties to a dispute involving a voluntary organisation to resolve the issue by mutual agreement by referring it to mediation or failing that, to arbitration.

(2) When the Commissioner is informed of, or otherwise becomes aware of, a dispute involving a voluntary organisation which he considers should be resolved through mediation procedures, the Commissioner may refer the matter to mediation by notice in writing to the parties and the parties shall be bound by such reference. The Commissioner shall in the notice state who is responsible for the commencement of the proceedings and shall establish a time therefore, failing which the other party or parties may commence mediation proceedings themselves.

(3) Each party referred to mediation shall be bound to act in good faith in the conduct of such proceedings. Any party may withdraw from mediation procedures at any time:

Provided that if the mediator considers that a party has not demonstrated good faith in his conduct to promote or proceed with the mediation, then the mediator may order costs to be borne by such party.

(4) The Malta Mediation Centre may, after having consulted the Commissioner, from time to time prescribe rules governing mediation procedures in relation to voluntary organisations, including rules on the appointment of a mediator by the Centre in the event that the parties fail to agree on such appointment.

#### Arbitration.

21. (1) When a dispute as defined in sub-article (4) of article 19 is submitted to the Malta Arbitration Centre, the dispute shall, in the absence of agreement to the contrary by the parties involved, be determined in accordance with the provisions of the Arbitration Act and the arbitral tribunal may take into consideration general principles of good practice, transparency and fairness that are generally accepted and applied within the voluntary sector.

(2) The Commissioner shall, from time to time, advise the Malta Arbitration Centre in the drawing up of a panel or panels of mediators and arbitrators on matters involving voluntary organisations.

(3) The Malta Arbitration Centre may, after having consulted the Commissioner, from time to time prescribe rules governing arbitration procedures in relation to voluntary organisations.

#### PART 6

#### Offences and Penalties

#### Penalties.

22. Where any person acts in violation of this Act or in breach of any regulations made thereunder, and such an act or omission is designated as an offence, and a specific penalty is not provided for an offence under this Act, such person shall, on conviction, be liable to a fine (multa) of not less

than fifty liri but not more than one thousand liri or to a term of imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

Forgery or alteration of certificates or misrepresentation of status.

23. Any person who -

(a) forges or alters an enrolment certificate of an organisation so as to give the impression that he acts on behalf of an enrolled voluntary organisation, or that an existing organisation is a voluntary organisation when it is not; or (b) forges or alters a certificate of a voluntary organisation in any other manner, shall be guilty of an offence liable to the same punishment as provided for in article 183 of the Criminal Code.

Purporting to act as an

Administrator and public

collections.

24. (1) Any person who knowingly acts or purports to act as an administrator of a voluntary organisation without having been duly appointed or elected as an administrator of such organisation, shall be guilty of an offence punishable as a contravention unless the actions of the said persons constitute a more serious offence under any other law, in which case it shall be punishable accordingly.

(2) Any person who makes or attempts to make a public collection when not enrolled as a voluntary organisation under this Act shall be guilty of an offence.

Investigations.

25. (1) The Commissioner may investigate the affairs of any organisation at any time and may demand in writing any information relating to the operation of the organisation or any person involved in the activities of such organisation, if he has cause to believe that such information is

necessary for the better fulfilment of his duties under this Act, the protection of the public or the interest of the voluntary sector in Malta, and all organisations shall promptly comply with such requests in writing.

(2) Any person who fails to provide information and documentation as aforesaid, and destroys or defaces documents required by the Commissioner pursuant to this article shall be guilty of an offence under this Act.

(3) The Commissioner may issue directives demanding compliance with any provision of this Act and failure on the part of any person to comply with such directives shall constitute a breach of duty unless such a breach does not constitute an offence hereunder.

(4) The Commissioner may set a period for compliance with any provision of this Act or any directives issued hereunder, and may establish penalties for non-compliance within such period. Such penalties shall not exceed two thousand liri for the breach of the directive and fifty liri for each day of non-compliance.

(5) All penalties under the terms of the preceding sub-article shall be paid to the Voluntary Organisations Fund.

Breaches and offences.

26. The Appeals Board shall have jurisdiction in relation to any breach of the provisions of this Act or of any regulations as may be prescribed there under when such breach does not constitute a criminal offence.

## PART 7

General

National Council for the Voluntary Sector.

27. (1) There shall be a body to be known as the National Council for the Voluntary Sector, hereinafter referred to as "the Council".

(2) The Council shall provide a forum for the voluntary sector and a platform from which to develop co-operation between voluntary organisations and the Government.

Such forum shall carry out such other functions and shall have such powers as may be given to it by the Minister, from time to time, by means of regulations. The Council shall also administer the Voluntary Organisations Fund.

(3) The Council shall be composed of a Chairperson and another ten members. One member shall be appointed by the Minister to represent the Government and the other nine members shall be appointed from among the voluntary sector.

(4) The members of the Council who are appointed to represent the voluntary sector reflecting the various sectors in which voluntary organisations operate, shall be appointed by the Minister after the receipt of any nominations received on a public call by the Minister for nominations in the following manner:

(a) five members from among the voluntary sector in Malta as follows:

(i) three members shall be nominated by the voluntary organisations enrolled in terms of this Act;

(ii) one member shall be nominated by the voluntary organisations which are not enrolled in terms of this Act but registered in terms of the Second Schedule to the Civil Code;

(iii) one member shall be nominated by the voluntary organisations which are neither enrolled in terms of this Act nor registered in terms of the Second Schedule to the Civil Code: Provided that where there are no nominations, the Minister shall appoint such member or members at his discretion and when there is more than one nomination representing the particular sector referred to above, the Minister shall appoint members from among the nominations received;

(b) four members shall be appointed at the discretion of the Minister for the following purpose:

(i) one member to represent founders of voluntary organisations;

(ii) one member to represent members of voluntary organisations;

(iii) one member to represent administrators of voluntary organisations;

(iv) one member to represent foreign and international organisations.

(5) The Commissioner shall be the Chairperson of the Council and the Deputy Chairperson shall be elected by the other members of the Council from among themselves. Where the Chairperson is absent from Malta or is otherwise temporarily unable to perform the functions of his office, the Deputy Chairman shall act as chairperson and shall exercise all the powers and functions of the chairperson.

(6) The members of the Council shall be appointed for a period of two years and shall be eligible for re-appointment on the expiration of their term. The Minister may make regulations to regulate the nomination, removal and retirement of members of the Council.

(7) A person shall not be qualified to be appointed or to hold office as a member of the Council if he:

(a) is a member of, or a candidate for election to, the House of Representatives; or

(b) is a judge or magistrate; or

(c) is legally incapacitated; or

(d) has been declared bankrupt or has made a composition or arrangement with his creditors; or

(e) has been convicted of a crime affecting public trust or theft or fraud or of knowingly receiving property obtained by theft or fraud; or

(f) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as a member of the Council: Provided that the Minister may waive the disqualification of a person under paragraph (f) if such person declares the interest and such declaration and waiver are published in the Gazette.

(8) Subject to the provisions of this article, the office of a member of the Council shall become vacant:

(a) at the expiration of his term of office; or

(b) if any circumstances arise that, if he were not a member of the Council, would cause him to be disqualified for appointment as such.

The Voluntary Organisations Fund.

28. (1) The Voluntary Organisations Fund is hereby established as a foundation in virtue of this Act and shall be registered in terms of the Second Schedule to the Civil Code and enrolled as the first enrolled voluntary organisation in terms of this Act.

(2) The address of the Voluntary Organisations Fund shall be the offices of the Commissioner or any other address as the Commissioner may deem fit.

(3) The objects of the Voluntary Organisations Fund are to assist and support all enrolled voluntary organisations established in Malta through education, management support and financial grants.

(4) The Voluntary Organisations Fund is vested with the right to income and capital as is contemplated by this Act:

Provided that the requirements in article 31 of the Second Schedule to the Civil Code shall not apply to the Voluntary Organisations Fund in virtue of this article and the requirements therein shall be substituted by a statement signed by the Commissioner.

(5) The legal representation shall be vested in the Chairperson.

Trading activities.

29. (1) Voluntary organisations should not be established for trading purposes nor should they principally engage in trade.

(2) When a trading activity is required to be carried out by a voluntary organisation in order to raise funds to achieve its purposes, the organisation shall establish an appropriate legal entity and ensure that it does not burden the human and financial resources of the organisation beyond its means.

(3) The sale of donated goods and the grant on lease or a management contract of land or buildings or other commercial property, where no services are provided by the voluntary organisation, shall not be deemed to be trading activities for the purposes of this article.

(4) Activities carried out by a voluntary organisation directly in the achievement of the purposes of the organisation shall not be prohibited by this article even if remuneration is received for the services rendered by such organisation, including, but not limited to:



- (a) fees for educational services;
  - (b) consideration for sales of goods and services to members;
  - (c) admission fees for entrance to art galleries, exhibitions and museums;
  - (d) admission fees for attendance at theatrical or musical activities;
  - (e) participation fees in competitions organised for members;
  - (f) payment for residential accommodation and care; or
  - (g) similar income which may be payable to voluntary organisations established for the specific purposes for which they have been established.
- (5) The investment of the property of a voluntary organisation shall not be deemed to be a trading activity for the purposes of this article.
- (6) In case of doubt, a ruling on whether activity is trading or not for the purposes of this article shall be given by the Commissioner and his decision shall be final.

#### Issue of guidelines.

30. The Commissioner may, from time to time, issue guidelines in relation to the activities of voluntary organisations. Guidelines shall be binding on such voluntary organisations as codes of good practice and shall be issued by the Commissioner after due consultation with the National Council for the Voluntary Sector.

#### Inspection of documents.

31. (1) On payment of the applicable fee any member of the public may review and obtain copies of any documents which have been submitted to the Commissioner by any voluntary organisation which makes public collections or which receives funds or other support from the Government or any of its agencies or any statutory body.

(2) Voluntary organisations which do not make public collections shall make the statute, annual

report and accounts available for inspection by any founder, administrator or member of the organisation as well as by any donor or beneficiary who satisfies the administrators of an interest in the information.

(3) If a person is refused any information by a voluntary organisation such person may complain to the Commissioner who shall take a final decision on whether he is entitled to the information or not in terms of this article.

#### Power of the Minister to

make regulations.

32. (1) The Minister shall have the power to make regulations:

(a) to further regulate voluntary organisations which are not enrolled in terms of this Act;

(b) to establish the forms for the enrolment of an organisation, for the notification of changes to the statute to its administrators and otherwise;

(c) to establish the form and contents of certificates to be issued in terms of this Act;

(d) to establish the forms and procedures to be used for appeals in terms of this Act;

(e) to establish rules applicable to public collections by enrolled voluntary organisations;

(f) to regulate foreign or international organisations carrying on activities in Malta;

(g) to lay down any penalties for breach of the provisions of this Act;

(h) to implement any international convention or any European Union regulation or directive, to the extent necessary, to which Malta has adhered to in the context of organisations or the voluntary sector;

(i) to state the rules applicable to the Voluntary Organisations Fund, to regulate the terms and interest rates of loans therefrom and to regulate the terms and conditions of guarantees which may be provided by the Fund;

(j) to lay down rules on the position of volunteers in relation to their employers when such volunteers wish to carry out voluntary activity, in Malta or overseas, for periods beyond their leave entitlement;

(k) to lay down rules on the powers of the Board of Appeal and the Court in relation to the interpretation or variation of a statute and the administration of organisations;

(l) to establish the form and content of annual reports and accounts which have to be submitted to the Commissioner in order to achieve a satisfactory level of transparency and accountability of voluntary organisations;

(m) to extend, clarify or define the functions of the Commissioner under this Act and provide for all ancillary and related matters;

(n) for the better carrying out of any of the provisions of this Act.

(2) The Minister may, with the concurrence of the Minister responsible for finance, issue regulations relating to the fiscal status of voluntary organisations, including different rules for different categories or different classification of purposes, and may establish the criteria for the granting of any such exemptions, in whole or in part, from any law relating to taxation, duties or other charges by the State, as well as any fiscal rules on the activities of voluntary organisations and donations to such organisations. Such regulations may also establish the terms, conditions and forms of any fiscal certificates, receipts or other documents which may be necessary for the enjoyment of the above fiscal status and regulations.

#### OBJECTS AND REASONS

The purpose of this Bill is to regulate voluntary organisations, to establish the Commissioner for Voluntary Organisations and to provide for privileges to be enjoyed by such enrolled organisations.

This Bill also establishes the Register of Voluntary Organisations and the Council of Voluntary Organisations.

*(b) Civil Code (Amendment)*

#### INFORMATION ON THE PROVISIONS OF THE CIVIL CODE (AMENDMENT) ACT IN

#### SO FAR AS THEY ARE RELEVANT TO VOLUNTARY ORGANISATIONS

##### Introduction and Scope

1. When this legislative project started, the idea was to address the problem of the

lack of legal personality of Foundations and Associations in the same law as that

dealing with Voluntary Organisations.

2. This approach, however, was not found to be appropriate for the voluntary sector for various reasons, including the following:

- not all Voluntary Organisations require legal personality;

- in the case of Associations, which in effect are created in the exercise of the freedom of association protected by the Constitution, registration as a legal person cannot be imposed as a condition for the exercise of such right;

- not all Foundations and Associations are voluntary or 'non-profit making' structures. Foundations are used by the State and by private interests (just as limited liability companies are used by such interests) and Associations can be used for the carrying out of a trade or profession and also be 'private interest';

- all Voluntary Organisations which interface with the public or the State need to be subject to rules on transparency and supervision and this irrespective of whether they are registered as legal persons or not;

- dealing with registration for legal personality (which has its own formal and administrative rules which are purely mechanical) at the same time as dealing with enrolment of Voluntary Organisations (which seeks a more value laden approach resulting in prioritizing State support balanced against standards of transparency and supervision) results in unduly complex legislation;

- a complex law would not be of benefit to the voluntary sector as it would not achieve the goal of a workable and supportive law for this important sector.

3. A decision was therefore taken that the Continental approach should be followed and the issues of legal personality, Foundations and Associations be addressed in the Civil Code in a general manner. These would be applicable both to Voluntary Organisations as well as State and private interest Organisations. The advantage lies in the fact that general legislation with the particular elements of interest only to Voluntary Organisations will not be burdened with technical detail.

4. The provisions of the Civil Code are, therefore, focused on dealing with legal persons in general and addressing, in a non-sectorial manner, a problematic vacuum in Maltese law relating to Foundations and Associations, two forms of legal structures which are very commonly used in

Malta. These are used by all sectors of society and need to be addressed in this manner.

5. The purpose of this appendix is not to explain or expand on all the provisions of the proposed Civil Code but only to highlight the areas of relevance to the voluntary sector. This will enable readers of this White Paper, to which this appendix is attached, to put the discussion in context of the correct legal principles. The Civil Code also deals with issues of liability and the effects of non-registration as well as dissolution and winding up of organisations.

#### Principles of Legal Personality

6. To date legal personality is not dealt with in any part of Maltese law in a homogenous manner. There are many provisions in many laws granting legal personality by virtue of the laws themselves or by catering for a registration procedure or, in some cases, making it the effect of the issue of a license by the State. In case of Foundations, legal personality has been recognised by the courts on the basis of custom. In the case of Associations there have been many conflicting and ambiguous judgements of the Courts over the years but it is now almost universally accepted that associations of persons should have legal personality.

7. The situation is, however, very unsatisfactory and the proposed provisions of the Civil Code lay down the principle that legal personality arises only through an act of recognition by the State. In case of Voluntary Organisations this means registration in terms of law. Companies are registered at the Companies Registry to obtain legal personality. Voluntary Organisations will need to register at the Public Registry to obtain legal personality.

8. It should be emphasised that it is not mandatory for an organisation, other than a Foundation, to register. Foundations are obliged to register because Foundations consist of a patrimony of things. However Associations of persons do not need to register. It is not mandatory for an organisation to obtain legal personality for it to exist.

9. 'Unregistered organisations' which do not have legal personality are addressed in the Civil Code. This is a very important innovation because for the first time the state of fact in the case of hundreds of organisations will finally be addressed

in a clear manner. Participants in 'unregistered organisations' will know what their powers, rights, duties and liabilities are. With the new provisions of the Civil Code it is naturally expected that many Associations will indeed register in order to obtain the benefits of legal personality.

#### Types of Organisations

10. Organisations are classified into those set up for a private benefit and those which are set up as 'non-profit' organisations with a social or other purpose. This is the basic distinction which then allows the latter group to be called 'Voluntary Organisations' and are dealt with in the special law called the Voluntary Organisations Act.

11. As with any organisation, Voluntary Organisations must respect certain basic structural rules:

- they must have a name;
- they must have an address in Malta;
- they act through their organs such as boards, committees and general meetings;
- they are bound by the acts of designated legal and judicial representatives;
- they cannot act as curators or tutors;
- they can benefit under wills. In this case, for instance, the law imposes that they must be registered before they can inherit, thus ensuring basic levels of transparency through which the implementation of the testators' intentions can be monitored;
- legal personality cannot be used against a person in good faith if it is set up to perpetrate fraud, abuse of right or non-observance of a rule of law of mandatory application or of public order. This again is a very important innovation in our law as it ensures that no-one can create legal screens for illegitimate purposes.

12. Recognizing the fact that to date there are many organisations which exist and operate in Malta and enjoy legal personality as a result of customary law and judicial interpretation, the proposed Civil Code seeks to preserve the existing status quo. In the case of Foundations, all Foundations (except Pious Foundations and marriage legacies) will be required to register within the stated period. If they do not register

within the period prescribed in the law, although they will continue to enjoy legal personality, they will thereafter be treated as 'unregistered entities' with the relatively negative effects implied.

#### Administrators

13. Organisations are administered by administrators who are appointed by or in terms of the statute. The amendments indicate the persons who are not permitted to act as administrators of organisations. Administrators can be removed from office in terms of the Statute or by the Board of Appeal. Among their other duties, administrators must keep books of account and prepare annual reports relating to the organisation.

#### The Registrar, Registration and Board of Appeal

14. A Registrar of Legal Persons will be appointed to administer the registration system at the Public Registry.

15. Registration is made according to the legal form chosen for the organisation. When a law already provides a registration system for an organisation (e.g. a company which is another type of association of persons) then that organization cannot form part of this Register. The implication of this in effect is that, in the main, Foundations and 'Non-Profit' Associations will use this registration system. However, it could also be used by civil partnerships, as to date there is no registration system for these. Foundations have a different legal structure to Associations and that has its effect on the registration procedures and documents to be submitted.

16. It is possible that some 'social purpose' or 'non-profit' organisations already have legal personality because they are licensed under special laws. The obvious example is schools which are licensed under the Education Act. They receive legal personality automatically and without any form of registration. This is not consistent with the principles of the Civil Code, as proposed, since this method does not achieve transparency. These organisations too are therefore expected to register within the period provided in the Civil Code.

17. The same issue arises regarding unions and employer Associations which may be 'non-profit making' and may not have legal personality. Although the Employment and Industrial Relations Act solves problems arising from lack of legal personality, Unions and Employers' Associations may wish to register and can do so under the Civil Code as they are not registered elsewhere in the manner meant to create legal personality. Registration in their case does not cater for public accessibility to the registration records, which is the basic condition for eligibility to certain privileges at law.

18. When a foreign or international organisation is established in Malta it will be required to have a resident representative for purposes of compliance in Malta.

19. The provisions of the Civil Code propose the establishment of a Board of Appeal to deal with all contestations relating to registration, removal of administrators and certain other disputes. There is an appeal to the Courts on points of law and when there is a determination of a civil right.

#### Unregistered Entities

20. This is one of the important innovations of the proposed Civil Code and it is of relevance to the voluntary sector. Although the law is introducing a registration system it is not necessarily the case that all organisations will register and obtain legal personality, but that does not mean the organisations do not exist as a matter of fact. This new provision, which is based on Italian law, looks at the state of fact and gives it legal effect.

21. This is based on the theory of 'appropriation of assets for a purpose' being capable of creating a legally relevant effect and is consistent with what the Maltese Courts have been trying to do over the years to support these organisations in achieving their purposes. The Courts have held that organisations may lease property and enter into contracts although they do not necessarily have legal personality. Some legal provisions, such as in the Employment and Industrial Relations Act, have even tried to solve this problem. This Act also addresses this issue of lack of legal personality by giving relevant Associations powers to carry out legal acts.

22. For an entity to exist and be recognised as existing as a matter of fact, it must have at least a written statute which must state its purpose and define the legal powers it needs to achieve that purpose.

23. The proposed law then states that such entities may carry out all the legal actions, through their administrators, to achieve their purposes. However, as they are not legal persons they do not have their own patrimony, which means that the assets are owned by the promoters 'in co-ownership'. This rule does not apply to 'non-profit' or 'social purpose' organisations where there are no private interests and, consequently, assets are held only for the purpose for which they have been dedicated and cannot be given to any private person.

24. The administrators and promoters of 'unregistered organisations' will be personally liable, jointly and severally, for the various matters outlined in the law including the duty:

- to keep the property of the entity identified as such and distinct from their
- own personal property and other property they may be administering;
- to preserve any property received; and
- to apply assets to the fulfilment of the aims expressly stated in the statute of the entity;
- to ensure, to the extent possible considering their functions, observance of the law applicable to the organisation and its activities.

25. This might appear to be harsh. The aim is to ensure that promoters and administrators of organisations do not remain completely outside the purview of the supervisory authorities of the country, away from the review by the counterparts to contracts and the enquiring public. As these organisations are totally non-transparent the persons involved in them must bear the responsibilities. Naturally the assets of the organisation are used first to fulfil liabilities before one moves on to the promoters and the administrators. Founders, donors and beneficiaries are never liable as they are not involved in administration.

26. When the liability of administrators is governed by a special law which may be applicable to the 'unregistered organisations', such as is the case with Unions and Employers' Associations under the Employment and Industrial Relations Act, then that special law prevails.

27. Unregistered entities may not create other unregistered entities.

28. It should be noted that some entities, although not registered, will still not be treated as 'unregistered organisations' for the purposes of this law. These include:

- any organisation which is not permitted to register as it is already registered pursuant to a special law regulating its form;
- Pious Foundations, although not registered;
- marriage legacies, although not registered; and,
- public organisations, which shall be regulated by any special law applicable to their particular form.

29. Most of the above are not Voluntary Organisations. However, 'Pious Foundations' are likely to qualify as such. In this case, Pious Foundations fall under the supervisory authority of the Catholic Church in Malta and are bound by Canon Law. As there are hundreds of these Foundations varying greatly in size, purpose and effect, it has been suggested that they should not be governed by the provisions of the Civil Code and should continue to be governed by the applicable religious laws. It should be emphasised that there is nothing to bar them from registering as legal persons if they wish to do so, in which case they shall be bound to comply with all the applicable rules.

Liability Of Persons Involved in Registered Organisations and of the Organisations Themselves

30. This is probably the second most serious cause of ambiguity in the voluntary sector, after lack of legal personality. This is the liability of persons involved in organisations, be they founders, members, administrators, donors or beneficiaries. These provisions now lay down clear principles.

31. The proposed Civil Code outlines the rules on liability of the organisations themselves. This provision states the obvious fact that organisations are liable for their own obligations. It then deals with specific situations which are not so relevant to the voluntary sector other than the one relating to groups of Organisations where there is no cross liability for different members of the group of organisations.

#### Public Collections

32. Only registered organisations having legal personality can engage in public collections. This is the case because it is only registered organisations which have the sufficient level of transparency as a result of the public registration of their statute, their administrators, their accounts and reports and any relevant changes to their organisation.

33. 'Unregistered organisations' cannot therefore make public collections and this is expected to be one of the determining factors when organisations consider whether to register or not.

#### Foundations and Associations

34. A Foundation is dedicated to a purpose for the benefit of persons and administered by administrators. In the case of Voluntary Organisations, the main concern is purpose Foundations. There are many organisations in Malta and several carry different names – institutes, agencies, funds, and so on – and all these are included in the definition even if they have different descriptions. The only similar structures not included are charitable trusts as these are governed by a totally different law although there is a natural connection between these two laws, given that Foundations for a 'social purpose' have an identical purpose as do charitable trusts.

35. All Foundations must register as legal persons and have no choice in the matter. These are artificial persons and are treated as persons because of their distinct patrimony dedicated to the purpose for which they are established. Registration is necessary to establish the extent of this patrimony given that there is no liability

towards third parties beyond the patrimony. Registration also caters for transparency in relation to Voluntary Organisations so that members of the public can see that the aims and purposes are being fulfilled and the Inland Revenue can ensure that the fiscal benefits extended by law to these entities, when philanthropic, is justified.

36. Associations are different from Foundations in that they are made up of persons. Persons associate together to achieve the purpose defined in the statute. These are organisations with members and need a democratic structure to determine decision-making powers. In the voluntary sector we find many of these, ranging from band clubs to sports clubs and from charitable to environmental groups. These are usually 'non-profit making' and are not 'owned' by anyone in particular. In the private sector we find professional organisations, such as firms of auditors, lawyers or architects and professional associations, such as the Chamber of Commerce or the Chamber of Advocates. When these are set up to carry on a trade or profession then these are civil partnerships with the owners entitled to the assets and profits. However, when they are set up to educate, promote the ethics or the ideals of the members or to organise activities for members, then they also qualify as Voluntary Organisations. The provisions of the Civil Code cater for all these types as they all share the same legal structure.

Voluntary Organisations in the form of Associations are then further governed by the Voluntary Organisations Act where special rules apply to certain privileges which are appropriate only to 'non-profit making' entities.

37. Hybrid Organisations: Much confusion has arisen over the last decades because of lack of legal provisions in our system and there are Foundations with members and Associations focused on applying a patrimony for a purpose and not for members. There is also a lot of confusion between social, public and charitable purposes on the one hand and private purposes on the other. Public collections are made for specific individuals (primarily for medical needs and health) as though these were for a public purpose. The Civil Code proposals include a provision to deal with this situation and allow organisations some time to restructure if they wish to do so. The provision also permits organisations to continue as they are, as long as they observe the rules for both Foundations and Associations.

38. Segregated Cells: Several Voluntary Organisations have also developed into specific project directions and it is not uncommon to see Foundations within a Foundation but without any formality (for instance a school foundation sets up a gym fund or, as can be evidenced in State foundations such as Sedqa, Appogg and Sapport, under the Foundation for Social Welfare Services). This can happen in private structures as well. In order to facilitate this, the law provides for segregated cells within Foundations. Cells are not legal persons but form part of the main Foundation with the exception that their assets and liabilities are distinct from the main Foundation and other cells so that if it runs out of funds, the others are not affected in any manner. Strict formalities and disclosures apply.

39. Groups: A related concept is groups of organisations, each having distinct legal personality and able to contract with each other. This can be compared to a parent and a subsidiary or a group of affiliated entities.

40. Conversions: The Civil Code provides the facility for the conversion of one type of entity into another. As Trusts and Foundations are very similar in purpose and nature, one not having legal personality and the other one having it, the idea of converting one to another by complying with simple rules provides flexibility where needed. If for instance it is necessary for EU funding to show that an entity has legal personality, a Trust would not be eligible and so it should be possible to convert to a Foundation. There is also the possibility of the State converting its Foundations into agencies, given the draft provisions of the Public Service Act.

41. Amalgamations and Divisions: At present there are no guidelines to assist organisations which wish to amalgamate together or those which wish to become more than one organisation from an original structure. There are no rules on how to terminate organisations in a manner which is transparent and hence satisfactory from a public interest point of view. The proposed Civil Code adopts the solutions used in the Companies Act.

42. Winding up: The last part of the law deals with the dissolution and winding up of organisations, given that there exist no provisions

of law on the subject except in the Companies Act which are far too complex for these kinds of legal structures and the sectors in which they operate.

#### Foundations

43. The proposed Civil Code deal in detail with Foundations. These could be for a private interest with beneficiaries or for a 'social purpose' and established as 'non-profit making'. Most of the rules in this part are more relevant for private interest Foundations as that is the more complex alternative, given that it operates within the law of succession. The following gives some points in brief in so far as Voluntary Organisations formed as Foundations are concerned.

44. Foundations can be created by public deed or will, which must contain statutory information about various matters listed in the law, and must be registered in the Public Registry.

45. Foundations must be established with at least Lm 500 and additional funds can be endowed after establishment.

46. The provisions of the proposed Civil Code also relate to purpose Foundations and these are very relevant for the voluntary sector as they outline how purposes need to be defined and achieved and what happens when the purpose is achieved or becomes impossible. The law also deals with the relationship between the achievement of the purpose and commercial activities which are usually not permitted for Voluntary Organisations. It is possible for a purpose Foundation to have beneficiaries only when the dominant purpose of a Foundation is to support a class of persons which constitute a sector within the community as a whole. In that case the public interest overcomes the problem of private interest of the individual beneficiaries.

47. The provisions then deal with rights of founders, administrators and beneficiaries including the rights of information of beneficiaries. It should be noted that as the Continental Law of Foundations is not very developed in so far as it relates to rights of beneficiaries, the proposed provisions of the Civil Code track those in the Trusts and Trustees Act where beneficiaries are very much the focus. This also results in harmony within the legal system for similar cases.

## Associations

48. The proposed Civil Code also deals with Associations and again here we have a classification where Associations can have different purposes. Some may be of private interest (such as when set up to support a specific person or group of named persons, or when it is set up to carry on a trade or profession) and others can have 'social purposes' or be 'non-profit', even if its purposes are not technically defined as being of a public nature.

49. Private Associations can register under this law and so can 'social purpose' or 'non-profit making' associations but this remains a choice: registration is not mandatory. If registration is opted for then the rules of law must be observed and all information required by law on registration and annually must be filed at the Registry. The law lists those items which must be stated in the statute and hence publicly disclosed for the various public interest reasons which have been mentioned above.

50. These provisions are now more concerned to deal with the fact that there are members and so there are democratic principles which have to be observed. Rules on general meetings, the duties of administrators and the possibility of disputes between members and administrators are more in focus. These provisions are all relevant for the voluntary sector as most Voluntary Organisations are indeed Associations.

## Conclusion

51. The above are intended to provide information on the provisions of the draft Civil Code (Amendment) Act, 2005 in so far as they are relevant to Voluntary Organisations.

## 9.6. Other Laws

### 9.6.1. Gaming Act

#### PART I

#### PRELIMINARY

1. The short title of this Act is the Gaming Act.

2. In this Act, unless the context otherwise requires - "authorised game" means a game specified by the Authority under article 29 to be an authorised game for the purposes of this Act;

"authorised machine" means a machine used for the purpose of gaming as specified under article 31(1);

"Authority" means the Lotteries and Gaming Authority established under article 9 of the Lotteries and Other Games Act;

"casino" means such premises in relation to which the Minister has granted a concession under article 3;

"casino employee" means any receptionist, dealer, chef de table, cashier, supervisor, watcher, machine engineer, manager, or any other person who, in the view of the Authority, is involved in the gaming operations of a casino;

"casino licence" means a licence granted under article 15; "chips" means any tokens used or capable of being used in a casino in the conduct of gaming in the place of money and approved for this purpose by the Authority;

"gaming" means the playing of a game of chance for money or money's worth;

"gaming equipment" means any electrical, electronic or mechanical device, cards or any other thing, other than chips, used, or suitable for use, in connection with gaming;

"gaming machine" means any machine which is constructed or adapted for playing a game of chance or chance and skill combined as may be prescribed by the Minister;

"inspector" shall have the same meaning as is assigned to it in article 2 of the Lotteries and Other Games Act;

"junket" means an arrangement the purpose of which is to induce any person, selected or approved for participation therein on the basis of his ability to satisfy a financial qualification obligation related to his ability or willingness to gamble, or on any other basis related to his propensity to gamble, to come to a licensed casino for the purpose of gambling and pursuant to which, and as a consideration for which, any or all of the costs of transportation, food, lodging, and entertainment for the said person is directly or indirectly paid by a casino licensee;

"Minister" means the Minister responsible for finance.



## CONCESSIONS

3. (1) It shall be lawful for the Minister to grant concessions to persons to open and operate casinos.

(2) A concession under this article shall be granted for such consideration including the payment of any sums of money to the general revenues, for such period and upon such terms and conditions as the Minister thinks fit.

(3) The grant of a concession under this article shall not dispense any person opening or operating a casino from the requirement of any licence by the Authority under this Act.

(4) Notwithstanding the other provisions of this article, the Minister may from time to time designate a company owned wholly directly or indirectly by the Government as the Government Casino Operator and such company shall, whenever the Minister so directs, take over the operation of a casino owned directly or indirectly by the Government whenever the person to whom a concession has been granted to run such casino for any reason abandons such concession or has his licence revoked or suspended under this Act.

4. Subject to the requirement of any other licence under this Act or any other law and to the other provisions of this Act, where a concession has been given by the Minister under article 3, or where the Minister has directed a company as therein referred to operate a casino, then, notwithstanding the provisions of any other law, it shall be lawful during the period of such concession –

(a) for the person to whom such concession has been granted or for any person to whom such concession has been assigned in accordance with the terms and conditions thereof, or for the company so directed, to permit the use of the premises specified in the concession as a casino for the playing therein of such games of chance for money or money's worth and for such stakes as may be specified in the casino licence and to encourage the playing therein by such persons of any such games for any such stake; and

(b) for any person to take part therein in any such game for any such stake.

## PART III

### THE AUTHORITY AND INSPECTORS

5. The Authority shall carry out the functions assigned to it by the provisions of this Act or of any other law or of regulations made thereunder and shall perform such other functions as the Minister may from time to time assign to the Authority by order in writing and considered appropriate by the Minister in relation to the operation of this Act or of any other law.

6. The functions of the Authority shall be –

(a) to supervise the operation of casinos;

(b) to issue licences to own and/or operate casinos under article 15;

(c) to issue licences to the casino employees, including the managers thereof, and junket leaders, proposed to be engaged by a casino licensee to work in relation to gaming;

(d) to inquire into the suitability of –

(i) casino owners and operators, licensees or persons nominated as proposed casino licensees;

(ii) the employees, including the management and junket leaders, proposed to be engaged by the casino licensee;

(e) to regulate by licence the importation, supply and maintenance of gaming machines and gaming equipment for casinos;

(f) to advise the Minister on the making of regulations, in accordance with the provisions of article 50, on matters relating to the control of casinos or of the operation of casinos, or, generally to gaming in casinos;

(g) to perform any of the functions that is or may be assigned to it by this or any other law.

7. Deleted by Act XXIV. 2001.80.

8. Deleted by Act XXIV. 2001.80.

9. Deleted by Act XXIV. 2001.80.

10. An inspector may at any time upon production of his identity card enter and remain in a casino for the purposes of –

(a) viewing gaming;

(b) observing any of the operations of the casino or, generally, of gaming;

(c) ascertaining whether the operation of the casino or, generally of gaming, is being properly conducted, supervised and managed;

(d) ascertaining whether the provisions of this Act are being complied with; and

(e) in any other respect, exercising his powers or performing his duties.

11. (1) An inspector may for the purpose of ascertaining that the provisions of this Act are being complied with and that the full amount of tax under this Act is being paid -

(a) require any person whom the inspector believes, on reasonable grounds, to be in possession or have under his control any gaming equipment or chips -

(i) to produce the equipment or chips to the inspector for inspection or testing; or

(ii) to attend before the inspector at a reasonable time and place specified by the inspector and there to answer such questions, or to supply such information, relating to the equipment or chips as the inspector specifies;

(b) require a casino licensee or a person acting on behalf of a casino licensee -

(i) to produce to the inspector for inspection such book or document in his custody or control relating to the operation of the casino as the inspector specifies; or

(ii) to attend before the inspector at a reasonable time and place specified by the inspector and there to answer such questions, to supply such information, or to produce such book or document, relating to the operation of the casino as the inspector specifies;

(c) inspect or test any gaming equipment or chips or inspect such book or document, and take copies of, or make notes in relation to, such book or document, relating to the operation of the casino as the inspector considers necessary;

(d) direct a casino licensee not to use any gaming equipment or chips that the inspector considers to be unsatisfactory for use;

(e) receive and, if the inspector thinks fit, investigate a complaint with respect to any aspect of the operation of a casino and to make a report of the result of such investigation to the Authority;

(f) call to the inspector's assistance -

(i) another inspector; or

(ii) a casino employee who, in the belief of the inspector, is competent to assist the inspector in

the exercise of his powers or performance of his duties; and

(g) require any person entering or to be found at a casino to produce identification documents.

(2) A requirement under subarticle (1)(a) or (b) or a direction under paragraph (d) of the same subarticle shall be made by notice in writing or orally as the inspector deems fit in the circumstances.

(3) An inspector shall be present in a casino at the opening and closing of any gaming table, when any adjustment is made to the table float, when the count of money and tokens is undertaken, and at the opening and closing of any gaming machine and to verify jackpot wins.

(4) Any person who, without reasonable excuse, hinders or fails to assist the inspector in the discharge of his duties under subarticle (1), shall be guilty of an offence under this Act.

(5) An inspector shall make a report on the exercise of his functions under this Act to the Authority.

12. (1) Without prejudice to any power exercisable by virtue of the preceding provisions of this Act, the Authority may at any time serve on a casino licensee a notice requiring him, in such manner and within such reasonable time as may be specified in the notice -

(a) to produce for inspection by or on behalf of the Authority books or documents relating to the casino, as specified in the notice which the Authority reasonably requires to inspect for the purpose specified in of article 11(1), and

(b) to furnish the Authority with information relating to the premises as specified in the notice which the Authority reasonably requires for that purpose.

(2) If without reasonable excuse any requirement imposed in relation to a casino by a notice served by virtue of subarticle (1) is not complied with, the casino licensee shall be guilty of an offence under this Act.

13. Without prejudice to the provisions of the Professional Secrecy Act, any information disclosed to an inspector, the Authority or any member, officer or employee of the Authority, and any document produced in pursuance of articles 11 or 12 shall be secret and confidential and may not be disclosed or produced other than for the

purposes of this Act or any prosecution for an offence against this Act or an offence committed against or in a casino.

#### PART IV

#### GRANT OF CASINO LICENCE

14. No person may open or operate a casino unless he is in possession of a licence by the Authority.

15. (1) It shall be lawful for the Authority by licence to authorise a person to open and operate a casino in Malta.

(2) The Authority shall not issue such licence to a person unless that person is a company registered in Malta and unless it appears to the Authority that -

(a) the relevant voting share capital of the proposed casino licensee is owned, directly or indirectly, by a person or persons of integrity;

(b) the director or directors of the company or of any affiliate thereof are persons of integrity;

(c) the proposed casino licensee has the financial means and expertise available to operate the casino and to fulfil all its obligations under this Act.

(3) A casino licence remains in force for ten years and shall be subject to the annual payment of a licence fee. Subject to compliance with the provisions of this Act, the licence, unless it is sooner surrendered or cancelled, may be renewed by the Authority. A casino licence shall, in all cases, be conditional to there being a concession by the Minister in favour of the licensee in accordance with the provisions of Part II of this Act.

(4) The casino licence shall be in a form approved by the Board and -

(a) shall specify inter alia:

(i) the date of its issue;

(ii) the date of its expiration;

(iii) the name of the licensee;

(iv) an address in Malta specified by the licensee for the service of documents on the licensee;

(v) the address of the casino;

(vi) the maximum number of tables that can be operated under the licence;

(vii) the maximum number of machines allowed to be used under the licence;

(viii) the minimum opening hours;

(ix) such other particulars relating to the casino as the Authority considers necessary; and

(x) such other particulars as may be prescribed;

(b) shall identify the area or areas by reference to plans designated to be the casino.

(5) (a) A licensee shall within fourteen days of any change in the ownership of any share capital of the company or of its affiliates and of any change in the management or Board of Directors of the company or of its affiliates inform the Authority of such change.

(b) If pursuant to any change as is referred to in paragraph (a) a situation is brought about that had it existed at the time of the application for the licence, would have disqualified the company from obtaining a licence in accordance with subarticle (2), the Authority shall by notice inform the licensee accordingly and if the situation shall not have been remedied within one calendar month from the notice to that effect by the Authority, the Authority shall revoke the licence: Provided that the Authority shall not issue a notice as aforesaid later than three calendar months after being informed by the licensee of the change in accordance with paragraph (a).

(6) Failure to comply with the provisions of subarticle (5) shall constitute an offence against this Act.

(7) A licence under this article may not be assigned.

16. (1) The Authority shall, on the basis of the costs incurred by itself in carrying out its functions under this Act, determine the casino licence fee, in the casino licence, for the purposes of this Act.

(2) The casino licence fee is payable in advance to the Authority on behalf of the Government on each anniversary of the licence by the casino licensee.

(3) Determinations under subarticle (1) shall not be made at intervals of less than twelve months and in any case shall only be varied upon the grant or renewal of a casino licence.

17. (1) The casino licensee may surrender the casino licence at any time by giving notice in writing to the Authority not less than one year prior to the date of the surrender of the licence.

(2) The surrender of any casino licence shall not dispense the person surrendering the licence from any obligation incurred under articles 16 and 37.

(3) If the casino licensee surrenders the casino licence without giving the notice specified in subarticle (1), the gaming equipment and machines to be found in the casino shall be forfeited to the Authority on behalf of the Government.

18. The Authority may order the cancellation of a casino licence on any of the following grounds:

(a) any director or manager of the casino licensee is convicted of an offence against this Act or of theft, receiving stolen property, fraud or any crime against public trust;

(b) the casino licensee contravenes a provision of this Act or is in breach of a licence condition;

(c) the casino licensee knowingly or recklessly supplies to the Authority information that is false or misleading in a material particular;

(d) the casino licensee fails to fulfil the licensee's financial commitments when they become due and payable;

(e) the casino licensee fails to maintain the formal gaming reserve as specified in article 39;

(f) the licensee is being wound up; or

(g) the Authority is satisfied that the casino licensee is not, or has ceased to be, a suitable person to be the licensee of a casino.

19. (1) Where a ground for cancellation of the casino licence arises under article 18, the Authority, by notice in writing, shall request the casino licensee, and may request any other person who in its opinion has an interest in the licence, to show cause, within such period, being not less than twenty-one days after the issue of

the notice, as is specified in the notice, why the casino licence should not be cancelled on such ground as stated in the notice.

(2) The Authority shall have regard to any response made under subarticle (1) and -

(a) where the matter is resolved to its satisfaction shall take no further action;

(b) where, although the matter is not resolved to its satisfaction, it considers that further action is not warranted, it shall, in writing, caution the casino licensee; or

(c) where the matter is not resolved to its satisfaction and it is satisfied that further action is warranted, it may -

(i) by notice in writing, give such direction as it considers appropriate; or

(ii) suspend for such period as it thinks fit, or cancel, the casino licence.

(3) Where a direction given by the Authority under subarticle (2)(c)(i) is not complied with within the time specified in the notice, the Authority shall cancel the casino licence.

20. (1) No person shall employ or work as a -

(i) casino employee;

(ii) casino manager; or

(iii) junket leader, without a licence from the Authority, wherever such licence shall be required by any regulations under this Act.

(2) Any person who shall do anything referred to in subarticle (1) wherever a licence therefor is required under subarticle (1), without being in possession of the relative licence or not in accordance with such licence shall be guilty of an offence against this Act.

## PART V

### OPERATION OF CASINO

21. (1) It shall be lawful for a casino licensee to require persons entering the casino premises to pay a fee therefor. Such fee shall be fixed by the licensee with the approval of the Authority.

(2) Such approved fee is to be clearly displayed at the entrance to the premises. All such fees received shall be recorded.

22. (1) A casino licensee shall –

(a) maintain the facilities and amenities of the casino in a condition to the satisfaction of the Authority;

(b) ensure that the casino is at all times properly and competently conducted;

(c) ensure that all casino installations, equipment and procedures for security are available and are tested, used, operated and applied effectively; and

(d) ensure the gaming equipment and chips approved by the Authority for use in the casino are maintained in good order and condition.

(2) The casino licensee shall not operate the casino unless the layout of the casino is in accordance with plans and diagrams approved by the Authority.

23. The casino licensee shall, for the purpose of ensuring security within the premises of the casino, install and keep in good working order such camera and audio system, in such numbers and locations, and which shall be monitored by such number of persons adequately trained to be employed as professional security staff as may be approved by the Authority.

24. The Authority shall, in the casino licence, establish a schedule of minimum operating times for the casino setting out the days on which, and hours during which, the licensee shall operate the casino. The Authority may also establish the days during which casinos shall remain closed.

25. (1) It shall be the duty of the casino licensee to ensure that persons entering the casino premises are identified and may at any time request such persons to produce their identification card or passport for inspection.

(2) The casino licensee shall cause the particulars of persons entering the casino together with details of identification card or passport produced to be registered in a register kept at the casino premises for such purpose.

26. (1) A person shall not enter a casino during the hours of operation of the casino, if the person –

(a) is requested by a licensed casino employee not to enter the casino or other gaming premises, as the case may be, on the ground that the person has previously contravened the approved rules of an authorised game

or rules of conduct of gaming in force;

(b) is a person in relation to whom a court order under article 27(1) is in force;

(c) is in the case of a citizen of Malta under the age of twenty-five years;

(d) is in the case of any other person under the age of eighteen years;

(e) has asked for a ban or restriction on his own admission;

(f) upon a request to do so by a licensed casino employee, fails to produce his identification card or passport; or

(g) appears to be under the influence of alcohol or a drug or is acting in a disorderly manner: Provided that, any ban or restriction of admission shall, under paragraph (e), have effect during the period requested by the person concerned, which shall not be less than six months and not more than one year. Any such ban or restriction cannot be cancelled before its expiry.

(2) A person shall not remain in a casino during the hours of operation of the casino if the person –

(a) when requested to do so by a licensed casino employee, refuses or fails to produce evidence of his age;

(b) has been requested by a licensed casino employee to leave the casino on the ground that the person –

(i) appears not to understand fully the nature or consequences of gaming as it relates to the application of the approved rules of authorized games and the potential for financial loss;

(ii) appears to be under the influence of alcohol or a drug;

(iii) is affecting the orderly functioning of the operations of the casino or, generally, of gaming

whether because of the influence of alcohol or drugs or otherwise;

(iv) appears to be disturbing the peace or affecting the orderly functioning of the operations of the casino;

(v) appears to be cheating, or attempting to cheat, in the casino; or

(vi) has previously contravened the approved rules of an authorised game or rules of conduct in force in a casino;

(c) is a person in relation to whom a court order under article 27 is in force.

(3) Without prejudice to the other provisions of this Act, admission to a casino shall be at the discretion of the licensee who shall ensure that persons who may have a problem of pathological gambling are not given access to the gaming area: Provided that no person shall be refused admission to a casino by reason of his race, place of origin, political opinion, colour, creed, sex or physical infirmity.

27. (1) Where any person is convicted by a court of an offence which in the opinion of the court is of such nature, or where the circumstances under which it was committed were such that it is undesirable that the person so convicted should be permitted to enter a casino, the court may in addition to any other power under any other law make an order prohibiting the person convicted from entering a casino as specified in such order, for such period as may be specified therein.

(2) The Authority as well as all casino licensees shall, as soon as practicable, be notified with such order by the Registrar of Court.

(3) The casino licensee shall keep a list of the names, together with any other available identification details of those persons, in relation to whom a court order has been made as provided in subarticle (1).

(4) A casino licensee shall make the said list available for inspection by the Authority and by inspectors.

28. (1) A person who is –

(a) a police officer; or

(b) for the time being in charge of the casino; or

(c) an agent or an employee of the casino licensee, may, with such assistance as is necessary and reasonable and using such force as is necessary and reasonable, cause any person who, under article 26, may not enter, or remain in, the casino:

(i) to be prevented from entering the casino; or

(ii) to be removed promptly from the casino as the case requires.

(2) A person who, without reasonable excuse, obstructs or hinders a person in the exercise of a power conferred on the latter person under subarticle (1), shall be guilty of an offence under this Act.

(3) The casino licensee who, knowingly or recklessly, permits to enter, or fails to remove from, the casino a person who is not entitled to be in such premises by virtue of the provisions of article 26, shall be guilty of an offence under this Act.

29. (1) The Authority shall, in the casino licence issued or to be issued under this Act, specify the game or games to be designated as authorised games for the purposes of the Act.

(2) The Authority may at any time alter the list of the designated authorised games and the approved rules of a game as specified in the casino licence.

(3) In carrying out its functions under subarticles (1) and (2), the Authority shall seek the agreement of the casino licensee thereon.

30. The Minister may, after consultation with the Authority, make regulations specifying in a general manner the terms and conditions according to which gaming is to be conducted in a casino. The Authority may in a casino licence specify in a particular manner terms and conditions, being terms and conditions not prohibited by regulations, according to which gaming is to be conducted in a casino.

31. (1) The Authority shall, in a casino licence, specify the number of authorised machines that may be installed and kept for use on the casino premises, and may in the licence subject the keeping of such machines to any conditions as may be specified by the Authority in the licence.

(2) Subject to any limitation in the concession granted by the Minister under article 3 the Authority may, either on its own initiative or upon a request by the casino licensee, upon the renewal of a casino licence, vary the number of, and the terms and conditions regulating, authorised machines permitted to be installed in the casino: Provided that the Authority shall not refuse the request made by the casino licensee under this subarticle unless there are reasonable grounds for such refusal. The acceptance or refusal of any such request shall be made in writing.

32. (1) No gaming machine of any description shall be kept for use in a casino –

(a) contrary to the conditions specified in the casino licence; or

(b) without the machine being registered in accordance with any regulations issued under this Act and in force from time to time.

(2) If any gaming machine is kept for use in the casino in contravention of subarticle (1), the casino licensee shall be guilty of an offence under this Act.

(3) Any person who manufactures, imports, keeps or supplies a gaming machine for use as a casino under this Act shall, without prejudice to any other liability under any other law, be guilty of an offence under this Act: Provided that the Minister may, under such conditions as he may deem appropriate, give a permit for the manufacture of gaming machines for export, and any machines manufactured in accordance with such a permit shall not be deemed to be manufactured in contravention of this subarticle.

(4) If, in any proceedings for an offence under subarticles (2) and (3), it is proved that a gaming machine was on the premises of a casino, it shall be presumed, unless the contrary is shown, that the machine was kept on the premises of the casino for use on those premises.

## PART VI

### PROVISION OF MONEY FOR GAMING

33. It shall not be lawful for the licensee or any person acting on his behalf or under any arrangement with him, to make any loan or otherwise provide or allow to any person any

credit, or release or discharge on another person's behalf, the whole or part of any debt:

(a) for enabling a person to take part in gaming at a casino; or

(b) in respect of any losses incurred by any person in gaming at a casino.

34. (1) Article 1716 of the Civil Code shall not apply with respect to a game lawfully played in a licensed casino.

(2) The provisions of article 1713 of the Civil Code shall not prejudice the right of the casino licensee to recover a debt arising from the acceptance of a cheque in accordance with article 35 and which is subsequently not honoured.

35. (1) Subject to any regulation made by the Minister or any directive that may be issued by the Authority, a casino licensee or any person acting on his behalf or under any arrangement with him may, if he has reasonable grounds to believe that a cheque will be honoured upon presentation, accept a cheque and give in exchange for it cash or tokens for enabling such person to take part in the gaming as long as –

(a) the cheque is not a post-dated cheque; and

(b) the cheque is exchanged either for cash to an amount equal to the amount for which it is drawn, or it is exchanged for tokens at the same rate as would apply if cash, to the amount for which the cheque is drawn, were given in exchange for them.

(2) Where the conditions set out in subarticle (1) are fulfilled, the giving of cash or tokens in exchange for a cheque shall not be deemed to be contrary to the provisions of article 33.

(3) Where the casino licensee or a person acting on his behalf or under any arrangement with the licensee, accepts a cheque in exchange for cash or tokens to be used by a player in gaming, he shall, not more than two banking days later, cause the cheque to be delivered to a bank for payment or collection.

36. A person may, with the consent of the casino licensee, and not later than thirty minutes from the end of a gaming session redeem any cheque accepted from the person by the casino licensee during that gaming session by presenting at the cash desk of the casino –

- (a) an amount of money, or
- (b) chips the face value of which is, or
- (c) any combination of cash and chips, or
- (d) where more than one cheque is being redeemed, a consolidating cheque for an amount, equivalent to the amount for which the cheque or cheques are drawn, or the sum of the amounts of the cheques, to be redeemed.

## PART VII

### FINANCIAL

37. (1) The licensee shall pay to the Authority on behalf of the Government the rate of tax based on the total gross takings of all games played at the casino specified in the Schedule without the deduction of any expenses of any kind whatsoever, but subject to the following provisions of this article. The licensee shall not later than the seventh day of each month, effect payment to the Authority of the tax due in respect of the preceding month.

(2) For the purpose of determining the sums due to the Authority under subarticle (1), the gross takings or gross losses, as the case may be, on all games of chance shall be those resulting at the closing of the casino each day, but the casino licensee shall be entitled to set off any gross losses on such games incurred during any two months against gross takings on such games made during the same months: Provided that where a casino remains open for twenty-four hours in a day the closing of the casino for the purposes of this subarticle shall be deemed to be 8 a.m.

(3) The gross takings or losses on all games of chance shall be calculated at the closing of the casino each day and duly appointed representatives of the Authority shall be entitled to attend the making of such daily calculation for the purpose of verifying the same and, moreover, to attend at the playing of all games at the casino.

(4) The licensee shall further pay to the Authority on behalf of the Government such rate of tax on the casino entrance fee as may be specified in the casino licence.

(5) For the purposes of subarticle (2), the term "two months" means periods of two months, ending at the closing of the casino on the last day of February, April, June, August, October and December of each calendar year and does not

include any time after the closing of the casino during which the business of the casino, commenced on the last day of the relevant two months' period, is continued or concluded.

38. (1) Upon the grant of a casino licence, the Authority may require the casino licensee to take out a bank guarantee issued by a bank or by a credit or financial institution licensed in Malta in favour of the Authority on behalf of the Government in an amount not exceeding the gaming reserve and subject to such terms and conditions as may be specified in the licence. Such bank guarantee shall remain valid until the expiration of one year after the expiration of the licence.

(2) The casino licensee may forfeit such bank guarantee in favour of the Authority in any of the following cases:

(a) upon the surrender of the casino licence under article 17;

(b) upon cancellation of the casino licence by the Authority under article 18;

(c) upon breach of any of the conditions in respect of maintenance of facilities in terms of article 22;

(d) in settlement of any liability of the licensee with respect to a fine imposed under Part VIII of this Act.

39. (1) Upon the grant of a casino licence, the casino licensee shall establish a formal reserve in an amount to be fixed by the Authority which will protect the casino against a run of gaming losses and therefore ensure that punters are paid out after a large win and which will provide comfort that the casino licensee has adequate financial resources to carry on the business of casino gaming to acceptable and proper standards and without imminent risk of closure or liquidation.

(2) The gaming reserve shall be in the form of a deposit held with a bank established in Malta and or any other security held on the licensee's behalf by such bank acceptable to the Authority. The casino licensee shall cause the bank to confirm existence of such a reserve to the Authority, as and when requested by the Authority, and in any case annually upon every anniversary of the licence.

(3) Should it be necessary for the reserve to be drawn upon, the casino licensee shall immediately inform the Authority and shall restore the reserve



within two months and shall thereupon cause the bank to confirm its restoration to the Authority.

40. (1) Without prejudice to the provisions of the Prevention of Money Laundering Act, and of article 50, the Minister with the concurrence of the Minister responsible for justice may by order provide guidelines for conduct by a licensee, inspectors or the Authority in relation to certain transactions that may give rise to suspicion of money laundering, and may in particular provide that the provisions of article 12(1) of the Prevention of Money Laundering Act shall apply with regards to a casino with such modifications and adaptations as may be specified in the Order.

(2) Where an inspector or a casino employee has reason to suspect that a transaction or a proposed transaction could involve money laundering, he shall act in accordance with regulations made under the Prevention of Money Laundering Act, and any regulation made under this Act, applicable thereto.

41. It shall be lawful for a casino licensee, upon authorization granted by the Central Bank of Malta and subject to such conditions as may be specified in such authorisation, to provide facilities for the exchange of foreign currency on the casino premises.

42. (1) Any person guilty of an offence against this Act, shall on conviction be liable to a fine (multa) of not less than three thousand liri and not more than one hundred thousand liri or to imprisonment of not more than two years or to both such fine and imprisonment:

Provided that where the person so found guilty is the director, manager, secretary or other similar officer of a company or other undertaking the said person shall, for the purpose of this article, be deemed to be vested with the legal representation of the same company or other undertaking which accordingly shall be liable in solidum with the person found guilty for the payment of the said fine:

Provided further that where the Attorney General in the sanction issued in accordance with article 48, certifies that the offence will be adequately punished with a fine (multa) of not less than one hundred liri and not more than three thousand liri the applicable penalty shall be a fine (multa) of not less than one hundred liri and not more than three thousand liri.

(2) The fine referred to in subarticle (1) shall be recoverable as a civil debt in favour of the Government by the Chief Executive of the Authority.

(3) The provisions of the Probation Act and of article 21 and of articles 28A to 28I of the Criminal Code shall not apply with respect to offences referred to in subarticle (1).

43. (1) It shall not be lawful for a person to use, or have in his possession, in or outside a casino -

(a) chips that the person knows are counterfeit chips; or

(b) cards, dice or coins that the person knows have been marked, loaded or tampered with.

(2) Whosoever shall contravene the provisions of subarticle (1) shall be guilty of an offence against this Act.

44. (1) It shall not be lawful for a person - .

(a) to forge or counterfeit any chips or other tokens to be used in a casino licensed under this Act, or a licence used for the purposes of this Act; or

(b) knowingly to utter counterfeit chips or knowingly utter a forged or counterfeit licence.

(2) Whosoever shall contravene subarticle (1) shall be guilty of an offence against this Act.

45. (1) No person shall take part in gaming at a casino -

(a) if he is not present on the premises of the casino when gaming takes place there;

(b) on behalf of another person who is not present on the premises at the time.

(2) Any person who contravenes the provisions of subarticle (1) or who aids or permits any other person to contravene such provisions shall be guilty of an offence under this Act.

46. (1) Every person who in any premises not licensed under this Act or under the Lotteries and Other Games Act or in contravention of the provisions of this Act or any regulations made thereunder or in breach of any condition imposed in any licence issued under this Act, takes part in

any game of chance played for money or money's worth; or permits the use of any place for or encourages any such game; or wilfully prevents any Police officer, lawfully authorised to enter into any place suspected of being used as a gaming house, from entering into such place or any part thereof, or obstructs or delays any such officer in so entering, or, by any bolt, bar, or other contrivance secures any external or internal door or means of access to any such place; or uses any means or contrivance whatsoever, for the purposes of preventing, obstructing or delaying the entry of such officer into any such place or any part thereof; or although not taking part in any unlawful game, shall be a partner of any player at any such game; or who is present while any such game is being played shall be guilty of an offence against this Act.

(2) In addition to any penalty under any other provision of this Act the money and effects representing the stakes as well as the instruments and articles used in gaming in contravention of subarticle (1) and any money found on any person committing an offence under that subarticle shall be forfeited in favour of the Government.

(3) Subarticles (1) and (2) shall not apply in respect of any game lawfully played in terms of the Lotteries and Other Games Act or any other law.

47. The Court of Magistrates shall be the competent court to take cognisance of offences against this Act.

48. No proceedings for an offence against this Act shall be commenced without the sanction of the Attorney General.

## PART IX

### MISCELLANEOUS

49. (1) No person shall issue or cause to be issued any advertisement –

(a) informing the public that any premises in Malta are premises on which gaming takes place or is to take place as a casino; or

(b) inviting the public to take part as players in any gaming which takes place, or is to take place, in any such premises, or to apply for information about facilities for taking part as players in any gaming which takes place, or is to take place, in any such premises; or

(c) inviting the public to subscribe any money or money's worth to be used in gaming on such

premises or to apply for information about facilities for subscribing any money or money's worth to be so used; or

(d) inviting the public to take part as players in any gaming which takes place, or is to take place, in any casino outside Malta or to apply for information about facilities for taking part as players in any gaming which takes place, or is to take place, outside Malta:

Provided that such restriction on advertising shall not apply to advertisements published, displayed or broadcasted outside Malta for distribution or circulation outside Malta or to advertisements as described in subarticle (1) which are displayed in locations frequented mainly by tourists and are to include airports, seaports, hotels and holiday complexes but shall not include bars and restaurants.

(2) subarticle (1) shall not apply to:

(a) the display in a casino in respect of which a concession has been granted by the Minister, and a casino licence has been issued by the Authority, under this Act, of a sign or notice indicating that gaming takes place, or is to take place, in the casino, whether the sign or notice is displayed inside or outside the premises; or (b) the publication of a notice in the Gazette where the notice is required to be published under this Act; or (c) any advertisement authorised by the Authority relating to non-gaming activities held at a casino.

(3) Any person who contravenes the provisions of subarticle (1) shall be guilty of an offence under this Act.

50. The Minister may, on the advice of the Authority, make regulations for carrying out the provisions of this Act and, without prejudice to the generality of the provisions of the foregoing, may by such regulations –

(a) regulate the issue, suspension and cancellation of a licence;

(b) regulate gaming, and stakes at a casino;

(c) regulate junkets and prescribe the rate of taxation applicable to takings generated by junkets;

(d) regulate the use of machines at a casino;

(e) prescribe the records and accounts to be kept by a casino licensee;

(f) prescribe in relation to the gaming reserve referred to in article 39; and

(g) prescribe anything that is to be prescribed under any other provision of this Act.

51. The use of any part of a hotel for the running of a casino licensed under this Act shall not, for the purpose of the Development Planning Act, be deemed to be a change of use.

52. Nothing in this Act shall prejudice the operation of, or shall be deemed to substitute or to derogate any of the provisions of, the Lotteries and Other Games Act.

#### SCHEDULE

(Article 37)

#### TAXATION

(1) The casino licensee shall pay to the Authority on behalf of the Government the following rates of taxation:

(a) Table Games:

(i) On total gross takings of all table games played at the casino a sum equivalent to thirty-six per centum (36%).

(ii) On the gross takings generated by junkets approved by the Authority and in accordance with any regulations applicable thereto, on all table games dedicated to the junkets a sum equivalent to fifteen per centum (15%).

(b) Gaming Machines:

(i) On total gross takings of all gaming machines played at the casino a sum equivalent to forty per centum (40%).

(ii) On the gross takings generated by junkets approved by the Authority and in accordance with any regulations applicable thereto, on all gaming machines dedicated to the junkets a sum equivalent to twenty-five per centum (25%).

(2) The tax calculated under item (1) hereof shall be assessed separately and no set-off for any tax or for any loss under any one paragraph shall be allowed.

## 10. Poland

### 10.1. Law on Associations

7 April 1989

In order to create conditions favorable for the full enjoyment of the rights of freedom of association granted by the Constitution of the Republic of Poland; in accordance with Universal Declaration of Human Rights as well as International Pact of Civil and Political Rights; in order to give all the citizens, notwithstanding their individual convictions, equal rights to actively participate in public life, to pursue individual interests and express diversified opinions; considering historical traditions and commonly accepted achievements of association movement, the following has been proclaimed:

#### Chapter 1 GENERAL PROVISIONS

##### Article 1.

1. Polish citizens realize their right to associate according to the Constitution of the Republic of Poland and the legal order as defined by statute.

2. The right to associate may be restricted by other laws only when it is necessary to protect national security or public order, or to protect public health, morality or the rights and freedoms of other person.

3. Associations have the right to voice their opinions on public issues.

##### Article 2.

1. An association is a voluntary, self-governed and lasting non-profit union.

2. An association independently sets its goals, creates its programs and structures as well as passes regulations concerning its activities.

##### Article 3.

1. The right to found associations is vested in Polish citizens who have full capacity to conduct legal transactions and who have not been deprived of public rights.

2. Minors from 16 to 18 years of age, who have limited capacity to conduct legal transactions, may become members of associations and have both active and passive elections rights in these associations. However, majority of board members of an association must be persons with full capacity to conduct legal transactions.

3. Minors below the age of 16 may become members of an association if the statute of this association allows it, provided that they obtain consent from their legal guardians. However, they may not be given a vote at general assembly of an association nor will they have election rights or eligibility election rights. If a branch of an association consists only of minors, they may elect and be elected to authorities of such a branch.

Article 4.

1. Foreigners who are residents of the Republic of Poland may become members of associations in accordance with the regulations binding for Polish citizens.

2. Foreigners who are not residents of the Republic of Poland may become members of associations whose statutes provide for such a possibility.

Article 5.

1. International associations may be founded within the territory of the Republic of Poland according to the principles given in the present law.

2. Associations may become members of international organizations according to the provisions of their statutes. However, this may not violate commitments arising from international agreements of which the Republic of Poland is a party.

Article 6.

1. It is forbidden to found associations that accept the principle of their members unconditional obedience to the authorities of the association.

2. No one may be forced to become member of an association, nor may anyone's right to withdraw from an association be limited. No one bears negative consequences for belonging to an association or not belonging to it.

Article 7.

1. The provisions of the present law do not apply to:

1) social organizations that operate under separate laws or international agreements of which the Republic of Poland is a party;

2) churches and other religious unions;

3) religious organizations whose legal situation is defined by laws on relations between the state and churches and other-religious unions, if the

religious organizations operate within these churches or unions;

4) committees created to organize parliamentary elections as well as local council and other self-government elections, if the elections are run under laws or regulations by the state government, starting with the day of proclaiming the elections until the day of completing election procedures;

5) Political parties.

2. The provisions of the present law apply to organizations mentioned in section 1.1, section 1.2, and section 1.3 above in all matters not regulated separately.

Article 8.

1. An association is subject to registration if the present law does not provide otherwise.

2. Registration is carried out by the regional registry court that is appropriate for the associations seat, hereinafter registry court.

3. Application of the measures provided by the present law belongs to the regional court that is appropriate for the associations seat, hereinafter the court.

4. When hearing a case, the registry court applies the provisions of the civil code for non-trial proceedings, with modifications that follow from the present law.

5. An associations activities are supervised by the local branch of the national agency that is appropriate for the associations seat at the voivodship level and that has particular competence for social and administrative matters, hereinafter supervising agency.

6. Provisions of the present law do not restrict the rights of the public prosecutor granted by other laws.

Chapter 2 FOUNDING ASSOCIATIONS

Article 9.

At least 15 people who want to found an association adopt the associations statute and select the founding committee.

Article 10.

1. An associations statute particularly provides for:

1) a name of the association that distinguishes it from other associations, organizations, and institutions;

2) the seat and the territory of activities;

3) the goals of the association and the means for their achievement;

4) the ways of acquiring and losing membership, the rights and responsibilities of the members;

5) authorities of the association, the method of their election, the method of electing supplementary authority members, and the competence of the authorities;

6) the methods of representing the association and property obligations, as well as conditions under which resolutions of the associations are binding;

7) the ways of obtaining financial means and deciding upon members dues;

8) principles of changing the statute;

9) the method of dissolution.

2. An association which intends to create local branches is obliged to specify in the statute the ways of creating these branches and their structure.

3. A legal person may be a supporting member of an association only.

#### Article 11.

1. The highest authority of an association is a general assembly of its members. A general assembly of members decides upon all the matters on which the statute does not specify the competence of associations authorities.

2. The statute may provide for a delegates assembly instead of a general assembly of members, or the substitution of a general assembly of members with a delegates assembly if membership of the association reaches a certain number specified in the statute. In such cases, the statute specifies the principles governing the election of delegates and their terms of office.

3. An association must have a board and an internal auditing organ.

#### Article 12

The founding committee submits to the registry court a motion for registration with the following enclosures: the statute, a list of founders

containing each founders first name, last name, date and place of birth, present address and signature, a protocol of founding committee selection and the address of the associations temporary seat.

#### Article 13.

1. The registry court examines the registration motion immediately, and it should reach a decision

not later than 3 months after the motion has been submitted.

2. The registry court submits the registration motion, accompanied by all the enclosures listed in Art.12, to the supervising agency, which has the right to present its opinion on the motion within 14 days of the submission. Should the registry court allow, the supervising agency may join the judicial process as an interested party.

#### Article 14.

The registry court refuses to register an association if its statute does not meet the requirements of the present law.

#### Article 15.

1. If the registry court finds it necessary, it may call an explanatory session in order to discover additional facts.

2. The registry court summons brings participants in the process to explanatory hearing.

#### Article 16.

The registry court issues a decision on registering an association after concluding that its statute complies with the law and that the founding members meet the requirements specified in the present law.

#### Article 17.

1. An association gains the status of a legal person after the decision of its registration has become final and valid.

1a. The local branch of an association may gain the status of a legal person if the associations statute so provides.

2. An association becomes listed in the registry of associations after a final, valid decision concerning its registration.

3. The registry court notifies the supervising agency and the founders of the listing an association in

the registry of associations and sends the statute of the registered association to the supervising agency.

Article 18.

1. The Following are listed in the registry mentioned in Article 17 section 2:

1) the name, seat and the territory of activities of the association;

2) the date of listing in the registry;

3) the goals of the association and the means of their achievement;

4) the first and names of the founding committee members;

5) the names and addresses of board members;

6) the ways of representing the association and of property obligations.

2. Decisions by the court to apply against an association the measures provided by the law on appointing a caretaker and by the law on appointing a liquidator also listed in the registry of associations.

3. Registries of associations are open, and everyone has the right to obtain certified copies and

excerpts from these registries.

4. The Minister of Justice defines a model registry and the methods of keeping registries of associations by decree.

[cf. Decree of the Ministry of Justice of 17 April, 1989 on model registry and the ways of keeping registers of associations (Journal of Law of the Republic of Poland, No 23, item 126, with later changes) printed on p. 49 of this book]

Article 19.

1. Within a month of its appointment at the latest, the board of an association listed in registry of

associations is obliged to notify the registry court and supervising agency of its composition, of the addresses of board members and of the address of the seat of the association.

2. The provision of Article 19, section 1, applies as appropriate to any changes in composition of the

board and address of the seat.

Article 20.

1. Within 14 days of its creation, the board of a local branch of an association is obliged to notify the supervising agency that is appropriate for its seat of its creation. The notification must include the composition of the board, the address of the seat of the branch, and the statute of the association.

2. The provision of Article 20, section 1, applies as appropriate to any changes in the composition of the board and in the address of the seat of the local branch of an association, as well as to any changes introduced into the statute of the association.

Article 21.

The board of an association is obligee to notify the registry court immediately of any changes to the statute. Procedures concerning the registration of associations apply as appropriate for listing the changes introduced into the statute in the registry of associations.

Article 22.

1. At least 3 associations may create a union of associations. Other legal persons may also be founders or members of such a union. Legal persons, however, whose activities are income-oriented, may only become supporting members of such a union.

2. The provisions of the present law apply as appropriate for unions mentioned in Article 22, section 1.

Articles 23-24. [deleted]

Chapter 3 SUPERVISING AGENCIES

Article 25.

The supervising agency has the right:

1) to demand that the board of an association supply copies of acts passed by general assembly (assembly of delegates) within a specified period of time;

2) to review documents concerning activities of the association and to make notes, excerpts and copies of them at the seat of an association and in the presence of association authorities representative;

3) to demand appropriate explanations from the authorities of an association.

#### Article 26.

If an association does not comply with the requirements specified in Article 25, the supervising agency imposes upon it a one-time fine not exceeding 50,000 zlotys. The fine may be waived if the association complies with the requirements of the supervising agency immediately after the fine has been imposed. The association may, within 7 days, move for the court to waive the fine.

#### Article 27.

The agency supervising a local branch of an association is the agency as specified in Article 8, section 5, that is appropriate for the seat of the branch.

#### Article 28.

If the supervising agency concludes that activities of an association break the law or violate the provisions of its statute, as specified in Article 10, sections 1 and 2, depending on the kind and degree of the offense it may: demand a correction within a specified period of time; give a warning to authorities of the association, or file a suit against the association demanding that one of the measures specified in Article 29 below be applied.

#### Article 29.

1. Following a motion from the supervising agency or the public prosecutor, the court may:

1) give a warning to authorities of the foundation;

2) abrogate resolution of the association that violates the law or the statute;

3) dissolve the association if its activities shockingly and permanently violate the law or provisions of the statute and there are no conditions to assure that future activities of the association will comply with the law or the statute.

2. While examining the motion mentioned in section 1, part 3, above, on its own motion, the court may issue a temporary order suspending the board of the association or the appointing of a representative to handle the current affairs of the association.

3. While examining a dissolution motion, the court may suspend the proceeding and oblige the board to correct the activities of the association within a specified period of time. If the activities of the

association are not corrected within this period of time, the court resumes the suspended proceeding on its own motion or on the motion of the supervising agency.

#### Article 30.

1. If an association does not have a board capable of conducting legal transactions, the court, on its own motion or on the supervising agency, appoints a caretaker for the association.

2. The caretaker is obliged to convene a general assembly (assembly of delegates) of the association within 6 months so that a board may be elected. Before the election of the board, the caretaker represents the association in all the matters of property that require current attention.

3. The caretaker's remuneration is paid from the property of the association.

#### Article 31.

On a motion by the supervising agency, the court decides to dissolve an association if

1) the number of members has fallen below the number of persons necessary to found an association;

2) an association does not have the authorities provided by its statute, and there are no conditions to elect them over a period of time not longer than one year.

#### Article 32.

The decision to apply the measures provided by Article 20, section 1, and Article 31 is taken by a court composed of one presiding judge and two lay judges.

### Chapter 4 PROPERTY OF AN ASSOCIATION

#### Article 33.

1. Property of an association is formed from member contributions, donations, legacies, inheritances, the proceeds of its activities, income from its property, and public support.

2. An association may, so long as it observes binding regulations, accept donations, legacies and inheritances, as well as use public support.

#### Article 34.

An association may conduct economic activities according to general principles provided by other regulations. Proceeds from economic activities of an association serve to realize its statutory goals and may not be shared among the associations members.

Article 35.

An association may accept donations according to the principles provided by separate regulations.

#### Chapter 5 THE LIQUIDATION OF AN ASSOCIATION

Article 36.

1. If an association dissolves as a result of its own resolution to do so, members of the board become liquidators unless the statute or, if the statute has no relevant provisions, the resolution of the last general assembly (assembly of delegates) of the association provides otherwise.

2. If an association is dissolved by the court, the court issues an order of liquidation and appoints a liquidator.

Article 37.

1. The liquidator is obliged to carry out liquidation in the shortest possible time and in such a way that associations property is not unnecessarily decreased.

2. In particular, the liquidator should:

1) inform the court that liquidation has commenced and that a liquidator has been appointed, give his first name, last name, and address, unless conditions described in Article 36, section 2, hold;

2) carry out the legal proceedings necessary to complete the liquidation and publicly announce the commencement of liquidation;

3) after completing liquidation, file a motion to strike the association from the registry of associations.

3. If liquidation is not complete within one year since of its commencement, the liquidator informs the court of the reasons for the delay. The court may consider the reasons valid and extended the time limit for liquidation, or it rules to change liquidator.

Article 38.

Property of liquidation association is appropriated for the purpose given in its statute or in the

resolution to dissolve taken by the general assembly (assembly of delegates) of the association. If there is no decision by statute or by resolution in this matter, the court rules to appropriate the property for a given social purpose.

Article 39.

The cost of liquidation is covered by the property of the association being liquidated. If the association being liquidated has no property, the cost of liquidation is covered by the State Treasury.

#### Chapter 6 SIMPLE ASSOCIATION

Article 40.

1. A simple association is a simplified form of association, and it does not have the status of a legal person.

2. At least 3 persons who wish to found a simple association adopt regulations for the association. The regulations must particularly specify the name of the simple association, its goals, territory, its kinds of activities, its seat, and representative.

3. In writing, the founders notify the supervising agency that is appropriate for the seat about the founding a simple association. The notice must include the data mentioned in section 2 above.

Article 41.

1. The registry court, on a motion from the supervising agency or the public prosecutor, may forbid the founding of a simple association if the association does not fulfil the conditions specified in Article 16, section 2, of the present law.

2. If the activities of a simple association are not forbidden within 30 days from the day the supervising agency receives notice of the associations founding, the association may start its activities.

Article 42.

1. A simple association may not

- 1) create local branches;
- 2) enter unions of associations;
- 3) include legal persons;
- 4) conduct economic activity;



5) accept donations, legacies or inheritances, receive public grants or use public support.

2. A simple association gains financial means for its activities from member contributions.

Article 43.

In all the matters not regulated otherwise in the present chapter, regulations of the present law apply as appropriate, with the reservation that

1. the regulations of Articles 9-15, Article 14, Section 2, Articles 17-20, Articles 22-24, Article 30, and Article 32, section 2, do not apply;

2. whenever the law mentions statute, regulations of a simple association should be understood.

Chapter 7 SPECIAL REGULATIONS, CHANGES IN BINDING REGULATIONS, TRANSITIONAL PROVISIONS AND FINAL REGULATIONS

Article 44.

1. Separate laws specify restrictions on the right to join associations and participate in their activities for soldiers in active military service, active members of basic civil defense service, state security service agents and functionaries of Civil Militia.

2. Associations must obtain permission for conducting activities in the areas or premises currently supervised or used by military institutions or institutions of the Ministry of the Interior. Such permission is issued by the Ministry of Defense or the Ministry of the Interior, respectively, or by organs appointed by them.

Article 45.

Persons intending to found an association whose activities are directly related to a matters of state security, defense readiness of the state, or protection of public order are obliged to limit the sphere of their activity as required by the Ministry of Defense or the Ministry of the Interior, respectively, or by organs appointed by them.

Article 46. [deleted]

Article 47.

The law of 29 March, 1962 on meetings (Journal of Law of the Republic of Poland, No. 20, item 89, 1971, No. 12, item 115, 1982, No. 14 item 113, and 1985, No. 36 item 167) is amended in the following way: In Article 7, after section 1, section 1a is added, which reads:

1a. In order to call for a meeting of founders of an association, it is necessary to previously notify an organ of the national administration at the voivodship level particularly competent in social and administrative matters.

Article 48.

The law of 21 November, 1967 on general compulsory military service in the Peoples Republic of Poland [Journal of Law of the Republic of Poland, 1988, No. 30, item 207] is amended in the following way: The present Article 154 is marketed as Article 154, section 1, and section 2 is added which reads:

2. Active members of the basic civic defence service may join organizations and associations or actively participate in activities of organizations and associations of which they were members before being drafted into the service only if they obtain consent from the commanding officers of the civil defence service.

Article 49.

The law of 30 June, 1970 on professional military service (Journal of Law of the Republic of Poland No. 16, item 134, 1972, No. 53 items 341 and 342, 1974, No. 24, item 142, and No. 47 item 282, 1979, No. 15, item 97, and 1983, No. 16, item 78) is amended in the following way: Article 33 is changed to read:

Article 33. A professional soldier may become member of domestic organizations or associations and foreign or international organizations or associations only if he obtains consent from the Minister of Defense or military organs appointed by him.

Article 50.

[Refers to previous law on higher education; the new law of 12 September, 1990 (Journal of Law of the Republic of Poland No. 65, item 385, with later changes) does not depart from the Law on associations as far as student organizations and associations are concerned, with the exception of its separate regulation for university student organizations.]

Article 51.

1. Until separate regulations are introduced to settle the legal status of religious unions, monasteries, and congregations to which regulations contained in the decree by President of the Republic of Poland of 27 October, 1932-Law on Association - (Journal of Law of the Republic of Poland No. 94, item 335, 1946, No. 4, item 30, 1949, No 41, item 293, and No. 45, item 335, 1950, No. 44 item 41, and No. 53, item 489,

1964, No. 41, item 276, and 1985, No. 36, item 167), regulations of this decree apply to them.

2. The provision of section 1 above applies as appropriate to newly created religious unions, monasteries and congregations.

Article 52.

1. Registered associations and associations of public interest that are active on the day the present law becomes effective become associations in the understanding of this law. Statutes which provide the basis for the activities of these associations remain valid except as provided in section 2 below.

2. Provisions contained in the statutes of associations mentioned in section 1 above that are contrary to the present law cease to be binding.

Article 53. [deleted]

Article 54.

1. Within two months from the day on which the present law becomes effective, supervising agencies will hand over to registry courts all registers of associations and unions of associations which were previously kept by national administration organs, listing all the registered associations and unions of associations of associations active in a given voivodship.

2. Organs previously competent for simple association matters will hand over to supervising agencies all the documentation of these associations within time specified in section 1 above.

Article 55.

1. The provisions of the present law apply in all cases that are regulated by it and that have not been concluded with a final decision before the day on which the present law becomes effective.

2. Liquidation proceedings commenced before the day on which the present law becomes effective are conducted under the previous regulations.

Article 56.

The following cease to be binding:

1) the decree by President of the Republic of Poland of 27 October, 1932-Law on Associations - (Journal of Law of the Republic of Poland No. 94, item 335, 1946, No. 4, item 30, 1949, Nos. 41, item 293 and No. 45, item 335, 1950, No. 44, item 41, and No. 53, item 489, 1964, No. 41,

item 276 and 1985, No. 36, item 167), with the exception for Article 51 of the present law;

2) the decree of 5 August, 1949 on changing selected regulations of the law on associations (Journal of Law of the Republic of Poland No. 45, item 335), with the exception for Article 2, section 2, items a and c.

Article 57.

The present law comes becomes effective on the day of its publication.

## **10.2. Law on Foundations**

10.2.1. Text in Polish

USTAWA o fundacjach

6 kwietnia 1984

Fundacja może być ustanowiona dla realizacji zgodnych z podstawowymi interesami Rzeczypospolitej Polskiej celów społecznie lub gospodarczo użytecznych, w szczególności takich jak: ochrona zdrowia, rozwój gospodarki i nauki, oświata i wychowanie, kultura i sztuka, opieka i pomoc społeczna, ochrona środowiska i zabytków.

Art. 1.

Fundacja może być ustanowiona dla realizacji zgodnych z podstawowymi interesami Rzeczypospolitej Polskiej celów społecznie lub gospodarczo użytecznych, w szczególności, takich jak: ochrona zdrowia, rozwój gospodarki i nauki, oświata i wychowanie, kultura i sztuka, opieka i pomoc społeczna, ochrona środowiska oraz opieka nad zabytkami.

Art. 2.

1. Fundacje mogą ustanawiać osoby fizyczne niezależnie od ich obywatelstwa I miejsca zamieszkania bądź osoby prawne mające siedzibę w Polsce lub za granicą.

2. Siedziba fundacji powinna znajdować się na terytorium Rzeczypospolitej Polskiej.

Art. 3.

1. Oświadczenie woli o ustanowieniu fundacji powinno być złożone w formie aktu notarialnego.

Zachowania tej formy nie wymaga się, jeżeli ustanowienie fundacji następuje w testamencie.

2. W oświadczeniu woli o ustanowieniu fundacji fundator powinien wskazać cel fundacji oraz składniki majątkowe przeznaczone na jego realizację.

3. Składnikami majątkowymi, o których mowa w ust. 2, mogą być pieniądze, papiery wartościowe, a także oddane fundacji na własność rzeczy ruchome i nieruchomości.

Art. 4.

Fundacja działa na podstawie przepisów niniejszej ustawy i statutu.

Art. 5.

1. Fundator ustala statut fundacji, określający jej nazwę, siedzibę i majątek, cele zasady, formy i zakres działalności fundacji, skład i organizację zarządu, sposób powoływania oraz obowiązki i uprawnienia tego organu i jego członków. Statut może zawierać również inne postanowienia, w szczególności dotyczące prowadzenia przez fundację działalności gospodarczej, dopuszczalności i warunków jej połączenia z inną fundacją, zmiany celu lub statutu, a także przewidywać tworzenie obok zarządu innych organów fundacji.

2. Fundator może wskazać ministra właściwego ze względu na cele fundacji. Oświadczenie fundatora w tej sprawie powinno być dołączone do statutu i przekazane sądowi prowadzącemu rejestr fundacji.

3. Fundacja, która ma prowadzić działalność na terenie jednego województwa, powinna mieć siedzibę na terenie województwa objętego działalnością tej fundacji.

4. Jeżeli w statucie określa się przeznaczenie środków majątkowych fundacji po jej likwidacji, środki te powinny być przeznaczone na cele, o których mowa w art. 1.

5. Fundacja może prowadzić działalność gospodarczą w rozmiarach służących realizacji jej celów. Jeżeli fundacja ma prowadzić działalność gospodarczą, wartość środków majątkowych fundacji przeznaczonych na działalność gospodarczą nie może być mniejsza niż 10 milionów złotych.

6. Rada Ministrów, w drodze rozporządzenia, może określić ulgi i zwolnienia z tytułu

przeznaczenia zysków z działalności gospodarczej fundacji na realizację jej zadań statutowych, inne niż ulgi i zwolnienia określone w innych ustawach.

Art. 6.

1. Fundator może odstąpić od osobistego ustalenia statutu i upoważnić do jego ustalenia inną osobę fizyczną lub prawną.

2. Do ustalenia statutu, stosownie do przepisu ust. 1, mają zastosowanie przepisy dotyczące ustalenia statutu przez fundatora.

3. Jeżeli fundator ustanowił fundację w testamencie, a nie ustalił jej statutu i nie upoważnił do tej czynności innej osoby, stosuje się odpowiednio przepisy księgi IV Kodeksu cywilnego o poleceniu.

Art. 7.

1. Fundacja podlega obowiązkowi wpisu do Krajowego Rejestru Sądowego.

2. Fundacja uzyskuje osobowość prawną z chwilą wpisania do Krajowego Rejestru Sądowego.

Art. 8.

1. Nie pobiera się opłat notarialnych za sporządzenie aktu, którego przedmiotem jest wyłączenie oświadczenie woli o ustanowieniu fundacji.

2. Postępowanie w sprawach o wpis fundacji do Krajowego Rejestru Sądowego jest wolne od opłat sądowych.

Art. 9.

1. Sąd dokonuje wpisu do Krajowego Rejestru Sądowego fundacji po stwierdzeniu, że czynności prawne stanowiące podstawę wpisu zostały podjęte przez uprawnioną osobę lub organ i są ważne. Postanowienie o wpisaniu fundacji do Krajowego Rejestru Sądowego sąd wydaje ponadto po stwierdzeniu, że cel i statut fundacji są zgodne z przepisami prawa.

2. O wpisaniu fundacji do Krajowego Rejestru Sądowego sąd zawiadamia ministra właściwego ze względu na zakres jego działania oraz cele fundacji, zwanego dalej "właściwym ministrem", a gdy terenem działalności fundacji ma być jedno województwo - także wojewodę właściwego ze względu na siedzibę fundacji, zwanego dalej "właściwym wojewodą", przesyłając jednocześnie statut.

3. Jeżeli cele fundacji wkraczają w zakres działania dwóch lub więcej ministrów, sąd zawiadamia o wpisaniu fundacji do Krajowego

Rejestru Sądowego, wraz z przesłaniem statutu, właściwego ministra, z którego zakresem działania wiążą się główne cele fundacji.

Art. 10.

Zarząd fundacji kieruje jej działalnością oraz reprezentuje fundację na zewnątrz.

Art. 11.

1. Podjęcie przez fundację działalności gospodarczej nie przewidzianej w statucie wymaga uprzedniej zmiany statutu.

2. Zmiana statutu fundacji wymaga wpisania do Krajowego Rejestru Sądowego.

Przepisy art. 9 stosuje się odpowiednio.

Art. 12.

1. O zgodności działania fundacji z przepisami prawa i statutem oraz z celem, w jakim fundacja została ustanowiona, orzeka sąd w postępowaniu nieprocesowym na wniosek właściwego ministra lub wojewody.

2. Fundacja składa corocznie właściwemu ministrowi sprawozdanie ze swojej działalności.

3. Sprawozdanie, o którym mowa w ust. 2, jest przez fundację udostępnione do publicznej wiadomości.

4. Minister Sprawiedliwości określi, w drodze rozporządzenia, ramowy zakres sprawozdania, o którym mowa w ust. 2, obejmujący w szczególności najważniejsze informacje o działalności fundacji w okresie sprawozdawczym pozwalające ocenić prawidłowość realizacji przez fundację jej celów statutowych.

Art. 13.

Właściwy minister lub wojewoda może wystąpić do sądu o uchylenie uchwały zarządu fundacji, pozostającej w rażącej sprzeczności z jej celem albo z postanowieniami statutu fundacji lub z przepisami prawa. Organ ten może jednocześnie zwrócić się do sądu o wstrzymanie wykonania uchwały do czasu rozstrzygnięcia sprawy.

Art. 14.

1. Jeżeli działanie zarządu fundacji w istotny sposób narusza przepisy prawa lub postanowienia jej statutu albo jest niezgodne z jej celem, organ, o którym mowa w art. 13, może wyznaczyć odpowiedni termin do usunięcia tych uchybień w działalności zarządu albo może żądać dokonania w wyznaczonym terminie zmiany zarządu fundacji.

2. Po bezskutecznym upływie terminu, o którym mowa w ust. 1, albo w razie dalszego uporczywego działania zarządu fundacji w sposób niezgodny z prawem, statutem lub celem fundacji, organ, o którym mowa w art. 13, może wystąpić do sądu o zawieszenie zarządu fundacji i wyznaczenie zarządcy przymusowego.

3. Zarządca przymusowy reprezentuje fundację w sprawach wynikających z zarządu, w tym również w postępowaniu sądowym; jest on obowiązany wykonywać czynności potrzebne do prawidłowego działania fundacji.

4. Sąd uchyli swe postanowienia o zawieszeniu zarządu fundacji i wyznaczeniu zarządcy przymusowego na wniosek zarządu fundacji, jeżeli z okoliczności wynika, że działania, o których mowa w ust. 1, zostaną zaniechane.

Art. 15.

1. W razie osiągnięcia celu, dla którego fundacja była ustanowiona, lub w razie wyczerpania środków finansowych i majątku fundacji, fundacja podlega likwidacji w sposób wskazany w statucie.

2. Jeżeli statut nie przewiduje likwidacji fundacji lub jego postanowienia w tym przedmiocie nie są wykonywane, w wypadkach wymienionych w ust. 1, organ, o którym mowa w art. 13, zwraca się do sądu o likwidację fundacji.

3. W wypadkach innych niż przewidziane w ust. 1 likwidacja fundacji może nastąpić tylko na mocy przepisu ustawy.

4. Jeżeli statut fundacji nie określa przeznaczenia środków majątkowych pozostających po jej likwidacji, sąd orzeka o przeznaczeniu tych środków z uwzględnieniem celów, którym fundacja służyła.

Art. 16.

Nabywanie przez fundację w drodze spadku, zapisu lub darowizny pieniędzy lub innych rzeczy ruchomych albo praw majątkowych jest wolne od podatku od spadków i darowizn.

Art. 17.

Spory majątkowe, których stroną jest fundacja, rozpoznaje sąd.

Art. 18.

Ileokroć w ustawie jest mowa o właściwym ministrze, rozumie się przez to również kierownika właściwego urzędu centralnego.

Art. 19.

1. Fundacje zagraniczne mające siedzibę za granicą mogą tworzyć przedstawicielstwa na terytorium Rzeczypospolitej Polskiej.

2. Utworzenie przedstawicielstwa wymaga zezwolenia, które oznacza jednocześnie zgodę na podjęcie działalności określonej w zezwoleniu. Zezwolenie wydaje minister właściwy ze względu na zakres swego działania oraz cele utworzenia przedstawicielstwa.

3. Zezwolenie może być wydane, jeżeli utworzenie przedstawicielstwa ma służyć realizacji celów określonych w art. 1; jeżeli przedstawicielstwo ma prowadzić także działalność gospodarczą, stosuje się odpowiednio przepis art. 5 ust. 5 zdanie pierwsze.

4. Przedstawicielstwo jest obowiązane przestrzegać przepisów prawa obowiązującego na terytorium Rzeczypospolitej Polskiej.

5. Minister właściwy ze względu na zakres swego działania oraz cele utworzenia przedstawicielstwa może cofnąć zezwolenie, jeżeli przedstawicielstwo nie dotrzymuje warunków określonych w zezwoleniu lub w istotny sposób narusza przepisy prawa obowiązującego na terytorium Rzeczypospolitej Polskiej albo interes państwa.

6. Jeżeli przedstawicielstwo lub reprezentowana przez nie fundacja naraża na szkodę bezpieczeństwo lub inny ważny interes państwa, właściwy minister może zawiesić zezwolenie. Zawieszenie zezwolenia powoduje - do czasu podjęcia decyzji w sprawie cofnięcia zezwolenia - bezzwłoczne zaprzestanie działalności objętej zezwoleniem bez odszkodowania z tego tytułu.

7. W sprawach działalności gospodarczej przedstawicielstwa stosuje się ponadto przepisy odrębne, dotyczące prowadzenia działalności gospodarczej na terytorium Rzeczypospolitej Polskiej przez przedstawicielstwa podmiotów zagranicznych.

Art. 20.

Przepisy niniejszej ustawy nie naruszają przepisów prawa prywatnego międzynarodowego.

10.2.2. Text in English

LAW ON FOUNDATIONS

6 April 1984

Article 1.

A foundation may be established to pursue socially or economically useful objectives that are

consonant with the basic interests of the Republic of Poland; in particular, such objectives as health protection, advancement of the economy and science, education, literacy, culture, art, social services, environmental protection, and protection of historical landmarks.

Article 2.

1. Foundations may be established by individuals regardless of their citizenship and domicile, or by legal entities with offices in Poland or abroad.

2. The site of the Foundation should be on the territory of the Republic of Poland.

Article 3.

1. The declaration of intent to establish a foundation should be presented in the form of a notarial deed. This requirement is waived if the establishment of a foundation is prescribed in a testament.

2. The declaration of intent to establish a foundation should indicate the purpose of the foundation and the nature of the assets earmarked for accomplishing that purpose.

3. The assets referred to in Paragraph 2 may be money, securities, and the movable property and real estate donated to the foundation.

Article 4.

The foundation operates on the basis of the provisions of the present law and its statute.

Article 5.

1. The sponsor of the foundation determines its statute, which specifies its name, address, assets, purposes, principles, forms and scope of activity, composition and organizational structure of governing board, and the procedure for appointing members of that body, as well as the responsibilities and powers of that body and its members. The statute may also contain other provisions, in particular those concerning the foundation's conduct of economic activity, the admissibility and terms of its linkage with another foundation, changes in objectives, or amendments to the statute, and it may also provide for establishing other foundation bodies in addition to the governing board.

2. The sponsor may indicate the proper minister as related to the purposes of the foundation. The sponsor's declaration in this matter should be appended to the statute and transmitted to the court maintaining the Registry of Foundations.

3. A foundation that is to operate within just one voivodship should be sited in the area of that voivodship.

4. If its statute specifies the purposes on which the foundation's assets are to be allocated following its dissolution, these assets should be allocated for the objectives referred to in Article 1.

5. The foundation may engage in economic [profit-making] activity to the extent serving to accomplish its purposes. If it does so, the value of the foundation's assets set aside for the economic activity should be not less than PLN 1000.

6. The Council of Ministers may issue executive orders defining the [tax] discounts and exemptions for which foundations are eligible when they assign the profits from their economic activity on accomplishing their statutory purposes, other than the discounts and exemptions specified in other laws.

#### Article 6.

1. The sponsor may refrain from personally composing the statute of a foundation. and authorize another person or a legal entity to do so instead.

2. The composition of the statute in accordance with Paragraph 1 is governed by the provisions governing the composition of the statute by the sponsor.

3. If the sponsor establishes the foundation in his or her testament, without composing its statute or authorizing a third party to compose that statute, the provisions of Book IV of the Civil Code concerning testamentary instruction apply correspondingly.

#### Article 7.

1. The foundation acquires legal entity once it is entered in the Registry of Foundations.

2. The Registry of Foundations is maintained by the District Court for the capital city of Warsaw, hereinafter referred to as "the court."

3. The registry is public and accessible to third parties.

4. The minister of justice issues executive orders defining the guidelines and procedure in matters concerning the Registry of Foundations, the data subject to recording in that registry, the procedure for maintaining it, and the specific guidelines for providing access to it.

#### Article 8.

1. No notarial fees are charged for preparing a notarial deed whose subject is exclusively a declaration of intent to establish a foundation.

2. Proceedings relating to the Registry of Foundations are exempt from court fees.

#### Article 9.

1. The court performs inclusions in the Registry of Foundations upon finding that legal activities serving as the basis for the inclusion were carried out by the authorized person or body and are valid. The ruling to include a foundation in the Registry of Foundations is moreover issued by the court after it finds that the purpose and statute of the foundation are consonant with law.

2. The court notifies the proper minister about the inclusion of a foundation in the registry, that is, the minister proper in view of the scope of his or her activities and the purposes of the foundation, hereinafter referred to as "the proper minister." If the foundation is to be active on the territory of just one voivodship, the court also notifies accordingly the voivode concerned, hereinafter referred to as "the proper voivode," upon transmitting to him a copy of the foundation's statute.

3. If the purposes of the foundation concern the scope of activities of two or more ministers, the court sends a notice that the foundation was included in the Registry of Foundations to the proper minister whose scope of activities relates to the principal purposes of the foundation.

#### Article 10.

The governing board of the foundation directs its activities and represents it to the world.

#### Article 11.

1. If a foundation engages in an economic activity not envisaged in its statute, a prior amendment of the statute is required.

2. Amendments to the statute of a foundation have to be recorded in the Registry of Foundations. The provisions of Article 9 apply correspondingly.

#### Article 12.

1. The consonance of the activities of a foundation with the provisions of laws and its statute and the purposes for which it was established is decided upon by the court in nonlitigious proceedings upon the application of the proper minister or voivode.

2. The foundation submits annual reports on its activities to the proper minister the framework scope of these activities shall be defined by the minister of justice.

3. The reports referred to in Paragraph 2 should be made public by the foundation.

Article 13.

The proper minister or voivode may request ~ the court to waive a resolution of the governing board of the foundation if it is in glaring contrast with its purposes or with the provisions of its statute or with the laws. At the same time, the proper minister or voivode may request the court to order suspension of the implementation of that resolution until the matter is resolved.

Article 14.

1. If the actions of a foundation's governing board substantially violate the provisions of laws or of its statute, or if they are inconsonant with its purposes, the proper minister or voivode may designate a suitable time limit for eliminating these shortcomings in the actions of the governing board, or he may demand replacement of that board within a specified time limit.

2. If the time limit referred to in Paragraph 1 expires without effect, or if the foundation's governing board persists in acting in a manner inconsonant with the laws or the foundation's statute or purposes, the proper minister or voivode may request the court to suspend the foundation's governing board and appoint a government administrator.

3. The government administrator represents the foundation in matters concerning its board of governors, including judicial proceedings; he is obligated to perform the duties needed for the proper operation of the foundation.

4. The court shall waive its ruling to suspend the board of governors and appoint the government administrator upon the request of the board of governors if circumstances indicate that the actions referred to in Paragraph 1 shall be relinquished.

Article 15.

1. Should the purposes for which the foundation is established be accomplished, or should the funds and assets of the foundation be exhausted, the foundation is subject to dissolution by the procedure specified in its statute.

2. If the foundation's statute does not provide for its dissolution, or if its related provisions are not executed, in cases referred to in Paragraph 1, the

proper minister or voivode requests the court to dissolve the foundation.

Article 17.

Property disputes to which the foundation is a party are resolved by the court.

Article 18.

Whenever the present law refers to the proper minister, this is also construed to mean the director of the proper central office.

Article 19.

1. Foreign foundations sited abroad may open branch offices on the territory of the Republic of Poland.

2. The opening of the branch office referred to in Paragraph I requires a permit, which is tantamount to approval of the commencement of the activities specified in the permit. The permit is granted by the minister proper with regard to the scope of his activities and the purposes for which said branch office is opened.

3. The permit may be granted if the opening of the branch office is intended to promote the accomplishment of the objectives referred to in Article 1. If the branch office is also to engage in economic activity, the provisions of Article 5, Paragraph 5, first sentence, apply accordingly.

4. The branch office is obligated to adhere to the laws binding on the territory of the Republic of Poland.

5. The minister proper with regard to the scope of his activities and the purposes for which the branch office is opened may revoke the permit if the branch office does not adhere to the terms specified in the permit or markedly violates the laws binding on the territory of the Republic of Poland or the interests of the state.

6. If the branch office or the foundation it represents impairs the security or other important interests of the state, the proper minister may suspend its permit. Such suspension entails-until a ruling on the revocation of the permit is issued-an immediate cessation of the activities specified in the permit without payment of any compensation therefor.

7. Matters concerning the economic activity of the branch office of a foundation are moreover governed by separate regulations governing the conduct of economic activity on the territory of the Republic of Poland by representations of foreign entities.

Article 20

The provisions of the present law do not infringe upon the provisions of international private law.

**10.3. Law on NPO**

**10.4. Law on NGO**

**10.5. Law on Other Legal Forms**

**10.6. Other Laws**

10.6.1. Regulation of the Finance Minister 3 June 2003 on the Execution of Some Provisions of the Act on Games of Chance and Mutual Wagering

Section 1

General Provisions

§ 1. The Regulation states:

1) positions and functions which demand acquiring a certificate of profession, a sample of such a certificate of profession, the rules and regulations defining the works of the examining board; the regulations concerning the organisation and running of the examination and the course of its passing and the amount of remuneration received by the members of the examining board;

2) the amount of examination fees due for obtaining the permission to organise games of chance and mutual wagering, the issuance of the certificate of profession or the recognition of a certificate considered equivalent to it issued by a professional organisation conducting trainings on games of chance and mutual wagering;

3) detailed conditions concerning the payment of cash security;

4) detailed conditions concerning the organisation of tenders for subjects who compete to be granted a permission to run business activities related to organisation of games of chance;

5) conditions concerning the keeping of records for the purpose of fixing tax basis and calculating the amount of tax on games of chance;

6) the elements of tax records on games of chance.

§ 2. Whenever referring to "the act" in the regulation, one understands the Act dated 29 July 1992 on games of chance and mutual wagering.

Section 2

Certificates of profession

§ 3. 1. The obtainment of the certificate of profession is obligatory for individuals who hold the positions or perform the functions listed below:

1) a member of the board of a company mentioned in Art. 5 point 1 of the act and a person who supervises subjects running business activities in the scope of prize bingo or a prize lottery and in the event such games of chance are organised by natural persons – these persons;

2) a post which includes, within the scope of its responsibilities, supervision over games of chance and mutual wagering, in particular: directors and deputy directors of game centres and branches of game centres, managers and deputy managers who supervise activities of outlets organising games on slot machines of low payouts, video-lotteries, tele-bingo, prize lotteries, prize bingos, promotion lotteries and audiotex lotteries, table cashiers;

3) a post which includes, within the scope of its responsibilities, a direct organisation of a game or a mutual bet, in particular: croupiers accepting mutual bets, individuals running lottery offices, individuals operating gambling devices, excluding technical personnel.

2. The provision of Art. 1 point 3 does not concern individuals who distribute cash and prize lottery tickets, evidence of participation in tele-bingo games, cash and prize bingo and the proofs of participation in a promotion lottery and individuals who sell tokens or credit points in a slot-machine or video-lottery terminal.

§ 4. 1. An application to be admitted to the examination preceding the issuance of the certificate of profession is lodged by a subject who runs business activities within the scope of games of chance and mutual wagering.

2. The application mentioned in Art. 1 includes:

1) the identification of the applicant;

2) the personal data of the candidate: his first name, family name, date and place of birth and the place of residence;

3) the designation of the candidate's post and the scope of professional competencies he applies for;



- 4) statement of no arrears;
- 5) series and number of the candidate's identity card or passport.
3. A copy of the permit to run business activities and the rules and regulations of the games will be enclosed with the application.
4. A subject who has lodged an application to admit candidates to the examination will receive notification on the date and location of the examination.
- § 5. 1. Should at least 10 candidates be admitted to the examination, the date of the examination will be fixed.
2. The examining board will consist of three persons appointed by the minister proper for matters related to public finances from among the employees of the office servicing the said minister, herein called the "Ministry", who have adequate knowledge of the regulations on games of chance and mutual wagering.
- § 6. The duties of the examining board include:
- 1) preparation of examination questions;
  - 2) conduct of the examination;
  - 3) making a protocol on the course of the examination.
- § 7. 1. The examining board will conduct the examination in the seat of the Ministry.
2. The works of the examining board will be supervised by the chairman of the examining board.
3. The chairman of the examining board will announce the results of the examination on the day of its conduct.
- § 8. 1. A person entering for the examination will submit a voucher to prove the payment of the fee, mentioned in § 14, point. 1 and a document confirming his identity.
2. A person entering for the examination will answer the questions asked orally by the examining board.
3. After a person entering for the examination finishes answering the questions, the examining board will decide about the result of the examination with the majority of voices.

4. Should a person entering for the examination not pass it, he/she will have the right to enter for the examination for the second time, having complied with the conditions listed in Art. 1 and § 4.

§ 9. 1. A member of the examining board will receive the remuneration in the amount of PLN 400 due for the participation in the examination session.

2. The remuneration mentioned in Art. 1 will be paid from the means of the Ministry.

§ 10. A person who has passed the examination will receive the certificate of profession issued by the minister proper for matters related to public finances.

§ 11. 1. The certificate of profession will be issued for a limited period of time, no longer than 6 years.

2. After the elapse of the period of time the certificate was issued for, the holder of the certificate will have to enter for the examination again. The renewed certificate of profession will be issued for the period of time not exceeding the one defined in Art. 1.

§ 12. A sample of the certificate of profession constitutes an annex to the regulation.

### Section 3

#### Fees

§ 13. The fees due for permits to organise games of chance and mutual wagering are as follows:

- 1) the permit to organise games of chance in a casino: PLN 321,732;
- 2) the permit to organise games of chance on slot machines: PLN 128,803;
- 3) the permit to organise a game of bingo cash: PLN 128,731;
- 4) the permit to organise a prize lottery or a prize bingo game: PLN 2,152; when the permit concerns the area of one voivodship only: PLN 1,052;
- 5) the permit to organise mutual wagering: PLN 42,931 plus additionally for each outlet in which mutual wagerings are taken: PLN 218;
- 6) the permit to organise games on slot machines of low payouts – PLN 43,263 plus additionally for

each outlet with slot machines of low payout – PLN 217;

7) the permit to organise a promotion lottery and audiotex lottery – 10% of the value of the pool but not less than PLN 1,052.

§ 14. 1. The fees due for entering for the examinations for particular positions or posts are as follows:

1) director and deputy directors – PLN 1,608;

2) manager and deputy managers – PLN 1,499;

3) inspector supervising slot machine outlets of low payouts, video-lotteries and Tele-bingo – PLN 1.294;

4) table cashier – PLN 1,052;

5) a person directly supervising the game, servicing gambling machines (with the exclusion of technicians) and accepting mutual wagerings – PLN 423;

6) a person supervising a prize lottery, prize bingo, promotion lottery or audiotex lottery device – PLN 1,052;

7) other posts or positions, not listed in points 1-6 – PLN 2,152.

2. The fee due for the issuance of the certificate of profession mentioned in § 10 and the recognition of a certificate considered equivalent to it issued by a professional organisation conducting trainings on games of chance and mutual wagering will amount to PLN 218.

#### Section 4

Detailed conditions concerning the payment of cash security

§ 15. 1. The sum mentioned in Art. 38 section 4 point 3 of the act will be blocked on a bank account.

2. The term of expiry of an insurance or a bank warranty, stated in insurance or bank warranty agreements, mentioned in Art. 38 Section 4, points 1 and 2 of the act will not be shorter than two months following the date with which the permit to organise games of chance and mutual wagerings expires.

§ 16. In the event of entering into the insurance agreement mentioned in Art. 38, Section 4 point 1 of the act, the insured shall transfer his/her rights

resulting from the insurance policy to the State Treasury.

§ 17. 1. In order to lodge a cash security mentioned in Art. 38, Section 4, point 4 of the act, the following documents will be submitted:

1) current extract from the land and mortgage register of the real estate;

2) current valuation of the real estate done by property expert;

3) a copy of a notary act on establishing a mortgage on behalf of the State Treasury;

2. A building construction erected in the area of the real estate the mortgage has been established for shall be insured.

#### Section 5

The conditions of holding tenders for subjects applying for permits to run business activities concerning the organisation of games of chance

§ 18. The tender mentioned in Art. 24 Section 2 of the act, will be held in a written form.

§ 19. Notification of a tender will be announced on the announcement board and on the website of the Ministry.

§ 20. Notification of a tender will state:

1) the subject of the tender and in particular the scope of the future permit;

2) requested content of tender bids;

3) evaluation criteria in respect to the bids, defining the conditions of choosing the most favourable bid;

4) place and date of:

a) making bids,

b) opening bids,

c) commencing the tender,

d) solving the tender,

e) announcing tender results.

§ 21. The participants of the tender will submit their tender offers in a written form, in sealed envelopes.

§ 22. 1. The period of time between the announcement of the tender and the date of the tender will not be longer than one month.

2. The period of time between the date of making tenders and the date of completing the tender procedure will not be longer than 3 months.

§ 23. 1. Tender procedure will be conducted by a tender committee which will consist of at least three people appointed by the minister proper for matters related to public finances from among the employees of the Ministry, herein called the "committee".

2. The committee will decide its statute and fulfil its obligations at committee meetings.

§ 24. Tender procedure will consist of an open and a closed part.

§ 25. 1. During the open part of the procedure, the committee:

1) decides on the correctness of the invitation to tender;

2) rejects tenders made after the fixed date;

3) opens the remaining envelopes with tenders.

2. The participants of the tender procedure are allowed to participate in the opening of tenders.

§ 26. In the closed part of the procedure, the committee will:

1) reject tenders which do not meet:

a) the requirements stated in regulations on games of chance and mutual wagering;

b) the requirements stated in the announcement of the tender procedure;

2) choose the most favourable tender or

3) decides not to choose any of the tenders made.

§ 27. 1. A report will be made from the course of the tender, which will include:

1) the designation of the place and date of the tender;

2) names and family names of people responsible for running the tender;

3) the number of made tenders;

4) the indication of tenders which did not meet the requirements of the tender or made after the fixed date complete with justification;

5) the findings of the committee in accordance with § 26;

6) the signatures of people running the tender.

2. The committee will submit the report from the tender procedure to the minister proper for matters related to public finances.

§ 28. 1. The Committee will inform, without a delay, the participants of the tender procedure about the date of giving the decision concerning the permit.

2. The minister proper for matters related to public finances will make a decision concerning the permit not later than within 14 days from the date of completing the tender procedure.

## Chapter 6

Conditions concerning the keeping of records for the purpose of fixing tax basis and calculating the amount of tax on games of chance

§ 29. 1. A subject conducting business activities related to games of chance and mutual wagering will keep the records for the purpose of fixing tax basis and calculating the amount of tax on games of chance.

2. The records should include the following data:

1) for cylindrical games, dicing and card games, such as black jack, baccarat, poker on condition of Point 2 – the amount of cash payments from the exchange of tokens at the cash-desk and on the table, the amount of sums paid by the cash-desk in exchange for returned tokens and the the sum being the result of these two sums;

2) for the card game of poker, in which the participants play among themselves and the casino organises the game – the amount of sums obtained on this;

3) for games on slot machines – the amount of sums obtained from the exchange of tokens or paid to the ash-desk and credited in the memory of the slot-machines or paid into the slot machines and the amount of sums won by the participants and the result of these two sums;

4) for video-lottery – the amount of sums obtained from the exchange of tokens used in the game or paid to the cash-desk and credited in the terminal's memory or paid into the terminal and

the amount of sums won by the participants of the games and the result of these two sums;

5) for the games of chance and mutual wagerings – the sum of paid stakes;

6) for the game of cash bingo – the nominal value of coupons purchased by the company;

3. The records should illustrate the actual state for the time of the game closure, mentioned in Art. 2.

§ 30. 1. A subject organising cash lottery, tele-bingo, prize lottery or prize bingo will keep the records for the purpose of fixing the tax basis and calculating the amount of tax on games, which should include the following data:

1) the number of tickets, evidences of participation in tele-bingo or bingo coupons introduced to sale;

2) the revenues from the sale of tickets, evidences of participation in tele-bingo or bingo coupons;

3) the number of returned tickets, unused evidences of participation in tele-bingo or bingo coupons;

4) the cost of purchasing the tickets or coupons from the producer and the costs related to preparing evidences of participation in tele-bingo;

5) taxes and fees paid on the basis of separate regulations;

6) costs related to selling tickets, evidences of participation in tele-bingo or bingo coupons.

2. The subject mentioned in Art. 1, after the closing of the organised game shall submit the records to the body issuing the permit.

§ 31. A subject who organises games on slot machines of low payouts will keep the records for the purpose of determining and calculating the amount of tax on games in the form of a lump sum, which will include the following data:

1) the list of all outlets with slot machines of low payouts with exact addresses;

2) the number of slot machines installed in each outlet complete with registration numbers;

3) the equivalent of the sum in EURO, fixed in accordance with Art. 45, Section 1 of the act;

4) the amount of the lump sum of the tax on games.

#### Section 7

The registry of the tax on games

§ 32. The registry mentioned in Art. 44a section 1 of the act shall include:

1) the number of item;

2) date of tax collection;

3) amount of collected tax;

4) number and type of sold coupons;

5) signatures of authorised representatives of the tax payer and the payer;

6) date of transferring the collected sum of tax to the account of the proper tax office.

#### Section 8

Transitory regulations and final provision

§ 33. Certificates of profession issued on the basis of the regulations in force shall remain valid for the period of time they have been issued for.

§ 34. The regulation comes into force with 15 June 2003 3)

1) The Finance Minister supervises the works of governmental administration – public finances on the basis of § 1 Section 2 point 2 of the regulation of the Prime Minister of 29 March 2003 on the scope of the activities of the Finance Minister (Journal of Laws, No 32, item 301, No 43, item 378 and No 93, item 834).

2) The amendments of the uniform text of the act have been announced in the Journal of Laws of 1998, No 145, item 946, No 155, item 1014 and No 160, item 1061, of 2000 No 9 item 117, No 70, item 816 and No 116, item 1216, of 2001 No 84, item 908, of 2002 No 25, item 253 and of 2003 No 84, item 774.

3) The scope of matters regulated with this regulation was regulated by the regulation of the Finance Minister of 31 October 2000 on the execution of some of the provisions of the act on games of chance, mutual wagerings and games on slot machines (Journal of Laws No 95, item 1048 and No 115, item 1205, of 2001, No 151, item 1707 and of 2002 No 221, item 1859).

10.6.2. Law on Public Benefit Activity and Volunteerism

April 24, 2003

## SECTION I GENERAL REGULATIONS

### Article 1

1. The Law regulates the rules:

1) for performance by non-governmental organizations of public benefit activities, and for benefits resulting from such activities for public administration in the scope of performing public tasks;

2) for appointment of non-governmental organizations to the status of public benefit organization and for operation of public benefit organizations;

3) for supervision of public benefit activities.

2. The Law also regulates the conditions for providing services by volunteers and the benefits resulting from such services.

### Article 2

Where the Law refers to:

1) donation means donation in the sense of art. 69 par. 4 point 1 letter d of the Law on Public Finances dated November 26, 1988 (Journal of Laws of 2003 No. 15, it. 148, No. 45, it. 391 and No. 65, it. 594), hereinafter referred to as The Law on Public Finances;

2) public resources means public resources referred to in the Law on Public Finances, allocated to public expenditures within the framework of this Law;

3) volunteer means a person who voluntarily and with no remuneration provides services based on regulations specified in the Law.

### Article 3

1. Public benefit activity is an activity that is socially useful and is performed by non-governmental organizations in the field of public tasks mentioned in the Law.

2. Non-governmental organizations are legal entities or entities with no legal personality created on the basis of provisions of laws, including foundations and associations, taking into

consideration par. 4. Non-governmental organizations are not bodies of the sector of public finances in the understanding of regulations governing public finances, and operate on a not-for-profit basis.

3. Public benefit activities may also be performed by:

1) legal entities and organizational units operating on the basis of regulations governing the relation between the State and Catholic Church in the Republic of Poland, the relation between the State and other churches as well as religious unions, and the guarantees of the freedom of faith and conscience, provided their statutory goals include the performing of public benefit activities;

2) associations of units of local government.

4. The regulations from Section II do not apply to:

1) political parties;

2) trade unions and organizations of employers;

3) professional self-governments;

4) foundations founded solely by the State Treasury and/or a unit of self-government, unless:

a) separate regulations state otherwise,

b) the property of the foundation does not belong entirely to the State or its municipal bodies, or is not financed with public resources under the framework of the Law on Public Finances, or

c) the foundation performs its statutory activities in the field of science or humanities, particularly for the sake of science or humanities;

5) foundations established by political parties;

6) companies operating pursuant to the regulations governing sport activities.

5. The regulations from Chapter 2 Section II do not apply to commissioning tasks in the field of protecting the Polish Diaspora and Polish citizens abroad, financed from the portion of the state budget that is at the disposal of the Head of the Senate Chancellery.

### Article 4

1. The domain of public tasks mentioned in the Law covers tasks in the following fields:

1) social care, including assisting families and individuals in difficult life situations, and providing equal opportunities to such families and individuals;

2) charitable activities;

3) sustaining national tradition, cultivating Polishness, and the development of national, civil, and cultural identity;

4) activities for the sake of national minorities;

5) protection and promotion of health;

6) activities for the sake of the handicapped;

7) promotion of employment and job-related motivation of individuals who are unemployed or who are threatened with redundancies;

8) protection and promotion of women's rights and activities for the sake of equal rights for men and women;

9) activities that support economic development, including the development of entrepreneurship;

10) activities supporting the development of communities and local communities;

11) science and humanities, education and upbringing;

12) tourism and leisure of children and adolescents;

13) culture, arts, protection of national heritage and tradition;

14) promotion of sports;

15) natural environment and animal welfare and the protection of environmental heritage;

16) public order and social safety and prevention of social pathologies;

17) promotion of knowledge and skills for the State defense;

18) protection and promotion of human rights and freedoms, as well as activities supporting the development of democracy;

19) protection of people and emergency rescuing;

20) assistance to the victims of catastrophes, natural disasters, military conflicts and wars in the territory of the State and abroad;

21) protection and promotion of consumer rights;

22) activities for the sake of the European Integration and development of relations and co-operation among nations;

23) promotion and organization of volunteerism;

24) activities that provide technical support, training, information and/or financial assistance to non-governmental organizations and units mentioned in art. 3 par. 3, within the scope of points 123.

2. The Council of Ministers may, through a decree, designate tasks in addition to those mentioned in par. 1; these tasks will belong to the field of public tasks. In doing so the Council will be guided by these tasks particular social usefulness and the fact that units mentioned in art. 5 par. 1 are able to perform the tasks to the extent necessary to provide for social demands.

#### Article 5

1. Public administration organs perform activities in the field of public tasks that are mentioned in art. 4 in co-operation with non-governmental organizations and entities mentioned in art. 3 par. 3, which perform public benefit activities, taking into consideration the territorial division of public administration bodies. In particular, the co-operation may be conducted in the form of:

1) commissioning non-governmental organizations and entities mentioned in art. 3 par. 3 to perform public tasks according to the rules set by the Law;

2) mutually providing information about planned directions of activities and co-operation in order to harmonize these directions;

3) consulting with non-governmental organizations and entities mentioned in art. 3 par. 3, according to their scope of activities, regarding legislative projects in the fields related to the statutory activities of such organizations;

4) establishing mutual teams responsible for advising and initiative that consist of representatives of non-governmental organizations and entities mentioned in art. 3 par. 3 and representatives of relevant public administration bodies.

2. The co-operation, mentioned in par. 1, is implemented based on the following rules: subsidiarity, independence of each side, partnership, effectiveness, fair competition and transparency.

3. The decision-making body of a local government unit adopts an annual programme of co-operation with non-governmental organizations and entities mentioned in art. 3 par. 3.

4. Commissioning public tasks, which are mentioned in par. 1 point 1 as commissioned tasks described by art. 69 par. 4 point 1 letter d) and art. 71 par. 1 of the Law on Public Finances may be implemented in the following forms:

1) commissioning public tasks, which is accompanied by a donation to finance its implementation or

2) supporting such tasks, which is accompanied by a donation to participate in their financing.

## SECTION II PUBLIC BENEFIT ACTIVITIES

### Chapter 1 PAYABLE AND FREE OF CHARGE PUBLIC BENEFIT ACTIVITIES

#### Article 6

Statutory activity of non-governmental organizations and entities mentioned in art. 3 par. 3, within the scope of public benefit activities, are not, taking into consideration art. 9 par. 1, business activity as described by the regulations of the Law on Business Activity, and can be performed as payable and/or free of charge activities.

#### Article 7

Free of charge public benefit activity means the provision of services based on a legal relation, for which the non-governmental organizations and entities mentioned in art. 3 par. 3 that provide such services do not charge fees.

#### Article 8

1. A payable public benefit activity means an activity in the field of public tasks, included in the statutory activities performed by non-governmental organizations and entities mentioned in art. 3 par. 3, for which payment is received. A payable public benefit activity also means selling goods or services that are manufactured and/or provided by individuals who directly benefit from public benefit activities, especially in the context of the rehabilitation and adaptation to work of the handicapped, and also of selling goods donated for the sake of public benefit.

2. The profit gained from payable activities of public benefit is to be used exclusively to implement the tasks that belong to the field of public tasks or statutory activities, which are mentioned in par. 1.

#### Article 9

1. A payable public benefit activity performed by non-governmental organizations and entities mentioned in art. 3 par. 3 is a business activity if:

1) the remuneration that is mentioned in art. 8 par. 1 is greater than the direct cost that would be expected for an activity of that type, or

2) the remuneration of physical persons due to employment in performing free of charge statutory activity and payable activity exceeds 150% of an average monthly remuneration in the sector of companies in the previous year, as published by the President of the Chief Statistics Office.

2. The remuneration mentioned in par. 1 point 2 is understood as remuneration for providing work and/or services, regardless of the form in which the job relation is established or the kind and content of the legal agreement signed with the physical person.

3. An activity may not be both a payable public benefit activity and an economic activity.

#### Article 10

1. Operating payable and free of charge public benefit activities requires appropriate accounting that identifies revenues, costs, and effects, in compliance with regulations governing accounting.

2. The regulations from par. 1 above apply accordingly in the case public benefit activities are separated from other activities on the organizational level.

### Chapter 2 PERFORMING PUBLIC BENEFIT ACTIVITIES BASED ON COMMISSIONING PUBLIC TASKS

#### Article 11

1. Public administration bodies:

1) support non-governmental organizations and entities mentioned in art. 3 par. 3 that conduct statutory activities in a given field in performing public tasks, within the scope mentioned in art. 4;

2) commission organizations and entities mentioned in point 1 to implement public tasks, within the scope mentioned in art. 4.

2. The support and commissioning mentioned in par. 1 take place after an open call for tenders, unless separate regulations describe a different manner of commissioning.

3. In the open call for tenders mentioned in par. 2, non-governmental organizations, entities mentioned in art. 3 par. 3, and organizational units dependent on or supervised by public administration institutions may participate.

4. Commissioning mentioned in par. 1 point 2 may be performed in a different manner than that described in par. 2 if a given task may be effectively performed in a different manner, described in separate regulations, particularly through purchasing services according to the regulations governing public calls for tenders, and if the methods of calculating costs and taxation are similar.

#### Article 12

1. Non-governmental organizations or entities mentioned in art. 3 par. 3 may also by their own initiative make an offer to perform public tasks, including those tasks that, until present, have been performed in a different way, for example by public administration bodies.

2. In a situation mentioned in par. 1, a public administration body within a period of up to two months:

1) evaluates the usefulness of a given public task to be performed by non-governmental organizations and entities mentioned in art. 3 par. 3. In this evaluation, the public administration body takes into consideration the degree to which the offer matches the priorities of public tasks and guarantees the completion of the task according to the standards set to the given task. The administrative body also considers the available means for the implementation of set tasks, the types of set tasks, and the benefits coming from the performance of public tasks by non-governmental organizations and entities mentioned in art. 3 par. 3

2) makes its decision public, and if it decides the performance of a particular public task is necessary, it informs the entity submitting the offer about the manner of commissioning the public task mentioned in art. 11 par. 2.

#### Article 13

1. A public administration institution announces an open call for tenders at least 30 days in advance.

2. The announcement concerning an open call for tenders should include information about:

1) type of the task;

2) amount of public resources allocated with the task;

3) rules of providing donations;

4) deadlines and conditions of performing the task;

5) deadline for submitting applications;

6) deadline, mode, and criteria of choosing the offer;

7) public benefit tasks of the same kind, implemented by the public administration institution in the year of announcing the open call for tenders and the previous year, and corresponding costs with particular attention paid to the amount of donations given to non-governmental organizations and entities mentioned in art. 3 par. 3 and organizational units dependent on or supervised by public administration institutions

3. The announcement mentioned in par. 1 should be published, according to the type of the task, in a nationwide or local newspaper, in the Public Information Bulletin, and at the headquarters of the public administration body at a place designed for announcements. The announcement can be made public in other ways, particularly through the tele-information network, provided that anyone interested has access to it.

#### Article 14

The offer mentioned in art. 11 par. 1 and 2 should in particular contain:

1) a detailed scope of the suggested public task;

2) deadline and place of performing the public task;

3) estimated costs of performing the public task;

4) information about precedent activities of the entity submitting the offer in the field of the public task;

5) information about available resources, in terms of staff and material, that are necessary for performing the task, including the amount of financial resources for performing the task acquired elsewhere;

6) a statement whether the task will be performed free of charge.

#### Article 15

1. In assessing offers, a public administration body:



1) evaluates the capacity to perform the task of non-governmental organizations, entities mentioned in art. 3 par. 3, and organizational units dependent on or supervised by public administration institutions;

2) evaluates the suggested estimation of costs of performing the task, including the scope of the task;

3) takes into consideration the amount of public means allocated to the task.

2. The regulations in par. 1 apply also when only one offer has been submitted in the open call for tenders.

3. A public administration institution in delivering the explanation of its choice of a particular tender must specify how the tender fulfilled the requirements set in the Law and in the call, mentioned in art. 13. The regulations described in par. 2 also apply.

#### Article 16

1. Non-governmental organizations, entities mentioned in art. 3 par. 3, and organizational units dependent on or supervised by public administration bodies, upon accepting the commissioning of a public task in the mode described in art. 11 par. 2, are obliged to complete the task in the period of time and on conditions specified in the agreement, respectively of commissioning the task or supporting the performance of the task, taking into consideration art. 71 par. 2 of the Law on Public Finances and the regulations of the following Law. The public administration institution that commissions the task is obliged to allocate relevant public resources to the task in the form of donation.

2. The agreement mentioned in par. 1 requires a written form. Otherwise it will be deemed invalid.

3. An agreement commissioning a public task may be signed for the duration of the tasks performance, or for a definite period of time, not longer than three years.

4. A public task cannot be performed by a unit that is not a side of the agreement, unless the agreement allows such a unit to perform certain parts of the task.

5. A non-governmental organization, entities mentioned in art. 3 par. 3, and organizational units dependent on or supervised by public administration institutions are required to identify in accounting books the resources gained for the implementation of the agreement mentioned in par. 1 above. The regulations of art. 10 par. 1 apply accordingly.

#### Article 17

A public administration body that commissions a public task undertakes a periodic monitoring and assessment of the task, and in particular evaluates:

1) the degree of completion of the task;

2) effectiveness, accurateness, and quality of the task;

3) correct use of the public resources received for performing the task;

4) the conducting of documentation, prescribed by the Law and other legal regulations.

#### Article 18

1. A report on performing the public task described in the agreement has to be completed within 30 days after the agreement expires, taking into consideration par. 2.

2. The period of time used in reports is a budgetary year.

#### Article 19

The minister responsible for social security will set, in the form of a decree:

1) a template of the offer mentioned in art. 11 par. 2 and art. 12 par. 1;

2) a general template of the agreement mentioned in art. 16 par. 1;

3) a template of the report mentioned in art. 18 par. 1

taking into consideration the need to clearly define rights and responsibilities of non-governmental organizations, entities mentioned in art. 3 par. 3, and organizational units dependent on or supervised by public administration bodies and respective responsibilities and rights of public administration bodies, as well as the need to provide complete information concerning the completion of the task.

#### Chapter 3 PUBLIC BENEFIT ORGANIZATIONS

#### Article 20

A non-governmental organization or entity mentioned in art. 3 par. 3 can be a public benefit organization if, taking into consideration art. 21, it complies with the following requirements:

1) it conducts its statutory activities for the sake of the whole community or a defined group of individuals on the condition that the group is selected because of its particularly difficult living or financial situation in relation to the rest of the society;

2) the activities, mentioned in point 1, taking into consideration point 3, are the only statutory activities of the organization and they concern the implementation of public tasks for the sake of the whole community or a group of individuals mentioned in point 1, and also other socially important tasks as described in art. 4;

3) in relation to associations and sports societies, fulfilling the criteria in point 2 could mean conducting activities mentioned in points 1 and 2 also for the sake of members of associations and sports societies;

4) it does not conduct economic activities, or the economic activities of the organization are limited only to the fulfilment of statutory activities;

5) its entire income is allocated in the activities mentioned in points 1 and 2;

6) it has a statutory collegiate institution of monitoring or supervision that is separate from the management board and not supervised by the management board as far as internal monitoring or supervision are concerned. The members of the institution of monitoring and supervision:

a) cannot be members of the management board, nor be their relatives, in-laws or be in work-based dependence;

b) cannot have been pronounced, with a lawful verdict, guilty of a deliberate crime;

c) may receive, due to their duties in such institution, reimbursement of relevant expenditures or remuneration not exceeding the limit set in art. 8 point 8 of the Law on Remuneration of Persons in Charge of Certain Legal Units, dated March 3, 2000.

7) the statutes or other internal acts of the organizations and entities mentioned in art. 3 par. 3 prohibit:

a) granting loans to or securing obligations with their properties for the following persons as they relate to the organization: members, employees, spouses or direct relatives, or in-laws of members or employees, or persons who are their relatives or in-laws on the second level of kinship, or who are related to them by the nature of being ward, under care or supervision and who are subsequently called close ones;

b) ceding their properties for the sake of their members, employees, or relatives of members or employees, according to rules other than those applying to third parties, particularly if such ceding is performed free of charge or in a privileged way;

c) using their properties for the sake of their members, employees, or relatives of members or employees, according to rules other than those applying to third parties, unless such use directly stems from a statutory goal of the organization or an entity described in art. 3 par. 3;

d) purchasing in a privileged way goods or services from units, in which members, employees, or relatives of members or employees, participate.

#### Article 21

In the case of entities mentioned in art. 3 par. 3 point 1:

1) public benefit activities described in art. 20 point 1 are distinguished in a form that ensures a proper identification in terms of organization and accountings;

2) the requirement of exclusiveness mentioned in art. 20 point 2 does not apply;

3) the regulation in art. 20 point 5 applies to the income earned through conducting public benefit activities;

4) the regulations in art. 20 point 6 apply accordingly, taking into consideration detailed regulations of organizing and operating such units, regulated by the provisions relevant to them in their statutes or other internal acts.

#### Article 22

1. A non-governmental organization and entities mentioned in art. 3 par. 3 point 2 registered by the State Court Register gain the status of public benefit organization when it is noted in the Register that the organization or entity has fulfilled the criteria in art. 20, according to the rules and in the manner prescribed by the Law on the State Court Register dated August 20, 1997 (Journal of Laws of 2001, No. 17, it. 209 and No. 110, it. 1189 and of 2002 No. 1 it. 2 and No. 113, it. 984 and of 2003 No. 49, it. 408 and No. 60, it. 535).

2. A non-governmental organization, other than one referenced in par. 1, and entities mentioned in art. 3 par. 3 point 1 acquire the status of a public benefit organization the moment they are included in the State Court Register, according to

the rules and in the manner prescribed by the Law mentioned in par. 1.

3. A non-governmental organization and entities mentioned in par. 1 lose the status of public benefit organization the moment, following an official notion or a plea, of removal of information concerning fulfilment of the criteria mentioned in art. 20 from the State Court Register.

#### Article 23

1. A public benefit organization prepares annual reports on its activities, taking into consideration other separate regulations, and makes the reports public in a manner that is accessible to anyone interested.

2. A public benefit organization prepares and announces annual financial statements even when other accounting regulations do not require it. Regulations concerning accounting are applied accordingly.

3. The reports referenced in par. 1 include reports submitted by foundations pursuant to relevant regulations.

4. A public benefit organization, regardless of other binding regulations, submits reports mentioned in par. 1 and 2 to the minister responsible for social security.

5. In relation to public benefit organizations whose financial reports are not obliged to be examined in accordance with regulations on accounting, the minister responsible for public finances, in agreement with the minister responsible for social security, may provide for such an obligation in the form of a decree, taking into consideration:

- 1) the amount of received donations;
- 2) the amount of revenue;
- 3) the need to ascertain supervision of correct management of records.

#### Article 24

1. A public benefit organization is entitled, according to separate regulations, to exemption from:

- 1) corporate income tax,
- 2) real estate tax,
- 3) civil actions tax,
- 4) stamp duty, and

5) court fees,

- in relation to public benefit activities undertaken by it.

2. A public benefit organization may, according to the rules set in separate provisions, purchase, in a privileged way, the right of perpetual usufruct of estates that are owned by the State Treasury or local self-government units.

3. A non-governmental organization, which gained the status of a public benefit organization, is obliged to fulfil responsibilities stemming from tax exemptions from which it had benefited until gaining the status of a public benefit organization, based on rules set in separate provisions.

4. In the case of losing the status of a public benefit organization, the non-governmental organization will lose the right to benefit from exemptions stemming from such status.

5. The usufruct mentioned in par. 2 expires by the power of law when an organization or entity loses the status of public benefit organization.

#### Article 25

A public benefit organization may engage recruits who do not undergo military service in the army, based on rules and in the manner defined by separate regulations.

#### Article 26

Units of public radio and television are obliged to provide public benefit organizations with an opportunity to inform about their activities free of charge, based on rules defined in separate regulations.

#### Article 27

A taxpayer of personal income tax may, in the manner of and according to the rules defined in separate regulations, allocate 1% of the tax, which is calculated according to separate regulations, for the sake of public benefit organizations chosen by him or her.

### Chapter 4 SUPERVISION

#### Article 28

1. The supervision over the activities of public benefit organizations, with respect to the fulfilment of public tasks and the use of privileges described in the Law, is exercised by the minister responsible for the issues of social security, taking into consideration par. 2.

2. Public benefit organizations that perform their activities in the field of rescuing and protection of people are performing public tasks, and the supervision of the correct use of privileges described in the Law is undertaken by the minister responsible for internal affairs. The regulations of articles 29-34 apply accordingly.

#### Article 29

1. A public benefit organization is supervised by the minister responsible for social security in accordance with art. 28 par. 1.

2. An inspection is enacted by the minister responsible for social security, by virtue of his or her office, or on behalf of the public administration body.

3. The inspection is performed by individuals who hold a written clearance issued by the minister responsible for social security.

4. The inspection may involve the presence of a representative of the Council for Public Benefit Activities if a relevant motion is put forward by the minister responsible for issues of social security, a representative of a public administration body, which is mentioned in par. 2, or a representative of the non-governmental organization or entities mentioned in art. 3 par. 3.

5. The minister responsible for social security may commission a governor of a province to perform the inspection.

6. The minister responsible for social security may put forward a motion to permit the inspection to be performed by an institution that specialises in performing inspections of a given type of activities.

#### Article 30

1. Persons authorised to perform an inspection have the right to access the property, or a part of it, where activities of the organization are performed, and may also demand written or oral explanation. Inspectors have the right to access documents or other carriers of information and data relevant to the scope of the inspection.

2. The inspection described in par. 1 is performed in the presence of a representative of the management board, or his or her representative, or an employee of the public benefit organization in question. When none of the above is present, a witness must be present.

#### Article 31

1. After the inspection has been performed, a report is written, signed by the officials who

performed the inspection and the head of the public benefit organization in question or a person authorised by him or her. If the head of the public organization in question or a person authorised by him or her refuses to sign the report, he or she must provide a reason. If the head or person authorized refuses to sign the report, the report is deemed signed on the day of the refusal.

2. The head of the public organization in question may, within 14 days from the day of signing the report, submit a written explanation or put forward objections about the content of the report.

3. The officials who perform the inspection, having reviewed the objections mentioned in par. 2, deliver the results of the report. If the objections are not accepted, in their entirety or partially, a written statement of the objections is submitted.

#### Article 32

The inspection report should contain a description of the facts found during the inspection, including any deficiencies, taking into consideration their causes, scope and outcome, and the period necessary to correct them, which shall not be fewer than 30 days.

#### Article 33

1. The minister responsible for social security, or a governor of a province commissioned by the minister, calls a public benefit organization to eradicate, in a given period of time, the mistakes that have been identified in the process of inspection.

2. If the mistakes are not eradicated by the public benefit organization, the minister responsible for social security may file for the removal from the register court the information mentioned in art. 22 par. 1, or for the removal of the organization from the State Court Register.

3. If the mistakes concerning fulfilling the requirements described respectively in art. 20 and 21 are not eradicated by the public benefit organization, the minister responsible for social security files for the removal of the organization from the State Court Register.

4. If a public benefit organization is removed from the Register, or if the information mentioned in art. 22 par. 1 is removed from the State Court Register, the organization is obliged, within 6 months, to spend, on its own activities mentioned in art. 4, the means gained through public fundraising, which were gathered in the period when the organization possessed the status of a public benefit organization.

5. The means that have not been used in the manner and during the period defined in par. 4 have to be immediately ceded to an organization that runs statutory activities in the same or similar scope, and which is chosen by the minister responsible for social security. The submission of means in this case does not constitute a donation as defined by separate regulations.

#### Article 34

1. In the fields not regulated by this Law, the supervision and monitoring of spending public means is defined by relevant regulations concerning public finances.

2. The regulations contained in art. 30-34 do not exclude the possibility of applying separate regulations concerning supervision and inspections, as well as the powers of supervision by other institutions.

#### Chapter 5 THE COUNCIL FOR PUBLIC BENEFIT ACTIVITIES

#### Article 35

1. The Council for Public Benefit Activities, hereinafter referred to as "the Council", is established as an opinion, advising and supporting body for the minister responsible for social security.

2. The duties of the Council include in particular:

1) expressing opinion on the issues relevant for the application of the Law;

2) expressing opinion about government's legal acts concerning public benefit activities and volunteering;

3) providing assistance and expressing opinion concerning conflicts between public administration institutions and public benefit organizations;

4) collecting and analysing information about the performed inspections and their outcomes;

5) participating in the process of inspection;

6) expressing opinion in the field of public tasks, commissioning non-governmental organizations and entities mentioned in art. 3 par. 3 to perform such tasks, and recommending standards of performing public tasks;

7) creating, in co-operation with non-governmental organizations and entities mentioned in art. 3 par. 3, the mechanisms of informing about standards of performing public benefit activities and about the identified instances of violating such standards.

3. The term of the Council is three years.

#### Article 36

1. The Council consists of:

1) five representatives of public administration institutions and organizational units dependent on or supervised by them;

2) five representatives of local government units;

3) ten representatives of non-governmental organizations, unions, and alliances of non-governmental organizations and entities mentioned in art.3 par. 3.

2. The members of the Council are appointed and discharged by the minister responsible for the issues of social security, however, the appointing of the members of the Council representing:

1) non-governmental institutions, unions and alliances of non-governmental organizations and entities mentioned in art.3 par. 3 is limited to the candidates pre-selected by the organizations;

2) governmental administration bodies and units controlled or supervised by them is limited to the individuals pre-selected by these institutions and the heads of such institutions;

3) units of local government is limited to the individuals put forward by the self-governmental side in the Mutual Committee of the Government and Local Government.

3. The minister responsible for social security discharges members of the Council before the end of the term:

1) following their request;

2) following the request of the entity mentioned in par. 2 represented by a member;

3) if they are pronounced guilty, with a lawful verdict, of committing a deliberate crime.

#### Article 37

The sessions of the Council are called by the minister responsible for social security or following the motion of at least one quarter of the members of the Council.

#### Article 38

The Council may:

1) appoint experts;

2) invite to the sessions representatives of public administration institutions and non-governmental organizations and entities mentioned in art. 3 par. 3 that are not represented in the Council;

3) commission research and expert studies concerning the tasks implemented by the Council.

#### Article 39

1. The costs of the Council that stem from services, conducting research, and preparing expert studies, as well as the participation in sessions by experts and individuals who are not members of the Council, are partly covered from the budget at the disposal of the minister responsible for social security.

2. Participation in the works of the Council is remunerated with per diems and reimbursement of travel expenses defined in the regulations based upon art. 77(5) point 2 of the Labour Code.

3. An employer should grant an employee who is a member of the Council a leave in order to allow him or her to participate in the sessions of the Council. For the period of the leave the employee is entitled to remuneration calculated to be the financial equivalent of holiday leave. This is covered by the budget at the disposal of the minister responsible for social security.

#### Article 40

The minister responsible for social security will determine, in the form of a decree:

1) the manner of appointing the members of the Council, taking into consideration the need to provide accurate representation of non-governmental organizations and entities mentioned in art. 3 par. 3, diversity of types of public benefit activities and the deadlines of submitting candidates for the members of the Council;

2) the organization and the manner of operating of the Council, as well as the rules of participation in its works by representatives of public administration bodies, non-governmental organizations, and entities mentioned in art. 3 par. 3 that are not represented in the Council.

#### Article 41

The administrative and office services of the Council are provided by the office of the minister responsible for social security.

### SECTION III VOLUNTEERISM

#### Chapter 1 GENERAL REGULATIONS

#### Article 42

1. Based on the regulations set in the current chapter, volunteers may perform services on behalf of:

1) non-governmental organizations and entities mentioned in art. 3 par. 3 in the field of their statutory activities, in particular in the field of public benefit activities;

2) public administration bodies, with the exception of performing economic activities;

3) organizational units controlled by public administration bodies or supervised by them, except that a volunteer may not conduct economic activities on behalf of such units.

hereafter collectively called "beneficiary."

2. The provisions of the current chapter also apply to volunteers in the territory of the Republic of Poland performing services for the sake of international organizations, unless the provisions of international agreements state otherwise.

#### Article 43

A volunteer should be qualified and should meet the expectations relevant to the scope and range of performed activities if separate regulations impose an obligation that a volunteer possess such qualities and meet such expectations.

#### Article 44

1. The services of volunteers are performed in the scope, range, and time specified in an agreement with the beneficiary. The agreement should also contain a provision that allows for its dissolution.

2. Upon the request of a volunteer, the beneficiary is obliged to confirm in writing the content of the agreement mentioned in par. 1 and also issue a written confirmation about the services delivered by the volunteer, including, at his or her request, the information about the range of services provided.

3. Upon the request of a volunteer, the beneficiary may submit a written opinion about the services provided by the volunteer.

4. If services provided by a volunteer are implemented for a period of time exceeding 30 days, the agreement should be in writing.

### Chapter 2 DETAILED REGULATIONS

#### Article 45

1. A beneficiary is obliged to:

1) inform a volunteer about any health and safety risks that are connected with the services provided and about the rules for protection against risks;

2) provide a volunteer, based on the rules applying to employees that are defined in separate regulations, safe and hygienic circumstances in which to provide service, including relevant medical examinations, personal protection, and training in the issues of safety and hygiene at work;

3) cover travel expenses and per diems, based on the rules applying to employees that are defined in separate regulations.

2. Based on regulations described in separate provisions that apply to employers, a beneficiary may cover other indispensable costs undertaken by a volunteer that are related to the services provided by him or her for the sake of the beneficiary.

3. A beneficiary may cover the costs of training volunteers in the scope of the services provided by them that are described in the agreement mentioned in art. 44 par. 1.

4. A volunteer may exempt the beneficiary entirely or partially from the obligations enumerated in par. 1 point 3 through a compulsory, written form.

Article 46

1. A volunteer is entitled to healthcare benefits based on the regulations concerning common health insurance.

2. A volunteer is entitled to compensation in case of an accident in the process of providing services that are mentioned in art. 42, based on separate regulations, taking into consideration par. 3.

3. The beneficiary is obliged to provide accident insurance to a volunteer who provides services for a period of time not more than thirty days.

Article 47

The beneficiary is obliged to inform a volunteer about due rights and responsibilities, and to provide access to such information.

Article 48

If there is an agreement signed by a beneficiary mentioned in art. 42 par. 1 points 2 and 3, and a volunteer and it calls for sending the volunteer to perform his or her duties in the territory of a

foreign country, based on an international agreement binding the Republic of Poland, the volunteer is entitled to benefits and reimbursement of costs generally acknowledged for the situation, unless international agreements state otherwise.

Article 49

The expenditures, which are mentioned in art. 45 par. 1 and 3 and art. 46 par. 3, are respectively:

1) the costs of conducting statutory activities of non-governmental organizations and entities mentioned in art. 3 par. 3 as beneficiaries, and

2) the costs of beneficiaries mentioned in art. 42 par. 1 points 2 and 3.

Article 50

The value of services provided by volunteers does not constitute a donation to a beneficiary in under the regulations of the Civil Code and tax regulations.

Article 51

The first term of the Council mentioned in art. 35 point 1 lasts two years.

Article 52

Before June 30, 2005, the Council of Ministers will present to the Sejm and Senate of the Republic of Poland a report about the functioning of the Law for the period of time since it becomes effective before December 31, 2004.

Article 53

The Law becomes effective based on regulations described in a separate Law.

10.6.3. Law on Personal Income Tax (excerpt)

Chapter 6. Tax Base and Amount of Tax

Article 26.

1. The tax base, subject to Article 24, paragraph 3, and Articles 28 to 30, shall be the income assessed pursuant to Articles 9 and 24, subparagraph I and 2, and 4 to 7 or Article 25 after the deduction of the following amounts:

()

9) donations:

a) for the purposes of science, technical research, education, education and upbringing, culture, physical culture and sports, health protection and social aid, occupational and social rehabilitation of the disabled, supporting social initiatives to build roads and telecommunication networks in rural areas and to supply water thereto up to the amount not exceeding 15 per cent of the income;

b) for the purposes of religious practice, charitable welfare activities, public security, national defence, environment protection, charity, as well as for the purposes connected with housing for local self-governments and for constructing watchtowers of the units for fire protection as meant by the provisions on fire protection, their equipment and maintenance up to the total amount not exceeding 10 per cent of the income.

()

5. Total amount of deductions specified in paragraph 1, subparagraph 9 cannot exceed 15 per cent of income or revenue liable to lump sum tax pursuant to Article 30, paragraph 1, subparagraph 6, but the deductions may not be made for donations to:

1) natural persons;

2) legal persons and organizational units having no legal personality who perform activities consisting of the production of electronic equipment, fuels, tobacco, spirits, wines, beer and other alcohol products containing more than 1.5 percent of alcohol, as well as products of noble metals or containing such metals, or trading in such products.

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10.6.4. Law on Local Taxes and Payments (excerpt)

12 January 1991

(Dz. U. of 1991: No. 9 item 31 and No. 101 item 444; of 1992: No. 21 item 86; of 1994: No. 123 item 600; of 1996: No. 91 item 409, No. 149 item 704; of 1997: No. 5 item 24, No. 107 item 689, No. 121 item 770, No. 123 item 780; of 1998: No. 106 item 668, No. 146 item 954)

Chapter I. GENERAL PROVISIONS

Article 1.

The present law defines the tax obligation with respect to the real estate tax, the transportation

tax, the dog ownership tax, and the following local fees: open market, local, and administrative.

Chapter 2. REAL ESTATE TAX

Article 2.

1. The tax obligation with respect to the real estate tax, with proviso to par.2 is binding on individuals, legal entities, and organizational entities that lack legal entity status, if they:

1) Are owners or independent possessors of real estate or of structures that are not permanently joined to the ground.

2) Are perpetual usufructuaries of real estate or its part.

3) Are possessors of real estate or structures not permanently joined to the ground which constitute the property of the State Treasury or the self-government authority, if the possession ensues from an agreement concluded with the owner, the agreement concluded with the Agencja Wsnoci Rolnej Skarbu Paa or from administration established.

4) Possess without legal title real estate or structures not permanently joined to the ground which constitute the property of the State Treasury or the self-government authority, excluding the real-estates being a part of the Resources of Agencja Wsnoci Rolnej Skarbu Paa or being under management of Lasy Paowe.

()

Article 7.

1. The following are exempt from the real estate tax:

()

8) Real estate or parts thereof used by societies and associations to engage in statutory work with children and youth as regards education, upbringing, science and technology, physical culture, and sports, with the exception of the real estate or parts thereof serving for business activities, and the land permanently serving as camping grounds and recreational facilities for children and youth. ()

10a) Buildings and grounds possessed by registered museums. ()

2. The municipality council may introduce exemptions other than those referred to in Paragraph 1.



( )

(1) No one may be forced to associate, be a member in an association or to take part in its activities. Everyone may freely leave an association.

## 11. Slovakia

(2) No one, as a citizen, can be at a detriment because of associating, being a member of an association, taking part in its activities or supporting it nor because they remain apart from it.

### 11.1. Law on Associations

Law of 27 March 1990 Concerning the Right of Association

(3) The statute of an association regulates the rights and responsibilities of a member of an association.

In this law the Federal Assembly of the Czechoslovak Socialist Republic resolves that:

4

#### Introductory Provisions

Associations not allowed are those

1

(1) Citizens have the right to associate peacefully.

a) whose goal is to subvert or limit the personal, political or other rights of citizens because of their nationality, sex, race, origin, political or other opinions, religious faith or social situation, kindle hatred or intolerance for these reasons, support the use of force or in other ways violate the constitution and laws;

(2) It is not necessary to have the approval of a state organ in order to exercise this right.

b) who seek to attain their goals in ways that are incompatible with the constitution and

(3) This law does not relate to the associating of citizens

the laws;

(a) in political parties and political movements,

c) armies or armed unit; this does not include associations whose members maintain or use ire-arms for sport purposes or for the legal purpose of hunting.

(b) for profitable activity or for securing the regular exercise of specific occupations,

(c) in churches and religious societies.

5

2

(1) Citizens may established societies, companies, leagues, movements, clubs and other associations of citizens as well as labour union organizations (henceforth only associations) and to join them.

Associations are not allowed to perform the functions of state organs in so far as pecific laws do not otherwise stipulate. They are not allowed to govern state organs and impose responsibilities on citizens who are not their members.

(2) Legal persons also may be members of associations.

Registration and Origin of Associations

6

(3) Associations are legal persons. State organs may interfere in their formation and activity only within the limits established by law.

(1) Associations originate through registration.

(4) Soldiers in active service may not create trade union organizations or to join them. The provisions of specific laws determine the extent of the rights of trade union organizations, which associate members of national security units and units for reform training, to assert and defend their social interests.

(2) A proposal for registration may be submitted by a minimum of three citizens of hom at least one must be older than 18 years (henceforth only preparatory committee). The prposal is to be signed by the members of the preparatory committee and indicate their first and last names, birth registration number and residence. Further it should show which of the members, older than 18 years of age, is legally empowered to act in their name. Two copies of the statute must accompany the proposal in much must be provided:

3

- a) the name of the association,
  - b) its headquarters,
  - c) the goal of its activities,
  - d) the organs of the association, the manner of their constituting, specific organs and officials legally acting in the name of the association,
- 3) stipulations about organizations units, in so far as they will be established and in so far as they will act in their own name, f principles of management.

(3) In so far as the statute does not indicate otherwise, the preparatory committee acts in the name of the association until the creation of the organs indicated in section 2, letter d.

(4) The name of the association must distinguish it from the names of legal persons which already have developed activities in the territory of the Czechoslovak Socialist Republic.

7

(1) The proposal for registration is to be submitted to the Interior Ministry of the Slovak Republic as is appropriate according to the headquarters of the association indicated in the proposal for registration (henceforth only ministry).

(2) If the proposal does not have pertinence according to 6 paragraphs 2 and 4 (or if there is incomplete or imprecise data in it) the ministry shall immediately or within 5 days from the submission of the proposal inform the preparatory committee that as long as these defects are not removed the registration is not able to go into effect.

(3) The registration goes into effect on the day on which the ministry received the proposal which does not have immediately inform the legal representative of the preparatory committee about the legal representative of the preparatory committee about the day on the which it became effective.

8

(1) The ministry may decline a registration if it follows from the submitted by / laws of the association that

a) it concerns an organization described in 3 paragraph 3

b) its statute is not in agreement with 3 paragraphs 1 a 2,

c) it concerns a disallowed association ( 4),

d) the goals of the association are incompatible with the regulations indicated in 5.

(2) The ministry is to decide about declining a registration within 10 days from its submission. The decision is transmitted to the legal representative of the preparatory committee.

(3) The members of the preparatory committee may utilize legal means to appeal to the highest court of the Republic against the decision to refuse registration within 60 days from the day when this decision was delivered to their legal representative.

(4) The court may invalidate a decision of the ministry if there were not grounds given for the refusal of a registration. The day when this decision of the court takes effect is the day of the registration of the association. At the request of the legal representative of the preparatory committee, the ministry is to send to him one copy of the statute on which is indicated the date of registration.

(5) If the legal representative of the preparatory committee does not receive, within 40 days from the day of initiation, a notice of the decision of the ministry concerning the denial of registration, the association develops on the first full day following this term; this day is the day of registration. At the request of the legal representative of the preparatory committee the ministry is to send to him one copy of the statute on which is indicated the date of registration.

9

(1) In so far as the ministry does not identify a reason for the refusal of a registration, it is to complete registration within 10 days of the initiation of the process and in this term provide the legal representative of the preparatory committee with a copy of the statute on which is indicated the date of registration which is the day of dispatch. Decisions concerning registration are not published in legal proceedings.

(2) Within 7 days of its registration the development of an association, its name and headquarters are indicated by the ministry to the Federal Statistics Office who maintain evidence of associations carrying out activity on the territory of the Czechoslovak Socialist Republic; this is valid also for the development of associations according to 8, paragraphs 4 and 5.

9a

(1) Trade union organizations and organizations of employees is juridical person for the day after delivering proposal for the registration

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10

If an association registered in the Czech Republic intends to carry out activity also on the territory of the Slovak Republic, it should inform of the ministry about this and submit a notarized copy of the statute with an indication of the date of registration. The same is valid if an association registered by the ministry of the Slovak Republic intends to carry out activity on the territory the Czech Republic.

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11

(1) The association is to inform the ministry in writing of changes in the statute within 15 days of their approval and attach to it two copies of the changed text.

(2) If the changes in the statute are not in accordance with the provisions of g 6 paragraphs 2 and 4 or if the information provided is incomplete or imprecise or if there are valid reasons to decline registration according to g 8 paragraph 1, the ministry must immediately inform the association of this. The association is responsible to remove these defects within 60 days of receiving this notice and within a term of a further 10 days inform the ministry about this. If this is not done, the ministry dissolves the association; it is possible to appeal the decision of the ministry through legal means to the highest courts of the republics.

(3) If there is no reason for a process according to paragraph 2, the ministry sends to the association within 10 days of the receipt of the announcement according to paragraph 1 a copy of the changed statute on which is indicated that the changes have been accepted.

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(4) If the association conducts activity, also on the territory of the second republic ( 10), it is to send within 30 days to its ministry a notarized copy of the changes in the statute which have been accepted by the ministry of the that republic on whose territory the association has its headquarters.

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Dissolution of an Association

12

(1) An association is dissolved

a) by a voluntary dissolution or by merger with another association,

b) by a legal decision of a ministry concerning its dissolution.

(2) If the statutes of the association do not define the manner of its voluntary dissolution or merger with another association, the decision will be made by its highest organ. This organ will inform the appropriate ministry about its dissolution within 15 days.

(3) If the ministry ascertains that the association is conducting an activity

a) that is predominantly reserved to political parties and political movements or to organizations of associated citizens conducting profitable activities or for the practice of religion and in churches or religious communities (g 1 section 3);

b) that violates principles stated in 3 section 1 and 2;

c) that is in contradiction with 4 or 5;

it will immediately warn the association and will ask it to cease and desist this activity. If the association continues to conduct these activities it will be dissolved by the ministry. It is possible to appeal against this decision to the highest court of the Republic utilizing legal means.

(4) In evaluating decision made according to 11 section 2 and g 12 section 3 the court will proceed according to regulations of the Civic Judicial Code concerning the scrutiny of the decisions of other organs. The appeal process has a postponing effect; if there is serious cause, the court may stop the activities of the association during the legally valid period to make a decision. During this period the association can carry out only such activities that are necessary to fulfill its obligations according to the law. The court will rescind the decision of the ministry if the reasons given for the dissolution of the association were not given.

(5) If the ministry ascertains ( 7) that an organizational unit which is allowed to act independently operates in the manner stated in g 12 section 3, the ministry will follow the same regulations as stated in g 12. section 3. Similarly, the provision of paragraph 4 is valid.

13

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(1) For conducting business affairs, a specific law is valid. [109 / 19645 zb)  
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(2) At the dissolution of an association it is necessary to distribute its property legally.

(3) At the dissolution of an association according to g 12 section 1 subsection b the legal distribution of property will be effected by a liquidator appointed by the ministry.

(4) The procedure stated in section 3 will be followed also when the association is dissolved according to g 12 section 1 subsection a if there is no organ that would administer the legal distribution of property.

14

The ministry will announce the dissolution of an association to the Federal Statistics Office within 7 days beginning from the day when the ministry was informed about its dissolution.

15

#### Legal Protection

(1) If a member of an association considers that a decision of some of its organs, against which, according to the statute, it is not possible to appeal utilizing legal means, as illegal or in violation of the statute, he may request the district court within 30 days from the day he learned about the decision but, at the latest, within 6 months from the decision, to request the district court to investigate.

(2) the proposal to investigate does not have a delaying effect. The court, however, in justifiable cases may halt the implementation of the challenged decision.

16

#### Agreements about Co-operation

(1) Associations may conclude agreements among themselves about co-operation for attaining specific goals, namely for fulfilling other common interests. In order to be valid an agreement must be in a written form.

(2) An agreement about co-operation delimits the goal of co-operation, the manner of its implementation, the rights and responsibilities of participating associations and the means which they contribute to co-operation.

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(3) On the basis of a contract for co-operation there may develop a new legal person for which are valid analogous provisions concerning the economic operations of social organizations.  
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(4) A contract about co-operation may create a union of participating associations which is a legal person. For a union the provisions of this law are similarly valid.

(5) In the agreement about cooperation it is possible to establish that the agreement loses force, as agreed upon by the participating associations, when the goals are attained for which it was concluded or for other circumstances indicated in the agreement.

#### Common Regulations

17

If meetings or other assemblies of an association are open to the public, the citizens present have the responsibilities of participants in the assembly. They may not interfere in the negotiations unless the presiding officers decide otherwise.

18

In accord with the goals of their activity associations have the right of recourse to state organs through petitions.

#### Temporary and Concluding Provisions

(1) Associations which developed after 30 September 1951 or which were voluntary organizations declared according to law no. 68/1951 zb. concerning voluntary organizations and assemblies and which were not dissolved are considered as having developed according to this law. These organizations are only responsible to inform by 30 June 1990 the ministry indicated in 7 paragraph 1 or 11 of their name, headquarters and statute.

(2) Societies which developed prior to 1 October 1951 are considered to be associations already developed according to this law if they have not been dissolved. They are responsible to inform by 30 June 1990 the ministry indicated in 7 paragraph 1 or 11 paragraph 4 about their name and headquarters. If they do not do this, the ministry is so enquire whether they intend further to pursue activities. If a society does not fulfil its responsibilities according to the second sentence by 31.12.1990, it will be assumed that it is dissolved on this date.

(3) Information about associations ( 9 paragraph 2) indicated in paragraphs 1 and 2 are provided by the ministry ( 7 paragraph 1) to the Federal Statistics Office as documentation 7.

(4) Associations according to 10 in Slovak republic after 31.12.1992 have to finished activities up to 30.4.1993.

20

Law no. 116/1985 zb. about the conditions for the activity of organizations with international units in the Czechoslovak Socialist Republic remains intact.

(2 Organizations (branches of international organizations according act116/1985 which have seat in Slovakia are permitted.

21

Abrogated are:

1) law no. 68 / 1951 zb. concerning voluntary organizations and assemblies in the text of later regulations in so far as they deal with voluntary organizations;

2) the decree of the Ministry of the Interior no. 320 / 1951 U.1 (с. 248 / 1951 U. v.) aboutb voluntary organizations and associations in the text of the decree of the Minister of the Interior no. 158 / 1957 U.1., in so far as it concerns voluntary organizations;

3) the government decree no. 30 / 1939 zb. about the creation of special associations not subject to valid regulations about associating and about the supervision of them;

4) 2 of the law no. 126 / 1968 zb. about some temporary measures for securing public order:

5) 2 paragraph 8 letter c) of law no. 128 / 1970 zb. about the demarcation of the activity of the Czechoslovak Socialist Republic in matters of domestic order and security;

6) 45 paragraph 1 letter c) of law no. 194 / 1988 zb. about the activities of the Federal Central Organs of State Administration.

22

This law goes into effect on 1 May 1990.

## 11.2. Law on Foundations

11.2.1. Text in Russian

НАЦИОНАЛЬНЫЙ СОВЕТ РЕСПУБЛИКИ СЛОВАКИЯ

Закон Национального Совета Республики Словакия

от 22 мая 1996 г.

о фондах

Правительством Республики Словакия был принят следующий закон:

Часть I

### ОСНОВНЫЕ ПОЛОЖЕНИЯ

1

Настоящим законом регулируются создание фондов, формирование, закрытие, прекращение деятельности и экономическое управление ими.

2

(1) Фондом является совокупность объектов, финансовых средств, ценных бумаг и других ценностей, с возможностью определения их денежной стоимости (далее активы фондов), предназначенных учредителями главным образом для благотворительных целей.

(2) Фонды являются юридическими лицами. Государственные власти могут вмешиваться в деятельность фондов, касающиеся статуса и деятельности фондов, только в соответствии с законом.

(3) Прибыль, получаемая за счет активов и другие поступления фонда, могут быть использованы только на благотворительные цели, для которых был создан фонд.

(4) В Уставе фонда указывается его наименование, которое должно содержать слово фонд. Наименование фонда должно отличаться от названий уже зарегистрированных фондов. Слово фонд может быть использовано только юридическим лицом, зарегистрированным в соответствии с настоящим законом.

3

Фонды создаются главным образом с целью развития духовных ценностей, для соблюдения и защиты прав человека или для других гуманитарных целей, защиты и сохранения

окружающей среды, сохранения природных и культурных ценностей и поддержки здравоохранения и образования.

4

(1) Фонды обязаны представить убедительное доказательство источника происхождения своих активов (35, пункт 2г).

(2) Зарегистрированный капитал фонда определяется активами, размещенными учредителем на момент создания фонда. Зарегистрированный капитал должен составлять минимум 10000 словацких крон на момент образования фонда, который затем увеличивается до 100000 словацких крон как минимум в течение последующих 6 месяцев.

(3) Зарегистрированный капитал или его часть, представленный нефинансовыми вложениями, оценивается согласно положениям Устава.

(4) Зарегистрированный капитал фонда не должен уменьшаться в результате деятельности фонда.

5

Фонды не осуществляют предпринимательскую деятельность за исключением передачи в аренду своих активов, организации общественных сборов пожертвований, проведения лотереи и других подобных игр, или организации культурных, образовательных, общественных или спортивных мероприятий в случаях, когда такая деятельность позволяет использовать активы фонда наиболее эффективным образом.

6

Активы фондов не используются для финансирования деятельности политических организаций и политических движений.

Часть 2

## СОЗДАНИЕ И ФОРМИРОВАНИЕ ФОНДОВ

7

### Создание фондов

(1) Фонды создаются физическими или юридическими лицами (далее учредители).

(2) Фонды создаются посредством соглашения или акта фонда в случае, когда учредитель представлен в единственном числе (далее Устав).

(3) Фонд может быть создан физическим лицом по завещанию, в котором определяются уставные положения фонда.

8

### Обязательные положения Устава

(1) Устав содержит следующие положения, если иное не предусмотрено настоящим законом:

a) название и местонахождение фонда;

b) срок действия фонда или указание того, что фонд создан на неопределенный период времени;

c) цель создания фонда;

d) полное имя (звание) и постоянный адрес (местонахождение) учредителя;

e) стоимость активов, внесенных учредителем в фонд;

f) стоимость зарегистрированного капитала;

g) количество членов Совета Директоров и Наблюдательного Совета;

h) имя лица (администратора), ответственного за действия, связанные с созданием фонда, если эти обязанности не выполняются самим учредителем.

i) Регламент фонда.

(2) В Устав может быть включена дополнительная информация.

(3) Подписи в Уставе должны быть официально засвидетельствованы.

9

### Регламент фонда

(1) Учредитель разрабатывает Регламент фонда с указанием следующей информации:

a) Название и местонахождение фонда;

b) цель создания фонда;

c) правомочные органы управления фондом и их компетенция;

d) ограничение административных расходов фонда;

e) способы использования прибыли фонда, получаемой за счет его активов, и другого дохода фонда; определение круга лиц, среди которых может быть распределена прибыль фонда.

f) способы разрешения вопросов относительно собственности фонда в случае его ликвидации.

10

#### Управление депозитами фонда

(1) Депозитами фонда являются средства, обособленные от других активов как на правовом, так и на бухгалтерском уровнях и являющиеся собственностью учредителя.

(2) До формирования фонда его вклады управляются Администратором. Права собственности и/или иные права в отношении этих депозитов передаются фонду на момент его формирования. Фонд получает права собственности на недвижимость по факту регистрации недвижимости в Регистре земель, в соответствии с письменным заявлением учредителя с его заверенной подписью.

(3) Администратор выдает учредителю документ, подтверждающий внесение вклада и отделение активов фонда от активов, находящихся в собственности учредителя. Вышеуказанный документ прилагается к предложению о регистрации. В случае если Администратором была зарегистрирована сумма вклада, превышающая стоимость фактически отделенных активов, согласно пункту (1), последние подлежат снижению стоимости вкладов до суммы зарегистрированного капитала к моменту учреждения фонда за счет своего собственного имущества.

(4) Администратор передает вклады фонду сразу же после создания последнего. В случае невозможности создания фонда, Администратор передает вклады прежнему владельцу.

#### Создание фонда

11

(1) Датой создания фонда является внесение записи о его регистрации в Регистр фондов (далее Регистр). Регистр ведется Министерством Внутренних Дел Республики Словакия (далее Министерство).

(2) Процедура регистрации фонда начинается с письменного предложения учредителя или Администратора, подаваемого в течение 60 дней с даты засвидетельствования Устава. К предложению прилагаются Устав, Регламент, документы, подтверждающие стоимость

вкладов в фонд и информация об источнике происхождения этих вкладов.

(3) До момента принятия решения о регистрации, Министерство может запросить мнение компетентных центральных органов относительно цели создания данного фонда.

(4) Министерство выдает свое решение о регистрации фонда и вносит соответствующую запись в Регистр, в случае если из документов, указанных в пунктах (2) и (3) данного параграфа видно, что:

a) предложение об учреждении фонда соответствует совокупности активов, согласно 2, пункт (1), 4, пункты (1) и (2) настоящего закона;

b) фонд был создан для благотворительных целей, согласно 3; и

c) Устав и Регламент фонда находятся в соответствии с настоящим законом.

(5) Регистрация отклоняется Министерством, в случае если из представленных документов видно, что:

a) предложение об учреждении фонда не соответствует совокупности активов, согласно 2, пункт (1), 4, пункты (1) и (2) настоящего закона;

b) фонд был создан не для благотворительных целей, согласно 3; и

c) Устав и Регламент фонда противоречат настоящему закону.

(6) Дополнительная информация, необходимая для внесения в Регистр, кроме данных, определенных другими законодательными актами, включает следующее:

a) Полное имя (звание) и постоянный адрес (местонахождение) учредителя;

b) стоимость зарегистрированного капитала.

(7) Министерство уведомляет учредителя и статистический орган Республики Словакия о создании фонда с указанием его названия и местонахождения в течение 10 дней с даты регистрации.

(8) Порядок регистрации и принятия решений о регистрации фондов регулируется положениями административного кодекса, если иное не установлено настоящим законом.

12

Министерство представляет данные, занесенные в Регистр, для опубликования в Коммерческой Газете в течение 10 дней с даты регистрации.

13

(1) До момента образования фонда, все дела, связанные с его созданием одновременно ведут учредитель или Администратор.

(2) По всем обязательствам, принятым учредителями или Администратором от имени фонда, учредители несут солидарную ответственность.

(3) Обязательства, возникшие согласно вышеуказанному пункту (2), передаются фонду на дату его создания, если решение об отмене такой передачи не было принято в течение трех месяцев с момента создания фонда.

Часть III

Закрытие и прекращение деятельности фонда

14

Закрытие

Закрытие фондов осуществляется:

a) по наступлении установленного срока прекращения деятельности фонда;

b) по достижении цели создания фонда;

c) по решению Совета Директоров;

d) по решению суда о ликвидации;

e) по постановлению о банкротстве или предложению принять такое постановление в связи с недостатком активов;

f) по соглашению учредителей о ликвидации или по решению учредителя.

15

Ликвидация фонда по решению суда

(1) Фонд может быть ликвидирован по решению суда, принятому на основании предложения, сделанного уполномоченным государственным органом, Советом Директоров или лицом, способным доказать свою юридическую заинтересованность, в следующих случаях:

a) если сумма активов стала меньше стоимости зарегистрированного капитала, указанного в Регистре;

b) в случае прекращения условий, требуемых законодательством для создания фонда, или нарушения закона в результате слияния с другим фондом.

c) в случае нарушения фондом 6 настоящего закона;

d) в случае если в течение последних 15 месяцев не было проведено ни одного собрания Совета Директоров;

e) если члены органов управления фонда не переизбирались в течение шести месяцев с момента окончания срока их пребывания в своих должностях, или если их количество было менее требуемого (21, пункт 4).

f) в случае если цели, определенные Уставом, не выполняются фондом более двух лет;

g) в случае если активы фонда использовались в нарушение настоящего закона или Устава;

h) в случае грубого или повторного нарушения фондом положений настоящего закона.

(2) До принятия решения о ликвидации фонда, суд может установить крайний срок для устранения причин, вызвавших необходимость сделать предложение о ликвидации.

16

Слияние

(1) Совет Директоров может принять решение о слиянии фонда с другим фондом, согласно условиям, установленным настоящим законом, если такое слияние не противоречит Уставу.

(2) О всех изменениях в результате слияния, подлежащих регистрации, Администратор фонда уведомляет Министерство в течение семи дней.

17

Прекращение деятельности и ликвидация

(1) Фонд прекращает свою деятельность на момент его исключения из Регистра. Прекращению деятельности предшествует закрытие фонда с его ликвидацией или без таковой.

(2) Закрытие фонда с его ликвидацией или без таковой соответствующим образом регулируется положениями Коммерческого Кодекса о ликвидации коммерческих компаний, если иное не предусмотрено настоящим законом.



(3) Ликвидация не требуется в следующих случаях:

a) если активы фонда переданы другому фонду;

b) если предложение о заявлении банкротства было отклонено в связи с недостатком активов; или

c) если фонд полностью лишился своих активов по завершении процедуры банкротства.

(4) Активы, оставшиеся после ликвидации (ликвидационный баланс), могут быть переданы только другому фонду.

(5) Лицо, назначившее ликвидатора, назначает сумму вознаграждения последнему.

(6) Расходы, связанные с ликвидацией, погашаются за счет активов фонда.

(7) Прекращение деятельности фонда соответствующим образом регулируется положениями Коммерческого Кодекса<sup>4)</sup>.

#### Часть IV

### ОРГАНЫ УПРАВЛЕНИЯ ФОНДОВ

#### И ИХ КОМПЕТЕНЦИЯ

18

#### Обязательные органы управления фонда

Фонды имеют в своем составе следующие органы управления:

a) Совет Директоров;

b) Наблюдательный Совет (Контролирующий орган);

c) Администратор.

19

#### Совет Директоров

(1) Совет Директоров является высшим органом управления фонда.

(2) Совет Директоров имеет следующие исключительные полномочия:

a) утверждение бюджета фонда;

b) утверждение годового баланса счетов и годовых финансовых отчетов;

c) принятие решений о слияниях и закрытии фонда, если это не исключено Уставом;

d) назначение и снятие с должности Председателя и членов Совета Директоров, Наблюдательного Совета, Контролирующего органа и Администратора, если иное не предусмотрено Уставом или настоящим законом;

e) принятие решений о внесении поправок в правила внутреннего распорядка фонда, за исключением положений, которые согласно Уставу могут быть изменены только учредителем;

f) назначение ликвидатора;

g) принятие решений по увеличению или уменьшению зарегистрированного капитала.

(3) Совету Директоров могут быть даны исключительные полномочия также и в отношении других вопросов в пределах и согласно условиям, определенным правилами внутреннего распорядка.

20

#### Состав и порядок формирования Совета Директоров

(1) В состав Совета Директоров должно входить минимум три человека. Членами Совета Директоров могут быть только физические лица без криминального прошлого и с безупречной репутацией.

(2) В целях выполнения настоящего закона понятие с безупречной репутацией означает не совершение в прошлом умышленных преступлений.

(3) Первый состав Совета Директоров назначается учредителем, если иное не предусмотрено Уставом.

(4) Члены Совета Директоров не могут входить в состав Наблюдательного Совета того же фонда.

(5) Лица, между которыми распределяются средства фонда, не могут быть членами Совета Директоров.

(6) Членство в Совете Директоров является добровольным и не предусматривает вознаграждения. Члены Совета могут потребовать возмещения своих расходов, связанных с выполнением ими своих обязанностей.

21

Срок действия полномочий

(1) Члены Совета Директоров выбираются на срок 3 года, если иное не предусмотрено настоящим законом.

(2) Способ отбора членов Совета Директоров устанавливается внутренними положениями фонда.

(3) Членство в Совете Директоров прекращается в следующих случаях:

а) в случае смерти члена Совета;

б) в случае окончания срока действия его полномочий;

с) в случае выхода члена Совета в отставку;

д) в случае снятия с должности за потерю права быть членом Совета, или за отсутствие заинтересованности, проявившейся в неявке на три собрания Совета подряд.

(4) Новый член назначается на вакантное место Советом Директоров в течение 60 дней с момента появления вакансии на оставшийся срок полномочий или на следующий срок.

(5) Предложения о назначении членов Совета Директоров, согласно пункту (4), представляются учредителем; в случае если учредителя не существует, или если иное предусмотрено Уставом, такие предложения могут представляться любым членом Совета Директоров.

22

(1) Совет Директоров выбирает Председателя из своих членов для созыва и проведения заседаний Совета.

(2) Председатель созывает заседание Совета в течение 30 дней по требованию одной трети от всего числа членов Совета Директоров, или Наблюдательного Совета (Контролирующего органа).

23

(1) Если иное не предусмотрено Уставом, Совет Директоров должен иметь кворум, выражающийся в присутствии явного большинства своих членов. Решения Совета принимаются явным большинством присутствующих членов, если иное не предусмотрено настоящим законом. В случае равенства голосов, голос Председателя является решающим.

(2) Явное большинство голосов всех членов Совета Директоров требуется для избрания и снятия с должности Председателя Совета Директоров и Администратора, а также, для принятия решений о слиянии или закрытии фонда, или в отношении изменений в правилах внутреннего распорядка фонда.

24

Наблюдательный Совет (Контролирующий орган)

(1) Наблюдательный Совет является органом, осуществляющим контроль над деятельностью фонда. Если иное не предусмотрено настоящим законом, способы формирования Наблюдательного Совета и порядок членства в Совете регулируются правилами, действующими для Совета Директоров. Первые члены Наблюдательного Совета назначаются учредителем.

(2) Члены Наблюдательного Совета имеют право доступа ко всем документам и записям, связанным с деятельностью фонда, для их тщательной проверки и контроля за порядком ведения бухгалтерских записей, а также, для поддержания соответствия деятельности фонда действующему законодательству, Уставу и Регламенту фонда.

(3) Наблюдательный Совет выполняет следующие виды деятельности:

а) проверка годовых балансов счетов и финансовых отчетов; предоставление результатов проверки Совету Директоров;

б) проверка бухгалтерских записей и других финансовых документов по крайней мере раз в полгода;

в) уведомление Совета Директоров о любых обнаруженных расхождениях; представление предложений по исправлению недостатков;

г) представление предложений о созыве чрезвычайных заседаний Совета Директоров по важным вопросам деятельности фонда.

(4) Члены Наблюдательного Совета имеют право принимать участие в собраниях Совета Директоров без права голоса.

(5) Членство в Наблюдательном Совете является добровольным и не предусматривает вознаграждения. Члены Совета могут потребовать возмещения своих расходов, связанных с выполнением ими своих обязанностей.

(6) Правила внутреннего распорядка могут предусматривать выполнение функций Наблюдательного Совета ревизором. Ревизор избирается сроком на три года.

Администратор

25

(1) Администратор является правомочным органом фонда, назначаемым для управления деятельностью фонда и осуществления действий от имени последнего. Администратор принимает решение по всем вопросам, связанным с деятельностью фонда, если соответствующие полномочия не возлагаются настоящим законом, Уставом или правилами внутреннего распорядка на другие органы.

(2) Администратор избирается и снимается с должности Советом Директоров. Первый Администратор назначается учредителем (8).

(3) Новый Администратор избирается в течение последних 60 дней пребывания в должности предшествующего Администратора. В случае если вакансия должности Администратора появляется до истечения срока полномочий, согласно пункту (2), то в течение 30 дней избирается новый Администратор.

(4) Активы фонда, представляющие его зарегистрированный капитал, не могут быть использованы в качестве залога или иной гарантии выполнения обязательств. Другие активы фонда могут быть использованы для гарантии обязательств третьих лиц, в случае если другие активы были одновременно приобретены фондом, что позволило получить прибыль для финансирования целей фонда.

26

(1) Совет Директоров снимает Администратора с должности в следующих случаях:

а) юридически действительное обвинение Администратора в уголовном преступлении, связанном с выполнением обязанностей Администратора или умышленным совершением преступления;

б) потеря ограничения правомочности Администратора;

с) по личной просьбе Администратора;

(2) Совет Директоров может отозвать Администратора с должности в следующих случаях:

а) неспособность выполнять свои обязанности из-за проблем со здоровьем, продолжающихся

более шести месяцев в соответствии с медицинским заключением;

б) неспособность выполнить обязательства, вытекающие из занимаемой им должности Администратора, продолжающиеся после наступления крайнего срока, определенного в уведомлении, выданном Советом Директоров.

(3) Предложения по отзыву Администратора могут быть поданы членом Совета Директоров или Наблюдательного Совета.

27

Протоколы собраний органов управления фонда

Заседания органов управления фонда регистрируются протоколами, которые хранятся в течение срока, определенного правилами внутреннего распорядка, но не менее трех лет.

ЧастьV

## ЭКОНОМИЧЕСКОЕ УПРАВЛЕНИЕ ФОНДОМ

Распоряжение имуществом фонда

28

(1) Активы фонда, представленные его зарегистрированным капиталом, и иная собственность могут быть проданы только после того, как было гарантировано финансирование фонда и выполнено условие согласно 4, пункт (4).

(2) Активы фонда, представленные его зарегистрированным капиталом, и иная собственность могут быть отданы в аренду с целью их наилучшего экономического использования и получения за счет аренды наибольшего возможного дохода.

(3) Активы фонда, представленные его зарегистрированным капиталом, не могут служить средством для пожертвований<sup>7</sup>. Другие активы могут быть:

а) пожертвованы другим юридическим или частным лицам для выполнения целей, ради которых был создан фонд;

б) выданы в форме займа на договорной основе для бесплатного пользования другим юридическим или частным лицом для выполнения тех же целей, ради которых был создан фонд.

29

Прибыль, полученная за счет активов

Прибыль, полученная за счет активов фонда:

- a) прибыль, полученная за счет передачи активов в аренду;
- b) накопленные проценты на банковские депозиты;
- c) прибыль, полученная с ценных бумаг.

30

Доход фондов

(1) Доход фондов образуется главным образом из следующих источников:

- a) прибыль, полученная за счет активов, согласно 29 настоящего закона;
- b) денежные пожертвования и взносы от физических и юридических лиц;
- c) прибыль от сборов пожертвований;
- d) прибыль от проведения лотерей и других подобных игр<sup>1)</sup>;
- e) наследство;
- f) прибыль, полученная за счет проведения культурных, образовательных, общественных или спортивных мероприятий (5).

(2) Взносы и отчисления из государственного бюджета, муниципальных бюджетов или государственных фондов также могут служить источниками прибыли фондов.

(3) Запрещается использование прибыли, согласно пункту (2), в целях покрытия административных расходов.

31

Расходы фондов

(1) К расходам фондов относится следующее:

- a) расходы на поддержку целей фонда в соответствии с его правилами внутреннего распорядка;
- b) административные расходы фонда.

(2) Расходы фондов согласно пункту (1), подпункт (a), должны быть распределены в бюджете фонда по отдельным целям и способам использования, и/или по субъектам, между которыми распределяются расходы.

(3) Административные расходы фондов согласно пункту (1), подпункт (b), включают все расходы фонда за отчетный период, связанные с управлением фондом, и в первую очередь необходимые для сохранения и поддержки его активов, расходы на рекламу для осуществления целей фонда, и расходы, связанные с работой фонда, включая заработную плату и вознаграждение, выплачиваемое работникам фонда, а также, выплаты членам органов управления фонда в качестве компенсации их затрат, связанных с выполнением ими своих обязанностей.

(4) Сумма расходов фонда, согласно пункту (1), подпункт (b), определяется учредителем в Уставе фонда. Эта сумма не должна превышать 15% от суммы всех расходов фонда за отчетный период.

(5) По решению Совета Директоров, Наблюдательного Совета или согласно Уставу полномочия Администратора действовать от имени фонда могут быть ограничены. Такие ограничения не действительны в отношении третьих лиц.

(6) Администратор не имеет права быть членом Совета Директоров или Наблюдательного Совета; он имеет право принимать участие в собраниях Совета Директоров без права голоса.

(7) На должность Администратора могут быть назначены физические лица с безупречной репутацией и без криминального прошлого (20, пункт (2)).

32

Бюджет

(1) Фонды ведут свою хозяйственную деятельность в соответствии со своим утвержденным бюджетом.

(2) Бюджет фонда определяет все бюджетные расходы и доход фонда. Бюджет планируется и утверждается сроком на один календарный год.

(3) Предложения по бюджету представляются Администратором Совету Директоров для утверждения не менее чем за один месяц до начала календарного года. Совет утверждает бюджет до 31 марта следующего года.

33

Использование активов

(1) Фонды, получившие пожертвования или взносы от юридического или физического лица для определенных целей, могут использовать эти средства на различные цели только с

предварительного разрешения соответствующего жертвователя или вкладчика.

(2) Доходы, полученные от проведения сборов общественных пожертвований, могут быть использованы фондом только в целях, объявленных при проведении таких сборов.

(3) Лица, между которыми распределяются бюджетные средства фонда:

a) могут использовать средства фонда только на установленные цели;

b) должны доказать использование средств фонда на установленные цели;

(4) Фонд не распределяет свои средства между учредителем и членами своих органов управления и/или их родственниками<sup>10</sup> или членами органов управления юридических лиц, которые внесли в фонд свои пожертвования.

(5) Фонды имеют право потребовать возврат выданных средств или их часть от тех лиц, которые не смогли выполнить свои обязательства, согласно пункту (3) настоящего параграфа.

34

#### Отчетность

(1) Фонды осуществляют отчетность в соответствии с отдельными законодательными актами.

(2) Годовой баланс счетов представляется для аудиторской проверки в случае, когда общая сумма расходов и доходов фонда превышает 5000000 словацких крон за календарный год.

(3) Годовые остатки счетов, проверенные аудитором, согласно пункту (2) настоящего параграфа, представляются фондами для публикации<sup>12</sup> в Коммерческой Газете к 15 апреля следующего года.

35

#### Годовые отчеты

(1) Фонды составляют годовые отчеты за прошедший календарный год до 31 марта.

(2) Годовые отчеты фондов должны содержать следующую информацию:

a) обзор деятельности за отчетный период с указанием ее соответствия целям создания фонда;

b) годовой финансовый отчет с оценкой приведенных в нем данных и с заключением аудитора, если имеется;

c) обзор пожертвований и взносов, полученных фондом;

d) обзор доходов, с разделением по источникам ее происхождения;

f) состояние и движение активов и пассивов фонда;

g) общая сумма расходов, с разделением по отдельным видам деятельности фонда и отдельно по административным расходам;

h) изменения в правилах внутреннего распорядка и в составе органов управления фонда за отчетный период;

i) другая информация, которая может быть определена Советом Директоров.

(3) Годовой отчет фонда публикуется способом, определенным в правилах внутреннего распорядка. Копия годового отчета представляется фондом в Министерство до 15 апреля следующего года.

#### Часть VI

#### ОБЪЕДИНЕННЫЕ, ВРЕМЕННЫЕ И ЗАКЛЮЧИТЕЛЬНЫЕ ПОЛОЖЕНИЯ

36

#### Проверка

Министерство проводит проверку с целью установления факта выполнения задач фонда; с этой целью Министерство оценивает содержание годовых отчетов, уведомляет уполномоченные органы управления фонда о всех обнаруженных несоответствиях и требует устранения данных расхождений и выполнения фондом законных обязательств. В случае неспособности фонда устранить указанные недостатки, Министерство может представить предложение, согласно 15, пункт (1) настоящего закона.

37

#### Защита конфиденциальности жертвователей

(1) В случае если жертвователи пожелают остаться неизвестными, их полные имена (звания) не включаются в список жертвователей, за исключением обязательного указания, согласно 38 настоящего закона.

(2) Положение пункта (1) настоящего параграфа не применяется к правам проверки полномочий, в соответствии с отдельными законодательными актами.

38

Обязательное уведомление

До 31 января фонды обязаны уведомить налоговый орган о сумме пожертвований, с указанием полных имен и адресов (званий и местонахождения) жертвователей во всех случаях, когда общая сумма пожертвований одного жертвователя за отчетный период превышает 5000 словацких крон.

39

(1) Отчисления из государственного бюджета, муниципальных бюджетов и бюджетов государственных фондов могут осуществляться фондам с одинаковой целью только из одного источника, обычно из соответствующего источника в отношении основного вида деятельности фонда.

(2) Налогообложение дохода и активов фондов регулируется другими законодательными актами 14.

40

Порядок выдачи заработной платы работникам фондов регулируется другими законодательными актами 15.

41

Иностранные фонды

Юридические лица, имеющие свои головные офисы за пределами Республики Словакия, и которые являются фондами в соответствии с законодательством государства, на территории которого зарегистрирован фонд, могут осуществлять свою деятельность на территории Республики Словакия согласно условиям и ограничениям настоящего закона, при условии, что вышеупомянутыми юридическими лицами выполняются все законные условия регистрации.

42

Временные положения

(1) Фонды, образованные в соответствии с требованиями настоящего закона считаются фондами согласно настоящему закону, если их данные внесены в Регистр (11) в течение 12 месяцев с даты вступления настоящего закона в силу.

(2) Вместо представления предложения согласно пункту (1), Совет Директоров фонда в течение 12 месяцев с даты вступления настоящего закона в силу может принять решение о ликвидации фонда; кроме того, Совет Директоров может принять решение об преобразовании фонда в иную правовую форму.

(3) Ликвидатор уведомляет орган, зарегистрировавший фонд согласно действующему законодательству, о прекращении деятельности с ликвидацией фонда.

(4) В случае если меры, указанные в пунктах (1) и (2) остаются не выполненными, или если Министерством было отказано фонду в регистрации, фонд прекращает свою деятельность и органом, зарегистрировавшим фонд, согласно действующему законодательству отдается распоряжение о ликвидации фонда в течение трех месяцев с момента, указанного в пункте (1).

(5) До момента вступления регистрации в силу, согласно пункту (1), или до момента изменения фондом его правовой формы, согласно пункту (2), правовые отношения фондов, образованных до даты вступления в силу настоящего закона, регулируются действующим законодательством.

43

Настоящий закон вступает в силу к 1 сентября 1996 года.

Президент Республики Словакия

Председатель Национального Совета Республики Словакия

Премьер Министр Республики Словакия

1 № 194:1990 г. (Дайджест) Закон Национального Совета Словакии о лотереях и других подобных игр, с поправкой № 68:1992 г. (Дайджест) Закон Национального Совета Словакии и № 249:1994 г. (Дайджест) Закон Национального Совета Словакии.

2 28 Коммерческого Кодекса.

3 № 71:1967 г. (Дайджест) закон об административных процедурах.

4 69 и .т.д. Коммерческого Кодекса.

8 151a и т.д. Коммерческого Кодекса; 299 Коммерческого Кодекса.

5 с 588 по 610 Коммерческого Кодекса; 409 и т.д. Коммерческого Кодекса.

6 663 и т.д. Коммерческого Кодекса; № 116:1990 (Дайджест) закон об аренде и субаренде не помещений не в целях проживания, с исправлениями в соответствии с последними законодательными актами; 630 и т.д. Коммерческого Кодекса.

7 с 628 по 630 Коммерческого Кодекса.

9 № 303:1995 (Дайджест) закон Национального Совета Республики Словакия о бюджетных правилах.

10 116 Гражданского Кодекса.

11 № 563:1991 (Дайджест) закон о бухгалтерском учете.

12 769 Коммерческого Кодекса.

14 № 286:1992 (Дайджест) закон Национального Совета Словакии о подоходном налоге с поправками, внесенными последними законодательными актами; №317:1992 (Дайджест) закон Национального Совета Словакии о налоге на недвижимость с поправками, внесенными последними законодательными актами; № 318:1992 (Дайджест) закон о пошлинах на наследство, налоге на подарки и налоге на передачу недвижимости с поправками, внесенными последними законодательными актами.

15 № 1:1992 (Дайджест) закон о заработной плате, компенсациях, выплачиваемых on standby work и средней заработной с поправками, внесенными последними законодательными актами.

#### 11.2.2. Text in English

The Act No. 34/2002 Coll. On Foundations and the Change of the Civil Code as Amended by Later Acts.

#### Article 1

#### PART ONE

#### BASIC PROVISIONS

#### § 1

#### Subject

This Act shall govern position and legal conditions of the Foundations and the establishing of Funds.

#### § 2

#### Foundation

A Foundation shall be a purposeful grouping of property established for the support of public benefit purpose.

The Foundation is legal person; it has to be registered in the Registry of Foundations, maintained by the Ministry of Interior of the Slovak Republic (hereinafter "Ministry").

For the purpose of this Act, public benefit purpose is primarily development and protection of spiritual and cultural values, implementation and protection of human rights or other humanitarian goals, protection and creation of environment, preservation of natural values, protection of health, rights protection of children and youth, development of science, education, fitness and sport and providing of a humanitarian aid aiming at individual or group of people in danger of life or in need of an emergency assistance after a natural disaster.

The name, under which the Foundation is registered in the Registry of Foundations, shall be the name of the Foundation. The name must include the term "nadácia (Foundation)". No other natural or legal person can use this term in its name or commercial designation. The name of the Foundation has to be different from the name of other, already registered, Foundation and must not be interchangeable with the name of other, already registered, Foundation.

If the name of the Foundation is to include the family name of a natural person, different from the founder, the proposal of the Foundation's registration into the Registry of Foundations has to include the approval of this natural person; in case of his/her decease it has to include the approval of his/her heirs, if known.

For the purpose of this Act, the activities of the Foundation are:

Providing of monetary and non-monetary resources from the property of the Foundation to third parties/persons.

Administration of the property of the Foundation, including the Funds.

(7) The Foundation can perform other activities in accordance with the public benefit purpose of the Foundation and with the implementation of the Foundation's activities, if not stated otherwise in this Act.

### § 3

#### Property of the Foundation

The property of the Foundation shall include the Endowment of the Foundation, the Fund (Trust) and other property of the Foundation.

Endowment shall be the property of the Foundation registered in the Register of Foundations. Endowment shall be established by contributions of the individual Founders during establishment of the Foundation. The value of the contribution of each of the Founders shall not be less than SKK 20 000. The basic value of the Endowment shall be not less than SKK 200,000; this basic value can be formed exclusively of monetary assets and real estates. The movables, securities as well as other property rights and property values financially appraised may form the part of the Endowment in its value exceeding SKK 200,000. The value of the Foundation's Endowment cannot be decreased.

The Fund (Trust) shall include financial resources, which are not part of the Endowment or other property of the Foundation.

The other property of the Foundation, not being part of the Endowment or the Fund (Trust), is composed of monetary resources, securities as well as other property rights and property values financially appraised.

## PART TWO

### FOUNDING AND ESTABLISHMENT OF THE FOUNDATION AND OF THE FUND (TRUST)

### § 4

#### Founding of the Foundation

The Foundation may be founded by natural or legal person (hereinafter "Founder")

Written Foundation Deed signed by all Founders founds the Foundation. The authenticity of their signatures shall be officially verified. A single Founder may found the Foundation also; the authenticity of his/her signature shall be officially verified.

Prior to the establishing of the Foundation, Founders jointly or the Administrator of the Foundation act in the matters connected with it's establishing.

The Foundation gains the property rights for the immobility upon registration in the Registry of Land and Real Estates based on the written statement of the Founder, whose signature must be officially verified. The Administrator of the Foundation shall submit the motion for the registration of the property right to the Registry of Land and Real Estates within 15 days from the establishment of the foundation. The Administrator shall send a copy of the proposal for the registration of the property right for the immobility, together with the seal print of the Registry of Land and Real Estates to the Ministry. This shall happen within 15 days starting from the day, when the Registry of Land and Real Estates marks on the written proposal for the registration the date of its delivery.

If the Registry of Land and Real Estates denies registering the real estate, the Administrator of the Foundation shall invite the Founders to substitute the value of non-registered real estate with another real estate or with monetary resources, within a time limit of 30 days from the entry into force of the decision to deny the registration.

### § 5

#### Statute of the Foundation

The Foundation Deed shall include:

Name and headquarters of the Foundation,

Public benefit purpose that the Foundation will support,

Name and surname (designation), personal number (identification number) and permanent residence (headquarters) of all the Founders,

Value of the Endowment of the Foundation,

Value and subject of the property undertaken by each Founder to contribute to Endowment during the establishment of the Foundation,



Period for which the Foundation has been established,

Number of members of the Foundation bodies, length of the terms and method of their appointment,

The methods of conveying, voting and discussion of the Foundation bodies,

Name, surname, personal number and address of permanent residence or long-term residence of the first Administrator of the Foundation (§ 6(5), § 41(2)) and first members of other bodies of the Foundation, if established,

Conditions of the Foundation's property use,

Scope of persons that the Foundation may provide the resources to,

Conditions of providing the Foundation resources to third parties,

Further information/items, if the Founder considers it necessary to include them.

The Founder may determinate in the Foundation Deed that certain provisions cannot be changed by a decision of any body of the Foundation.

Anybody has a right to look into the Foundation Deed, make abstracts and extracts out of it. The Foundation is obliged to make the Foundation Deed available upon request.

#### Establishment of the Foundation

##### § 6

The Foundation is established as of the day of the registration in the Register of Foundations.

The Administrator of the Foundation shall submit the written motion for the registration of the Foundation to the Ministry of Interior. The signature of the Administrator shall be officially verified.

The motion for the registration of the Foundation shall include attached the Foundation Deed in two copies, the written declaration of the Administrator on the payment of the monetary contribution of the Founder, the written declaration of the Founder on contributing a real estate into the Endowment of the Foundation; the signature of the Administrator of the Foundation on the written declaration shall be officially verified and the extract from the Criminal Record

of the Administrator of the Foundation must not be older than three months.

If the Founder of the Foundation is a legal person, who is not established or set up by law, the motion for the registration of the Foundation shall include extract of the Commercial Register or other Register, which cannot be older than 30 days. The foreign legal person shall include document proving her legal personality and identifying her statutory authority.

If the Administrator of the Foundation is a foreign natural person, the motion for the registration of the Foundation shall also include a long-term residence permit for the territory of the Slovak Republic.

##### § 7

The procedure of the registration in the Register of Foundations starts with the date when the Ministry receives the motion of the registration of the Foundation, which includes the documents under § 6.

If the motion for registration failed to include documents of §6 (2)-(5), the Ministry shall, within 15 days from the date of delivery of the motion, notify the Administrator of the Foundation about the fact, that the registration procedure will start only after the deficiencies had been eliminated.

##### § 8

The Ministry shall reject the registration if from the documents of § 6 (2) - (4) can be concluded that

It is not a purposeful grouping of property,

The purpose of the Foundation is not of public benefit,

The Foundation Deed does not comply with the law.

The Ministry shall decide on the rejection of the registration within 30 days from the start of the procedure.

The Administrator of the Foundation may file for legal remedy with the Supreme Court of the

Slovak Republic against the decision on the rejection of the registration.<sup>214</sup>

§ 9

If Ministry does not determine any reasons for rejection of the registration, it will register the Foundation within 30 days from the start of the procedure of the registration and, within the same time limit, send to the Administrator of the Foundation one copy of the Foundation Deed, with marked date of registration.

The Ministry shall, within 10 days from the Foundation's registration, notify the State Statistics Office on the establishment, the name and the headquarters of the Foundation.

Register of Foundations

§ 10

The Register of Foundations shall be a public list where the data required by law regarding Foundations are being incorporated.

The Register of Foundations shall constitute of a set of documents including the Foundation Deed, the agreement on establishment of the Fund (Trust) or the decision of the Board on establishment of the Fund (Trust) and the Annual Report on activity and management of the Foundation (hereinafter "the Annual report").

Facts registered in the Register of Foundations shall be effective to everyone as of the day of the Foundation's registration to the Register of Foundations. Objections concerning the accuracy of the data registered in the Register of Foundations may not be raised by the subject of the registration against any person acting in good faith of the data registered in the Register of Foundations.

§ 11

Following data shall be registered in the Register of Foundations:

Name, headquarters and identification number if the Organization,

Public benefit purpose, that the Foundation will support,

Name and surname (designation), personal number (identification number) and permanent residence (headquarters) of the Founder,

Value and object of the Endowment of the Foundation, including

Amount of monetary resources,

Immovable property and their market value as appraised by an expert opinion,

Movable property and its value as appraised by an expert opinion,

Securities and their nominal value,

Other property rights and financially appraisable property values as appraised by an expert opinion.

Name and surname, personal number and permanent residence of the Administrator of the Foundation,

The Register of Foundations shall also include modification or cancellation of any registered data. The Administrator of the Foundation is obliged to file the motion for the registration of changes of the registered data to the Ministry within 15 days from their implementation; the authenticity of Administrator's signature on the motion must be officially verified. To the motion shall be attached the decision of the Board of Directors of the Foundation on implementation of the changes in the Statute and a supplement to the Foundation Deed in two copies, where the signature of the chairman of the Board of Directors shall be officially verified.

The Register of the Foundation shall further mark

Commencement of the liquidation proceeding against the Foundation including the name and surname, personal number and permanent residence of the Liquidator,

Declaration of bankruptcy, including the name and surname, personal number and permanent residence of the Trustee in bankruptcy.

Legal justification for the erasure of the Foundation.

The Ministry shall assign the Identification Number of the Organisation to the Foundation.

§ 12

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<sup>214</sup> See § 244 to 250 of the Civil Judicial Order.

The Founders shall have joint and several liability for the obligations assumed by the Founders on behalf of the Foundation until the date of its establishment.

The obligations under Section 1 shall be transferred to the Foundation as of the day of its establishment, unless rejected by the Foundation within three months due to the fact that the adoption of such obligation would be in discrepancy with the public benefit purpose of the Foundation.

### § 13

The Fund (Trust)

In order to support its public benefit purpose, the Foundation may establish a Fund (Trust) based on the decision of the Board of Directors or on a written agreement with a natural or a legal person.

The Fund (Trust) shall not have legal personality.

The decision of the Board of Directors on the establishment of the Fund (Trust) must include

Name of the Foundation establishing the Fund (Trust),

Name of the Fund (Trust); the name of the fund must include the name of the Foundation establishing the Fund (Trust),

Purpose to be fulfilled by the establishing of the Fund (Trust),

Term of the Fund (Trust).

(4) The objective of the Agreement on the establishment of the Fund (Trust) between a natural or a legal person and the Foundation consist in setting up the conditions for fundraising and for providing contributions from the Fund (Trust) for a specific public benefit purpose agreed beforehand. The Agreement on the establishment of the Fund (Trust) shall further include

Identification of the Parties to the Agreement,

Name of the Fund (Trust); the name of the Fund (Trust) must include the name of the Foundation establishing the Fund (Trust),

Purpose to be fulfilled by the establishing of the Fund (Trust),

Term of the Agreement,

Foundation's reward, providing it has been agreed,

Conditions for the use of the Fund's (Trust's) resources,

Conditions for the distribution of Fund's (Trust's) resources in case that the purpose of the Fund (Trust) is bound to the collecting of a concrete amount of money; and if the amount has not been reached or if the purpose for which the Fund (Trust) was established had ceased to exist,

Requirements of a final report on use of the Fund's (Trust's) resources or of an Annual Report on use of the Fund's (Trust's) resources, providing that the Fund (Trust) was established for the term exceeding one year or for an indefinite term.

## PART THREE

### TERMINATION AND LIQUIDATION OF THE FOUNDATION

Termination of the Foundation

#### § 14

The Foundation shall be terminated due to:

The expiration of the term for which it was established,

The fulfillment of the public benefit purpose for which it was established,

The decision of the Board of Directors on termination of the Foundation,

The court decision on the termination of the Foundation,

The declaration of bankruptcy or rejection of the motion for bankruptcy for the lack of property,

The decision of the Founders or the agreement of the Founders, in the case when the Board of Directors has not been operational for at least one year.

#### §15

At the request of the Founder, the Ministry or a person proving its legal interest, the Court shall decide on termination of the Foundation and order its liquidation if

The Endowment of the Foundation has decreased,

The Foundation fails to send its Annual Report to the Ministry within the time limit prescribed in the decision on imposing a fine under § 36 (3),

The Foundation violates the provision of § 29 (3),

Those Foundation bodies, whose electoral term expired more than 6 months ago, have not been elected or the Foundation bodies have not been completed up to the required number of members,

The Foundation has not performed its activities under § 2 (6) for a period longer than one year,

The Foundation's use of property is in violation with this Act or with the Foundation Deed.

(2) At the request of the Founder, the Ministry or a person proving its legal interest, the Court may decide on the termination of the Foundation or order its liquidation if the Foundation has by other serious manner or repeatedly violated the provisions of this Act.

## § 16

### Winding up of the Foundation

The Foundation shall cease to exist from the day of its erasure from the Register of Foundations. The winding up is preceded by the termination with or without liquidation.

The liquidation shall not be necessary if

The property and obligations of the Foundation after its winding up is transferred to another Foundation,

The motion for bankruptcy has been rejected due to the lack of property,

There is no foundation property left at the end of the bankruptcy proceedings.

## § 17

### Termination of the Foundation without liquidation

The Foundation may merge only with another Foundation on the basis of a written Agreement on the Merger, providing the Foundation Deeds of these Foundations do not prohibit it.

The Agreement on the Merger shall include name of the Parties to the Agreement and information on property, obligations, rights and duties of the Foundation, which merges with the other Foundation. The statutory bodies of both merging Foundations must sign the Agreement on Merger. The Endowment of the Foundation, which is taking over the property and obligations of the merging Foundation, shall be increased by the Endowment of the merging Foundation.

The motion to erase the merging Foundation from the Register of Foundations is filed by its statutory body, whose signature on the motion must be officially verified. The agreement on the Merger, the decision of the Board of Directors on termination of the Foundation without liquidation and the decision of the Founder, if he/she decided on the termination shall be enclosed to the motion to erase the merging Foundation from the Register of Foundations.

The property, rights and obligation of the merging Foundation shall pass on the Foundation with which it is merging as of the day when the merging Foundation is erased from the Register.

In the case of a fusion, the property of foundations, which terminate their existence due to the fusion, shall be transferred to the Foundation resulting from the fuse.

The Foundation may be transformed into a non-investment fund. At the transformation, the hitherto Foundation is terminated without liquidation if, as of the day of filing the motion to erase the Foundation out of the Register of Foundations, the prerequisites for the establishment of a non-investment fund have been fulfilled.

When transforming the Foundation, the Endowment of the Foundation is transferred to other Foundation or to the municipality of the seat of the terminating Foundation.

The Ministry shall erase the merging Foundation and register the change of the Foundation, which is taking over the property and obligation of the merging Foundation, effective as of the day of merger.

## § 18

#### Termination of the Foundation with liquidation

The commencement of the liquidation proceeding by the Foundation shall be registered in the Register of Foundations. The name of the Foundation during liquidation shall be used with the supplement "in liquidation".

Upon the registration of the commencement of the liquidation proceeding by the Foundation, the competencies of the Administrator of the Foundation to act on behalf of the Foundation shall be passed to the Liquidator registered in the Register of Foundations.

Unless this Act stipulates otherwise, the Board of Directors appoints the Liquidator. If the Liquidator is not appointed without undue delay, the court will appoint him/her. Only natural person can be appointed as Liquidator. When the liquidation of the Foundation is based on the decision of the court, the court deciding on the liquidation liquidator shall appoint the Liquidator.

The Liquidator is responsible for his/her performance in the same way as the Administrator of the Foundation.

Liquidator performs on behalf of the Foundation only acts leading to the liquidation of the Foundation.

In the case, when the Liquidator discovers the Foundation to be overcapitalised, he/she shall without undue delay file a motion for the Foundation being declared bankrupt.

The Liquidator shall, as of the day of the commencement of the liquidation proceeding, draft a liquidation book of accounts and is obliged to send the overview of property and obligations of the Foundation to all members of the Board of Directors.

To the day of the closing of liquidation, the Liquidator shall draft a closing aggregate balance sheet and shall submit it for approval to the Board of Directors together with the final report on the proceedings of liquidation and the proposal for the division of the liquidation balance.

The Liquidator shall offer the liquidation balance to another Foundation or municipality where the terminating Foundation had its seat. If the municipality accepts the liquidation balance, it shall use it exclusively for a public benefit purpose. Property consisting of the Endowment of the Foundation can be offered only to other Foundation registered according to this Act.

The liquidator shall file the motion to erase the Foundation from the Register of Foundation within 30 days of the end of the liquidation.

The body, which appointed the Liquidator, shall decide upon his/her remuneration.

#### PART FOUR

#### BODIES OF THE FOUNDATION AND THEIR COMPETENCIES

##### § 19

#### Bodies of the Foundation

The Bodies of the Foundation shall be

Board of Directors,

Administrator of the Foundation

Board of Supervisors, if the property of the Foundation exceeds SKK 5,000,000, otherwise if so stipulates the Foundation Deed,

Inspector, if Board of Supervisors is not established,

Other bodies if so stipulated in the Foundation Deed.

Members of the Foundation's bodies are obliged to perform their activities in such a manner that shall not harm interests of the Foundation; must not use the property of the Foundation for personal purposes. Members of the Foundation's bodies shall be impeccable and having full capacity to take legal actions. For the purpose of the present Act a person is considered impeccable if he/she has not been finally sentenced for a premeditated criminal act. The impeccability shall be proved by the extract from the Criminal Record not older than three months.

Board of Directors

##### § 20

The Board of Directors shall be the supreme body of the Foundation

The Board of Directors shall

Decide on the dissolution of the Foundation, unless it is prohibited by the Foundation Deed,

Elect and recall the Chairman and members of the Board of Directors, appoints and recalls the Administrator of the Foundation and the Inspector, unless stipulated otherwise in the Foundation Deed,

Decides on the changes in the Foundation Deed, unless prohibited to do so in the Foundation Deed,

Appoints the Liquidator,

Approves annual budget of the Foundation submitted to it by the Administrator of the Foundation,

Decides on the use of the property of the Foundation in accordance with the public benefit purpose of the Foundation and under the terms stipulated in this Act and in the Foundation Deed,

Decides on the increase of the Endowment and on the changes in the subject structure of the Endowment,

Decide on the establishment of a Fund (Trust), approves the final report on use of the Fund's (Trust's) resources or the Annual Report on use of Fund's (Trust's) resources, providing that the Fund (Trust) has been established for the term exceeding one year or for indefinite time,

Determines the remuneration for the performance of the function of the Administrator of the Foundation.

The Board of Directors shall also decide on any other facts within the scope and under the terms as determined in the Foundation Deed.

The Board of Directors is obliged to justify in writing its decisions according to Section 2 (g).

#### § 21

The Board of Directors shall have at least three members. A member of the Board of Directors may only be a natural person having full capacity to take legal actions.

Membership in the Board of Directors shall be incompatible with the function of the Administrator or a member of another body (§ 19) of the same Foundation.

A person receiving monetary assets from the Foundation property may not serve as the member of the Board of Directors.

The membership in the Board of Directors is unpaid. A member of the Board of Directors is entitled for reimbursement of the expenses occurred during performance of the office as specified in the special decree<sup>215</sup>.

#### § 22

The manner of elections and the terms of the office of members of the Board of Directors shall be determined by the Foundation Deed. The Founder appoints the first members of the Board of Directors in the Foundation Deed when establishing the Foundation. The Foundation Deed can also regulate the conditions for the performance of the membership in the Board of Directors.

If a post in the Board of Directors becomes vacant, the Board must elect a new member of the Board within 60 days from the day the vacancy occurred, for the rest of the term or for the next term. If due to the vacancies in the Board of Directors the number of the members of the Board of Directors drops under three, the Board of Directors cannot, with the exception of electing new members, accept any decision, until its members be completed.

Any member of the Board of Directors may submit the proposal for the election and removal of the Board of Directors members.

Membership in the Board of Directors shall cease by

The expiration of the term,

Written resignation delivered to the Administrator of the Foundation or to the Board of Directors,

Removal by the Board of Directors,

Death.

#### § 23

The Board of Directors shall elect the Chairman from among its members that shall convene and chair meetings of the Board. The Chairman may empower in writing any member of the Board to convene and chair meetings.

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<sup>215</sup> Act No. 119/1992 Coll., on Travel Reimbursements, as amended by later Acts.

A simple majority of all members of the Board of Directors is required to elect and recall the Chairman.

§ 24

The Board of Directors shall have the quorum if a simple majority of its members is present, unless stipulated otherwise in the Foundation Deed. Consent of a simple majority of all present members shall be required to adopt a decision.

The Board of Directors members may adopt decision also outside the sessions of the Board except decisions under § 20 Sec. 2 (a) and (b). In such an event, the draft resolution of the Board of Directors shall be submitted to individual members for comments with a time period for written comments to the draft being set. Should any member fail to give her/his comments within the given period of time, the draft resolution shall be deemed not being supported by that member. The Chairman of the Board of Directors shall inform the members of the Board of Directors on the outcome of the voting.

The Administrator of the Foundation

§ 25

The Administrator of the Foundation shall be a statutory representative of the Foundation that manages its activity and acts on its behalf. He/she shall decide on all matters of the Foundation, unless the competencies on these matters are vested under this Act or the Foundation Deed into other bodies of the Foundation.

The Board of Directors elects and recalls the Administrator of the Foundation. The Founder appoints the first Administrator of the Foundation in the Foundation Deed upon the establishment of the Foundation.

Unless stipulated otherwise in the Foundation Deed, the Board of Directors may limit the right of the Administrator of the Foundation to act on behalf of the Foundation. Such limitations shall not be effective with respect to any third party.

The Administrator of the Foundation must not be a member of the Board of Directors or any other body of the Foundation. He/she shall be entitled to participate at the meetings of the Board of Directors with an advisory vote.

Any natural person with permanent or long-term residence in the territory of the Slovak Republic

may be appointed as the Administrator of the Foundation.

§ 26

(1) The Board of Directors shall remove the Administrator of the Foundation if

He/she has been lawfully convicted for committing a criminal act or has been lawfully convicted for a crime and the court has not decided in his/her case on conditional suspending of the sentence,

He/she had lost the capacity for legal actions or this capacity for legal action has been proclaimed limited.

(2) The Board of Directors may remove the Administrator of the Foundation if

According to a medical statement, he/she is unable to perform this function for health reasons for more than six months,

He/she fails to carry out his/her duties and makes no improvement within given period of time after being notified in writing by the Board of Directors,

He/she lost the trust of the members of the Board of Directors.

The Administrator of the Foundation may resign on his/her function in written without stating the reason thereof.

If the Board of Directors recalls the Administrator of the Foundation under Sec. 1 and 2 or if the Administrator resigns under Sec. 3, the Board of Directors must elect the new Administrator of the Foundation within 30 days of the occurred vacancy. Until that time, the Chairman of the Board of Directors shall act on behalf of the Foundation, being authorized to perform only the acts not permitting any delays.

Electing and recalling of the Administrator of the Foundation requires a simple majority of votes of all members of the Board of Directors. A majority of two thirds of all members of the Board of Directors is required to recall the Administrator pursuant to Sec. 2 c).

Any member of the Board of Directors may submit proposal to election and recall of the Administrator of the Foundation.

§ 27

The Board of Supervisors (The Inspector)

The Board of Supervisors (the Inspector) is a supervisory body of the Foundation.

The Board of Directors elects and recalls members of the Board of Supervisors (the Inspector). The provisions on Board of Directors are applied in appropriate way for the manner of establishing and membership in the Board of Supervisors. The provisions on the Administrator of the Foundation apply in appropriate way for the Inspector. The Inspector serves for the term of three years.

Members of the Board of Supervisors (the Inspector) are authorized to examine all documents and records dealing with the activities of the Foundation and to check, whether the accounting books are kept in accordance with special regulation and whether the Foundation acts in accordance with generally binding regulations and its Foundation Deed.

In particular, the Board of Supervisors (the Inspector)

Checks the accounting books keeping,

Approves the closing balance of sheets and the Annual Report of the Foundation,

Advise the Board of Directors on identified deficiencies and submits proposals on their removal.

## PART FIVE

### THE USE OF THE FOUNDATION'S PROPERTY

#### § 28

Expenses (costs) of the Foundation

The property of the Foundation may be used only in accordance with the public benefit purpose and the conditions stipulated in the Foundation Deed and to cover the expenses (costs) related to the administration of the Foundation. The Board of Directors determines annually the limit of the expenses (costs) related to the administration of the Foundation in the amount necessary to secure the activities of the Foundation.

The expenses (costs) for the administration of the Foundation include expenses (costs) for

Protection and valorization of the Foundation's property,

Promotion of the public benefit purpose of the Foundation or of the purpose of its Fund (Trust),

Administration of the Foundation,

Remuneration of the Administrator of the Foundation,

Compensation of expenses according to special regulation<sup>216</sup>

Salaries of employees of the Foundation

Other expenses (costs) related to administering the Foundation.

The Foundation Deed may specify a more detail itemization of expenses then in Sec. 2.

The expenses (costs) related to administration of the Foundation must the Foundation account for separately from other expenses (costs).

#### § 29

Other use of the property of the Foundation

The Foundation may not conduct business, except for renting real estates, organizing cultural, educational, social or sport activities, if these activities contribute to more effective use of its property and if these activities comply with the public benefit purpose of the Foundation.

The Foundation may not enter into agreement on silence partnership.

The property of the Foundation must not be used neither for financing the activity of political parties and political movements, nor for the benefit of a candidate for an elected post.<sup>217</sup>

#### § 30

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<sup>216</sup> See note 215.

<sup>217</sup> E.g. Act No. 46/1999 Coll., on electing the President of the Slovak Republic, on Public Referendum and its Cancellation and on Amendment of Certain other acts; se also the Act of the National Council of the Slovak Republic No. 346/1990, Coll., on Elections to the Bodies of Self-Government of Communities as amended by later provisions.



The use of the Endowment of the Foundation

shall be liable for its obligation also including the resources of such a Fund (Trust).

Registered property of which consist the Endowment of the Foundation (§ 3 Sec. 2) may not be donated, invested as a deposit into a commercial company, pledged or otherwise used to secure any obligations of the Foundation nor to secure obligations of third parties.

Earmarked resources

§ 32

If the value of the gift or of the contribution exceeds SKK 10,000, the Foundation is obliged to inform the donor about the exact specification of its use within 60 days since the date of the use of the gift or contribution, unless otherwise specified by the donor.

The Foundation is obliged to put all the monetary assets forming a part of the Endowment to an account at a bank or at a foreign bank branch<sup>218</sup>, which is allowed to undertake its activities as a bank on the territory of the Slovak Republic.

If a donor provided the Foundation with a gift or a contribution for a specific public benefit purpose, the Foundation shall be entitled to use it for a different purpose only with the prior consent of this donor.

The monetary assets forming a part of the Endowment may be used only to purchase

Public securities and governmental treasury vouchers,

Securities accepted on the market of listed securities and shares of open investment funds,

§ 33

Any natural or legal person for to which the Foundation provided its resources is obliged to use such resources only for the public benefit purpose for which they were provided; upon request the person is obliged to document the use of the resources to the Foundation.

Mortgage bonds,

Bank deposits, savings certificates and deposit certificates,

Real estates.

Any natural or legal person failing to comply with the obligation under Sec. 1 is obliged to immediately return the said resources to the Foundation.

§ 31

Liability for the obligations of the Foundation

Any natural or legal person that received any resources of the Foundation in violation to the provisions of this Act is obliged to return such resources.

The Foundation shall be liable for its obligations by its whole property except the asserts of the Fund (Trust) established for the purpose of individually determined humanitarian assistance for an individual or a group of persons in danger of life or in need of an emergency assistance after being affected by a natural disaster.

The resources of the Foundation allocated for the fulfillment of its public benefit purpose may not be provided to a Founder, a member of the Board of Directors, the Administrator of the Foundation or to a member of any other body of the Foundation nor to the persons closed to them.<sup>219</sup> This shall not apply if the resources come from the Fund (Trust) established for the purpose of a humanitarian assistance for an individual or a group of people in danger of life or in need of an emergency assistance after being affected by a natural disaster.

If the Administrator of the Foundation doesn't deliver to the Ministry pursuant to § 13 (5) the written agreement or the decision of the Board of Directors on the establishment of the Fund (Trust) for the purpose of humanitarian assistance for an individual or a group of people in danger of life or in need of an emergency assistance after being effected by a natural disaster, the Foundation

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<sup>218</sup> See § 2 Sections 1 to 6 of the Act No. 483/2001 Coll., on Banks and on Modification and Amendments of Certain Acts.

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<sup>219</sup> § 116 of the Civil Code.

PART SIX

ACCOUNTING AND ANNUAL REPORT

§ 34

Accounting

The Foundation shall keep accounting books pursuant to a special regulation<sup>220</sup>.

The Foundation shall keep in its accounting books the resources of a Fund (Trust) separately from other resources.

An auditor shall verify the annual financial statement.

§ 35

The Annual Report

The Foundation is obliged to prepare an Annual Report by the term determined by the Board of Directors or the Foundation Deed after the end of the calendar year but not later than by 15 May of the next calendar year.

The Annual Report of the Foundation shall include

The overview of activities carried out in the evaluated period together with the statement of their relevance to the public benefit purpose of the Foundation.

The annual financial statement, the assessment of its basic data, as well as the verdict of the auditor regarding the annual financial statement,

The overview of the incomes (yields) according to their sources and origin,

The overview about the donors, if the value of the gifts or contributions, donated by the same donor, exceeded SKK 10, 000,

The overview about natural and legal persons that were given resources by the Foundation to fulfil the public benefit objective for which the

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<sup>220</sup> Act 563/1991 Coll. on Accounting as amended by later regulations.

Foundation has been established and the information on how such resources were used,

The overall expenses (costs) sorted by categories for individual types of activities of the Foundation, and separately the amount of expenses (costs) for administering the Foundation, including the expenses related to the decision of the Board of Directors under § 28 Sec. 1 and itemized according to the § 28, Sec. 2 and 3,

The changes made in the Foundation Deed and in the composition of the bodies during the evaluated period,

The remuneration for the Administrator of the Foundation and any other Foundation body it such has been established by the Foundation Deed,

The overview of the activities of the Funds (Trusts) together with the overview of the resources of these Funds (Trusts),

Other facts as determined by the Board of Directors.

If any facts are discovered after the publication of the Annual Report that would cause the need of its amendment, the Foundation is obliged to carry out such amendments without undue delay.

The Foundation shall send one copy of the Annual Report to the Ministry not later than on 31 May. The Foundation shall send one copy of the auditor's verdict for publication to the Commercial Bulletin not later than on 31 May.

PART SEVEN

JOINT, TRANSITORY AND FINAL PROVISIONS

§ 36

Fines

If the Foundation fails to send the Annual Report to the Ministry under § 35 Sec. 4, the Ministry shall impose a fine to the Foundation for violating this obligation in the amount from SKK 10,000 to SKK 100,000.

The fine is due within 30 days from the date of the entry into force of the decision on imposing the fine.

The Ministry shall, in its decision on the imposing of the fine, set a reasonable time limit for submitting the Annual Report.

Imposing of the fine under this Act does not infringe the provisions on the compensation for damages, nor does it make the obligations enacted by this Act void.

The yield from the fines is part of the income of the State Budget.

### § 37

#### Supervision

The Ministry shall supervise the performance of the Foundation's activities in accordance with public benefit purpose of its establishment. For this reason the Ministry shall evaluate the content of the Annual Report.

If the Ministry finds any deficiencies, it shall invite the Foundation to correct those deficiencies within a given time limit and simultaneously to inform the Ministry about undertaken measures.

If the Foundation has not redress the deficiencies under § 36 Sec. 3, the Ministry will file a petition under § 15 Sec. 1.

### § 38

#### Protection of Donors Anonymity

If the donor wishes to remain anonymous, its name and surname or its designation must not be stated in the list of donors nor shall be otherwise publicly disclosed.

Provision of Sec. 1 shall not apply to the powers of the supervisory bodies operating under special regulations<sup>221</sup>, service of the criminal police, service of the financial police and bodies active in

criminal proceedings when operating under special regulations<sup>222</sup>.

### § 39

#### Access to information

The Foundation provides information on its activities and on the dealing with its property as a compulsory person under special regulation<sup>223</sup>.

#### Foreign Foundation

### § 40

The Foreign Foundation is a legal person with its headquarters outside the territory of the Slovak Republic, if being recognized as Foundation under the domestic law of the State of its headquarters' location.

The Foreign Foundation may carry out its activities on the territory of the Slovak Republic only through its Organizational Branch under the same conditions and within the same framework as the Foundation established in accordance with this Act.

### § 41

The authorization of the Foreign Foundation to carry out its activities on the territory of the Slovak Republic through its Organizational Branch is valid as of the day of the registration of the Organizational Branch to the Registry of Foundations and it terminates as to the day of the expunction of the Organizational Branch from the Registry of Foundations.

The Ministry shall register the Organizational Branch of the Foreign Foundation established on the territory of the Slovak Republic if the public benefit interest of the Foreign Foundation complies with § 2 Sec. 2. Written motion to

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<sup>221</sup> E.g. Act of the National Council of the Slovak Republic No. 10/1996 Coll., on Supervision in the Public Administration, Act No. 440/2000 Coll., on the Reports of Financial Supervision as amended by Act 150/2001 Coll.

<sup>222</sup> The Criminal Code and the Act of the National Council of the Slovak Republic No. 171/1993 Coll., on Police Forces as amended by later regulations.

<sup>223</sup> Act n. 211/2001 Coll., on Free Access to Information and on Modification and Amendments of Certain Acts (Act on Freedom of Information).

register the Organizational Branch in the Registry of Foundations shall be submitted to the Ministry by the Administrator of the Organizational Branch of the Foreign Foundation. The authenticity of the signature of the Administrator of the Organizational Branch must be officially verified. The motion for registration shall include the name of the Organizational Branch, which must include the name of the Foreign Foundation with a supplementary stating that this is the Organizational Branch of the said Foreign Foundation, as well as identification of the headquarters of the Organizational Branch and the name, surname, personal number and long-term residence address of the Administrator of the Organizational Branch, who serves as its statutory representative.

To the motion for the registration shall be attached the document not older than 3 months certifying, that the Foreign Foundation has a legal personality, the decision of the relevant body of the Foreign Foundation on the establishment of the Organizational Branch on the territory of the Slovak Republic including the designation of the Administrator of the Organizational Branch; the Statute of the Foreign Foundation and the certificate proving that the value of the property contribution to the Organizational Branch corresponds to the provisions of this Act.

The procedure and decision on the registration is likewise carried out under § 7.

#### § 42

##### Transitory provisions

A Foundation established pursuant to current regulations shall be deemed to be considered a Foundation according to this Act, if until the 31 December 2002, the Administrator of the Foundation files a motion for the change of the registered data in the Register of Foundations and certifies the constitution of the Endowment as required under § 3 Sec. 2 as of the date of the submission of the proposal; the Foundation Deed of the Foundation shall be attached.

Until 31 December 2002, instead of submitting the motion as required under Sec. 1, the Board of Directors of the Foundation may decide on the transformation of the Foundation to a Non-for-Profit Organization Providing Public Benefit Services or to a Non-Investment Fund, or it may decide on termination of the Foundation and commencement of its liquidation. The decision on termination of the Foundation and its entering into liquidation procedure shall be announced to the

Ministry by the Administrator of the Foundation without necessary delay.

If measures in accordance with Sec. 1 and 2 are not taken or the appropriate registration body rejects the motion for registration, the Foundations not being registered pursuant to this Act shall be deemed as terminating as of 1 January 2003. The Statutory body of these Foundations is obliged to terminate the Foundation with liquidation.

During the validity of international agreements setting up the conditions for providing foreign assistance to the Slovak Republic which are binding for the Slovak Republic, the provision under § 29 Sec. 1 shall not be applicable for Foundations established under § 20b of the Civil Code before 1 September 1996, if their establishment had been the precondition for drawing of foreign assistance by the Slovak Republic and if these Foundations as of the day of effect of this Act use their resources for the support of entrepreneurial undertakings.

#### § 43

##### Annulment provision

The Act of the National Council of the Slovak Republic No. 207/1996 Coll., on Foundations, as amended by Act No. 147/1997 Coll. shall be annulled.

#### Art. II

Act No. 40/1964 Coll. Civil Code as amended by Act No. 58/1969 Coll., Act No. 131/1988 Coll., Act No. 94/1998 Coll., Act No. 188/1988 Coll., Act No. 87/1990 Coll., Act No. 105/1990 Coll., Act No. 116/1990 Coll., Act No. 87/1991 Coll., Act No. 509/1991 Coll., Act No. 264/1992 Coll., Act of the National Council of the Slovak Republic No. 278/1993 Coll., Act of the National Council of the Slovak Republic No. 249/1994 Coll., Act No. 153/1997 Coll., Act No. 211/1997 Coll., Act No. 252/1999 Coll., Act No. 218/2000 Coll., Act No. 261/2001 Coll. and Act No. 281/2001 Coll., shall be amended as follows:

§§ 20b to 20e including the head shall be omitted.

In § 477, the Section 2 is omitted.

Simultaneously the sign Section 1 is cancelled.

Art. III

Entry into force

This Act shall enter into force on March 1, 2002.

### 11.3. Law on NPO

LAW of July 2<sup>nd</sup>, 1997 ON NON-PROFIT ORGANIZATIONS PROVIDING GENERALLY BENEFICIAL SERVICES

#### CHAPTER ONE

##### FUNDAMENTAL STIPULATIONS

###### Section 1

###### Subject of regulation

This law regulates the foundation, establishment, abolition, termination, capacity (structure and power) of organs (bodies), and economic operations of Non-profit organizations providing generally beneficial services (Hereinafter only: "non-profit organization").

Non-Profit Organization and Generally Beneficial Services.

###### Section 2

(1) The non-profit organization is a legal person established according to this law, whose primary activity is to provide generally beneficial services under the beforehand determined and to all users equal conditions and whose profit may not be used for the benefit of its founders, members of its bodies nor its employees, but must be fully used to secure the public benefit services.

(2) The public benefit services are, in particular:

- a. Health care provision,
- b. Social care and humanitarian assistance provision,
- c. Creation, development, protection, restoration and presentation of spiritual and cultural values,

- d. Protection of human rights and basic freedoms,
- e. Education, learning and physical fitness training,
- f. Science, technological development, scientific and technology services and information services,
- g. Creation and protection of environment and protection of health of population,
- h. Support of regional development and employment policy,
- i. Provision of dwelling capacities and services related to management, maintenance and restoration of public dwellings.

###### Section 3

The non-profit organization may provide services only when it fulfills conditions set for their provision by special regulations [1]

###### Section 4

###### Name of the non-profit organization

The name of the non-profit organization is the name under which it is filed in the register of non-profit organizations providing generally beneficial services (hereinafter referred to as Register). The name of the non-profit organization must include the indication neziskov□ organiz□a (non-profit organization), but it is sufficient to use the abbreviation n.o.; the name must differ from the names of other already registered non-profit organizations.

#### CHAPTER TWO

##### FOUNDATION AND ESTABLISHMENT OF THE NON-PROFIT ORGANIZATION

###### Section 5

###### Foundation of the non-profit organization

(1) The non-profit organization can be founded by a natural or legal person (hereinafter referred to as founder), if not otherwise excluded by the Law [2].

(2) The non-profit organization shall be founded by a Founders Deed, which is signed by all founders. The signatures of all founders must be officially verified. A single founder may also found the non-profit organization; his/her signature must be officially verified.

(3) The Founders Deed may be concluded also by an assignee furnished with a full power. The

founder shall sign the document on the full power under office and the document shall be attached to the Founders Deed.

Founders Deed

Section 6

(1) The Founders Deed shall include:

- a) Name and site of the non-profit organization
- b) The period for which the non-profit organization is founded, if it is not founded for an undetermined period
- c) The type of generally beneficial services (Sec. 2, Par. 2),
- d) The name and surname of the natural person or the business name of the legal entity, the birth number of the natural person or the identification number of the legal entity, the place of residence of the natural person or the seat of the legal entity, if these are founders,
- e) Name, surname, birth number and residence address of the first members of the Board of Directors, Supervisory Boards (Inspector), Director and members of other body, if established,
- f) Monetary contributions of individual founders, non-monetary contributions of individual founders and their monetary value documented by official evaluation, if such contributions exist.

Section 7

The Founders Deed may stipulate, that

- a) a specified number of members of the Board of Directors and/or Supervisory Board be elected based on the nomination by specific physical persons identified in advance, or on the proposal of a specific legal person, [or of] a body of the territorial self-government or the state administrative body,
- b) a specified property deposited as to the date of the foundation shall not be alienated,
- c) the specified range of generally beneficial services to be provided cannot be changed during the specified period of time and/or under defined conditions.

Section 8

The Statute

(1) The founder issues the Statute, which determines in detail the organizational structure, activities and economy of the non-profit organizations.

(2) The Statute includes, in particular:

- a. The name and seat of the non-profit organization,
- b. The type of generally beneficial services provided (Sec. 2, Par. 2),
- c. The way, in which the conditions for individual service providing shall be made public,
- d. The bodies of the non-profit organization and determination of the scope of their competence,
- e. Number of members of the Board of Directors, Supervisory Board (Inspector) or any other established body, the procedure of electing them and the length of their term of service,
- f. The period of time for which the proceedings of the meeting of the bodies of the non-profit organization shall be kept archived,
- g. The manner of publishing the annual report,
- h. The method of liquidation by termination of the non-profit organization

(3) Everyone is entitled to inspect the Statute and to make copies or records there from. The non-profit organization is obliged to make the Statute accessible on demand.

Establishment of the non-profit organization

Section 9

(1) The non-profit organization is established as of the day when the decision of the Regional Office (hereinafter referred to as Registration Office) on registration enters into force.

(2) The registry is kept by the Founders Deed as of the seat of the non-profit organization.

(3) The Ministry of Interior of the Slovak Republic (hereinafter referred to as the Ministry) maintains the Central Registry of Non-Profit Organizations Providing Generally Beneficial Services (hereinafter referred to as Central Registry).

Section 10

(1) A written motion to enter the non-profit organization into the registry must be filed by the founder or person empowered by the founder with in written within 60 days from the founding of the

non-profit organization. The signature of the person submitting the motion must be verified under office.

(2) The motion for registration must include the Founders Deed, the Statute and the proclamations of honor of the founders. All Founders must sign the Statute. In the proclamation of honor the founders must provide data on the non-profit organizations, in which they are or were active as founders or as members of their bodies.

(3) If the non-profit organization will be providing services regulated by special regulations [3], it is obliged to prove their fulfillment to the Registering Office within 30 days since these conditions were fulfilled.

#### Section 11

(1) The Registration Office shall issue the registration decision and enter the record into the Registry, if the Founders Deed and the Statute are in accord with the Law.

(2) The Registry shall include:

a. The name and seat of the non-profit organization,

b. The identification number,

c. The period of time for which the non-profit organization is established, if it is not established for an undetermined period of time,

d. The type of generally beneficial services,

e. The name and surname of a natural person or the business name of a legal entity, the birth number of the natural person or the identification number of the legal entity, the place of residence of the natural person or the seat of the legal entity, if these are founders,

f. Monetary contributions of individual founders, non monetary contributions of individual founders and their monetary value documented by official assessment, if such contributions exist,

g. The name, surname and permanent residence of the Director of the non-profit organization.

(3) Any change or cessation of registered data shall be entered into the Registry without delay.

(4) The Registration Office shall assign an identification number to the non-profit organization.

(5) The registration shall be realized as to the date specified in the motion for registration. If the

registration decision is issued later or if the motion for registration does not include the date of proposed registration, the registration will be realized as to the date of issuing the decision.

(6) The Registration Office shall submit the data filed in the registry as well as any changes of such data within 10 days of the registration for publishing in the Business Review [4]; these data shall be also sent at the same time to the Ministry for the purposes of the Central Registry, as well as to the Statistics Office of the Slovak Republic.

(7) The proceedings and decision making on the registration is regulated by the general rules on administrative proceedings [5], unless this law specifies otherwise.

#### Section 12

(1) The Registration Office shall refuse the registration if the presented documents indicate that:

a) It is not a non-profit organization under the terms of this Law,

b) There are not provided generally beneficial services,

c) The Deed on Foundation and the Statute are not in accordance with the Law,

d) The founder of the non-profit organization is simultaneously a founder or a member of the body of another non-profit organization, which fulfills conditions for being terminated as of Sec. 15, Par. 1, Item c)

#### Section 13

(1) To the date of establishment of non-profit organization act on behalf of the non-profit organization the founders jointly or that one of them who has been given full powers by the others.

(2) The founders are obligated jointly and severally as to all obligations the founders or any of them has undertaken on behalf of the non-profit organization.

(3) The obligations originated according the Par. 2 pass over to the non-profit organization as of the day of its establishment, unless the non-profit organization does not disavow the obligation within three months.

### CHAPTER THREE

#### TERMINATION AND CESSATION OF THE NON-PROFIT ORGANIZATION

Termination of the non-profit organization

Section 14

A non-profit organization shall be terminated:

- a) Upon expiration of the period of time for which the non-profit organization was established,
- b) To the date defined in the decision of its Board of Directors on termination of the non-profit organization, otherwise to the date on which such a decision has been made,
- c) By the decision of the Board of Directors on merge, fusion or split of the non-profit organization,
- d) To the date defined in the court resolution on termination of the non-profit organization, otherwise to the date on which this resolution entered into power,
- e) By the proclamation of bankruptcy or refusal of the proposal to proclaim bankruptcy due to the insufficiency of property,
- f) When the obligation according to the Sec. 10, Par. 3 has not been fulfilled,
- g) When the non-profit organization does not submit the Annual Report to the Registering Office as required according to the Sec. 34, Par. 3

Section 15

(1) The court shall decide on termination and liquidation of the non-profit organization upon a motion brought by a state body or a person declaring legal interest, if:

- a) The non-profit organization does not provide the public benefit services as stipulated in the Founders Deed for more than 12 months,
  - b) The non-profit organization does not fulfill the conditions for provision of services as defined by special regulations (Sec. 3),
  - c) The expenditures (costs) of the non-profit organization are not in proportion to the scope of provided public benefit services.
- (2) In the case of termination of the non-profit organization based on the provision of the Par. 1, item c), the persons who were founders or members of the bodies of it may establish another the non-profit organization not earlier than after three years since all liabilities were settled.

a) The court may decide on termination and liquidation of the non-profit organization upon a

motion brought by a state body or a person declaring legal interest, if: The Board of Directors of the non-profit organization did not meet during the elapsed 12 months,

- b) The new bodies of the non-profit organization were not elected in 12 months since their term has elapsed,
- c) The non-profit organization uses the incomes from its activities and the property provided to it in violation with this Law,
- d) The non-profit organization violates the provisions of the Sec. 30

(3) The court may appoint a time period for the non-profit organization to eliminate a reason for which its termination was proposed, before deciding about the motion.

Section 16

Merger and fusion

(1) The Board of Directors may decide on a merger or fusion of the non-profit organization with another non-profit organization or foundation.

(2) By merger the property of a dissolved non-profit organization passes to the non-profit organization or foundation, with which the non-profit organization was merged.

(3) By fusion the property of the non-profit organization passes to the non-profit organization or foundation constituted by the fusion.

(4) The Executive Manager of the newly constituted organization shall report the changes resulting from the merger or fusion, which are subject to registration, to the Registration Office within seven days.

Section 17

Cessation and liquidation

(1) The non-profit organization ceases to exist on the day it is deleted from the registry. Its cessation is preceded by termination with or without liquidation.

(2) Liquidation is not required if the property of the non-profit organization goes over to another non-profit organization or foundation after its merger or fusion. The deletion of a ceased non-profit organization from the registry shall be made on the same day as the registration of the non-profit organization or foundation constituted by the merger. The deletion of the fused non-profit organization from the registry shall be made on



the same day as the registration of change in the non-profit organization or foundation with which the ceasing non-profit organization was fused.

(3) The balance of assets upon liquidation can be transferred only to another non-profit organization or a foundation.

(4) The liquidator is obliged to offer the priority property as defined in Sec. 31a to the state or another non-profit organization.

(5) The authority, which appointed the liquidator, shall determine the liquidator's compensation.

(6) The costs of liquidation shall be covered from the property of the non-profit organization.

(7) The dissolution of the non-profit organization with or without liquidation and the cessation of the non-profit organization shall be subject to the regulation of the Commercial Code on the dissolution and cessation of commercial companies [6] as appropriate, if this law does not stipulate otherwise.

#### CHAPTER FOUR

#### BODIES OF THE NON-PROFIT ORGANIZATION AND THEIR JURISDICTION

##### Section 18

##### Bodies of the non-profit organization

The bodies of the non-profit organization are:

- a) The Board of Directors,
- b) The Executive Manager,
- c) The Supervisory Board (the Inspector),
- d) Other bodies, if specified in the Statute.

##### Board of Directors

##### Section 19

(1) The Board of Directors is the supreme official body of the non-profit organization. The Founder appoints the first members of the Board of Directors, unless otherwise specified in this Law.

(2) The Board of Directors primarily:

- a) Adopts the non-profit organization's budget,
- b) Adopts the annual accounts report and the annual activity and economic management report (hereinafter referred as the Annual Report),

c) Decides on the use of the profit and cover of losses including their settlement not later than before the end of the next accounting period.

d) Decides on the termination, merger, fusion or division of the non-profit organization (Section 14),

e) Submits motions for the change of data listed in the registry,

f) Elects and recalls the Executive Manager and determines his/her salary[7],

g) Elects and recalls members of the Board of Directors and the Supervisory Board (the Inspector),

h) Approves legal acts related to real estate,

i) Decides on changes in the Statute with the exception of provisions left to the Founder in the Founders Deed,

j) Decides on the limitation of the Executive Manager's right to act on behalf of the non-profit organization (Section 25).

(3) The Board of Directors decides on other matters to the extent of and under the terms set in the Statute.

##### Section 20

(1) The Board of Directors consists of at least three members. A natural person may become a member of the Board of Directors, when being in full legal capacity and of irreproachable character. The Executive Manager and a member of the Supervisory Board may not serve as the member of the Board of Directors.

(2) For the purposes of this Law, a natural person shall be considered as of irreproachable character if he/she has not been convicted of purposefully committing a crime.

##### Section 21

(1) For the purposes of this Law, a natural person shall be considered as of irreproachable character if he/she has not been convicted of purposefully committing a crime.

(2) The Board of Directors elects a Chair of the Board of Directors from among its members, and may elect also a Vice Chair.

(3) The Chair of the Board of Directors convenes, prepares and chairs the meetings of the Board of Directors.

(4) The Board of Directors meets according to need, but at least twice a year. The Board of Directors must be called within ten days since the delivery of a motion from the Supervisory Board (the Inspector) or from at least one third of members of the Board of Directors.

(5) An absolute majority of members of the Board of Directors is required for the decision of the Board of Directors to be valid, unless this Law stipulates otherwise.

(6) Membership on the Board of Directors is a voluntary and unpaid function. Members of the Board of Directors are entitled to reimbursement for their documented expenses connected with the performance of their function, under the special regulation. [8]

#### Section 22

(1) Membership on the Board of Directors terminates:

- a) Upon expiration of the term of office,
- b) Upon resignation,
- c) Upon recall, if the member of the Board of Directors violates provisions of this Law or if he/she does not participate on at least three subsequent regular meeting of the Board of Directors, or if he/she ceases to fulfill the terms as of Section 20,
- d) Upon death.

#### Executive Manager

#### Section 23

(1) The Executive Manager is the statutory organ managing the activity of the non-profit organization and acting on its behalf. He/she decides on all matters of the non-profit organization not reserved by this Law, the Deed on Foundation or the Statute to the jurisdiction of another body.

(2) The Board of Directors decision or the Founders Deed may limit the right of the Executive Manager to act on behalf of the non-profit organization; however, such a limitation has no effect with respect to third persons, if those persons did not or could not know about this fact.

(3) The Executive Manager is entitled to take part in the sessions of the Board of Directors with an advisory vote.

(4) The Executive Manager must be a natural person with legal capacity and of irreproachable character.

#### Section 24

(1) The Executive Manager is elected and recalled by the Board of Directors.

(2) The Board of Directors shall recall the Executive Manager if

a) he/she has been as convicted for a crime committed in connection with the performance of the executive managing function or for an intentional crime

b) he/she performs the activity [prohibited] by Section 27,

c) he/she demands so on his/her own.

(3) The Board of Directors may recall the Executive Manager if:

a) he/she is not able to perform his/her function for more than six months because of health reasons according to the medical expertise,

b) he/she acts in violation of this Law, the Deed on Foundation or the Statute,

c) the Supervisory Board or a member of the Supervisory Board so suggests.

(4) A two-thirds majority of all members of the Board of Directors is required in order to elect or recall the Executive Manager.

#### Supervisory Board (Inspector)

#### Section 25

(1) The Supervisory Board (the Inspector) is the supervisory body of the non-profit organization, which checks its activity.

(2) The Supervisory Board must be established, whenever the value of property of the non-profit organization is higher than SKK 5,000,000 or when its property contains priority property as of Sec. 31a. In all other cases it may be established, if the Statute provides for this.

(3) When the Supervisory Board was not established, its authority rests with the Inspector.

(4) The members of the Supervisory Board (the Inspector) are entitled to scrutinize all documents and records related to the activity of the non-profit organization and they check the compatibility of the books keeping of the non-

profit organization with the special rule<sup>[9]</sup> and whether the non-profit organization operates in compliance with the law, Founders' agreement and the Statute.

(5) The Supervisory Board (the Inspector), in particular:

- a) Examines the Annual Sheet of Balance and the Annual Report and provides its opinion to the Board of Directors,
- b) Checks the book-keeping and other documents,
- c) Alerts the Board of Directors on any detected deficiencies and submits suggestions for the elimination of such deficiencies.

(6) The Supervisory Board (the Inspector) is entitled to:

- a) Suggest convocation of an extraordinary meeting of the Board of Directors if the non-profit organization's interest so demands,
- b) Submit to the Board of Directors the move for recalling the Executive Manager,
- c) Suggest to limit the right of the Executive Manager to act on behalf of the non-profit organization,
- d) Take part in the meetings of the Board of Directors through its members with an advisory vote,
- e) Call the Board of Directors attention to detected breaches of the general laws, Founders Deed or the Statute.

#### Section 26

(1) The Supervisory Board has at least three members. The Inspector or a member of the Supervisory Board may be exclusively a natural person with legal capacity who is of irreproachable character. A member of the Board of Directors or the Executive Manager may not be [simultaneously] a member of the Supervisory Board.

(2) The members of the Supervisory Board (the Inspector) are elected and recalled by the Board of Directors. (See Section 19.)

(3) Membership in the Supervisory Board is a voluntary and unpaid function. The members of the Supervisory Board (the Inspector) are entitled to compensation for the documented expenses, which were spent in connection with their execution of the function, under the special rule<sup>[10]</sup>

#### Section 27

##### Conflict of interests

The members of the Board of Directors, the Executive Manager and the members of the Supervisory Board (the Inspector) must not:

- a) Make business in his/her own name or on his/her credit if such a business is connected with the activity of the non-profit organization,
- b) Mediate for other persons the businesses of the non-profit organization.

#### Section 28

##### Minutes from meetings of bodies

Minutes shall be made of the meetings of the bodies of the non-profit organization and these shall be preserved for the time set in the Statute; this period of time must not be shorter than one election period of the Board of Directors.

#### CHAPTER FIVE

##### ECONOMIC MANAGEMENT OF THE NON-PROFIT ORGANIZATION AND THE ACCOUNTING BOOK KEEPING

Economic management of the non-profit organization

#### Section 29

(1) The non-profit organization provides for its activity and manages its property; it may make use of the property of state or of the regional self-government according to special regulations<sup>[11]</sup>.

(2) The property of the non-profit organization is composed of:

- a) The founders contributions,
- b) The income from the organization's own activity,
- c) The income from business activity after taxation,
- d) The inherited property,
- e) The donations from natural and legal persons.

(3) Subsidies from the state budget, budget of the state fund or the community budget may also be provided to the non-profit organization.

A non-profit organization may receive state budget or state fund subsidies for the same

services from only one source, usually from that source, which has some relation to the predominant activity of the non-profit organization. The subsidy from the state budget, state fund budget or community budget may not be used to cover the expenditure (costs) of the administration of the non-profit organization.

#### Section 30

(1) A non-profit organization may be engaged in business activities according to special regulation<sup>[12]</sup> under the condition that such activity allows for more effective use of its property and the quality, extent and availability of services, for which the non-profit organization was established, will not be endangered.

(2) A non-profit organization is not entitled to take part in the business of other persons or to conclude an agreement on silent partnership.

(3) The incomes from activities of the non-profit organization are subjected to income tax according to valid tax laws.

(4) Means of a non-profit organization cannot be used to finance activities of political parties and political movements or for the benefit of a candidate to an elected function.

(5) The non-profit organization must not condition the provision of its public benefit services on acceptance of donations from natural or legal persons

#### Section 31

(1) The property of a non-profit organization may be used only in accordance with the terms set in the Founders Deed or in the Statute and to cover the expenses or costs connected with the management of the non-profit organization. The Board of Directors shall determine every year in the budget the amount of expenses (costs) of the non-profit organization in the measure necessary for assurance of the activities of the non-profit organization.

(2) If a natural or legal person donated a gift or contributes to a non-profit organization for a specific purpose, the non-profit organization may use it for a different purpose only with the prior consent of the person, which provided the gift or contribution.

#### Section 31a

(1) For the purposes of this law, the priority property is such a part of the state property, which the state as a founder or co-founder endows to the non-profit organization according

to the special law<sup>[13]</sup> and which is to be used exclusively for securing the public benefit services.

(2) The priority property must not be used as a security nor otherwise used to secure the obligations of the non-profit organization or a third person, it must not be sold, donated, rented nor lent.

(3) The priority property is not subject to liquidation.

(4) With respect to real estates forming the priority property there is registered the material burden to the benefit of the state, which is entered into the Cadaster (Register of Real Estates).

#### Section 32

##### Budget of the non-profit organization

(1) A non-profit organization is managed according to the adopted budget.

(2) The budget of a non-profit organization includes all budgeted assets and expenditures. It is constructed and adopted for the corresponding calendar year.

(3) The Executive Manager submits the budget proposal for adoption to the Board of Directors at least one month before the beginning of the calendar year for which the budget is designed. The Board of Directors shall adopt the non-profit organization's budget not later than by March 31 of the corresponding calendar year.

##### Accounting Procedures and the Annual Report.

#### Section 33

(1) A non-profit organization keeps accounting books according to a separate rule [14].

(2) A non-profit organization must keep separately incomes and expenditures related to the beneficial services from incomes and expenditures related to [unrelated] business activity.

(3) The Annual Accounts Report must be authorized by an Auditor,

a) if the subsidies from the state budget, budget of the state fund or the community fund are more than one million Slovak crowns in the year, which is reported in the Annual Accounts Report,

b) the total income of the non-profit organization exceeds five million Slovak crowns.

(4) One copy of the Annual Accounts Report authorized by the Auditor according to the Section 3 shall be submitted for publication in the Business Review<sup>[15]</sup> not later than by April 15th.

#### Section 34

(1) The non-profit organization shall prepare the Annual Report on the date determined by the Board of Directors or by the Founders Deed after the end of the calendar year, but not later than by March 31.

(2) The Annual Report includes:

a) A review of activities performed in that calendar year specified according to their relationship to the purpose of establishment of the non-profit organization,

b) The Annual Accounts Report and evaluation of the basic data included therein,

c) The Auditor Statement to the Annual Accounts Report if authorized by an Auditor,

d) A review of monetary incomes and expenditures,

e) A review of the extent of income specified according to its source,

f) The status and overview of handling the property and duties of the non-profit organization,

g) Changes in and new composition of the bodies of the non-profit organization which happened during the year,

h) Other data determined by the Board of Directors.

(3) The Annual Report must be published in the manner set forth in the Staute. One copy of the Annual Report shall be sent to the Registration Office by April 15<sup>th</sup>.

(4) The Annual Report must be accessible to the public at the seat of the non-profit organization.

#### CHAPTER SIX

#### COMMON, TRANSITIONAL AND CONCLUDING PROVISIONS

#### Section 35

##### State Supervision

(1) The Registration Office oversees, whether the non-profit organization fulfills its purpose and provides the generally beneficial services for

which it has been established. In order to do so, the Registration Office evaluates the content of the Annual Reports and in the case of detecting deficiencies the Registration Office notifies the bodies of the non-profit organization, demands correction, as well as fulfillment of the obligations set by the Law. If such a correction is not made, the Registration Office is entitled to file a motion to terminate the non-profit organization.

(2) The Ministry controls the registration and supervision of non-profit organizations as proceeded by registration offices.

(3) This Law does not affect the supervisory jurisdiction of bodies dealing according to special regulations, if the non-profit organization provides services according to special rules (Section 3).

#### Section 36

##### Provision of information

Everybody has the right of access to information on the use of property of a non-profit organization.

#### Section 37

##### Foreign non-profit organizations

A legal person with a seat outside of the territory of the Slovak Republic, which is a non-profit organization according to the Law of the state in which territory the non-profit organization or its organizational part resides, is entitled to operate on the territory of the Slovak Republic under same conditions and to the same extent as a non-profit organization constituted according to this Law, if it fulfills the terms for registration as defined by this Law.

#### Section 37a

##### Transitional Propositions

(1) The founder of the non-profit organization established according to previous regulations or a person empowered by the founder is obliged to submit before June 30<sup>th</sup> 2002 the proposal for registration of data, which are entered to the Register according to the provisions of this Law.

(2) In the case, when the proposal according to the Par. 1 is not submitted or the registering body rejects the proposal, the Ministry shall submit a motion to the court for termination of the non-profit organization.

#### Section 38

##### Effectiveness

This law becomes effective on the day of its declaration.

The Act No. 35/2002 becomes effective by March 1<sup>st</sup>, 2002.

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[1] E.g. the Act of the Slovak National Council No. 135/1992, the Act of the Slovak National Council No. 272/1994, on Prevention of Health and People in the text of later amendments, the Act of the Slovak National Council No. 277/1994, on Health Care in the text of later amendments.

[2] The Act of the Slovak National Council No. 303/1995, on Budgetary Regulations, in the text of the Act of the Slovak National Council No. 386/1996.

[3] E.g. the Act of the Slovak National Council No. 135/1992, the Act of the Slovak National Council No. 272/1994, on Health and People Protection in the text of later amendments, the Act of the Slovak National Council No. 277/1994, on Health Care in the text of later amendments

[4] The Governmental Regulation No. 100/1993, on Commercial Review.

[5] The Act No. 71/1967, on Administrative Proceedings.

[6] See Sections 68 to 75 of the Commercial Code.

[7] The Act No. 1/1992, on Wage, Remuneration for Working Alert and on the Average Wage in the text of later amendments.

[8] The Act No. 119/1992, on Travel Remunerations, in the text of later amendments.

[9] The Act No. 563/1991, on Accounting Procedures, in the text of the Act No. 272/1996.

[10] The Act No. 119/1992, on Travel Remunerations in the text of later amendments.

[11] See Section 13, Par. 1 of the Act No. 278/1993, on Management of the State Property in the text of the Act No. 374/1996. The Act No.138/1991, on the Property of Communities, in the text of later amendments.

[12] E.g. the Civil Code, the Act No.455/1991, on Trading, in the text of later amendments.

[13] The Act No. 13/2002, on Condition of Transformation of Certain Budgetary

Organizations and Subsidiary Organizations into Non-Profit Organizations Providing Generally Beneficial Services (the Transformation Act), by which the Act No. 92/1991, on Condition of the Transfer of the State Property to Other Persons, in the text of later amendments, is changed and amended.

[14] The Act No. 563/1991, on Accounting Procedures, in the text of the Act No. 272/1996.

[15] The Government Regulation No. 100/1993, on Commercial Review.

#### **11.4. Law on NGO**

#### **11.5. Law on Other Legal Forms**

Law on non-investment funds

147/1997 Z.z.

#### **ZÁKON**

z 15. mája 1997 o neinvestičných fondoch a o doplnení zákona Národnej rady Slovenskej republiky č. 207/1996 Z.z.

Národná rada Slovenskej republiky sa uzniesla na tomto zákone:

#### **§ 1 - § 2**

#### **Základné ustanovenia**

#### **§ 1**

Tento zákon upravuje zriadenie, vznik, zrušenie, zánik a hospodárenie neinvestičných fondov (ďalej len "fond").

#### **§ 2**

(1) Fond je neziskovou právnickou osobou, ktorá združuje peňažné prostriedky určené na plnenie všeobecne prospešného účelu alebo individuálne určenej humanitnej pomoci pre jednotlivca alebo pre skupinu osôb, ktoré sa ocitli v ohrození života alebo potrebujú naliehavú pomoc pri postihnúť živelnou pohromou.

(2) Podľa tohto zákona sa za všeobecne prospešný účel považuje najmä

- a) rozvoj a ochrana duchovných hodnôt,
- b) ochrana ľudských práv,
- c) ochrana a tvorba životného prostredia,

- d) zachovanie prírodných a kultúrnych hodnôt,
- e) ochrana a podpora zdravia a vzdelávania,
- f) rozvoj sociálnych služieb.

(3) Fond môže vlastniť aj veci nevyhnutne potrebné na jeho správu v rozsahu, ktorý je určený v štatúte.

### § 3

#### Zriadenie fondu

(1) Fond môže zriadiť fyzická osoba alebo právnická osoba (ďalej len "zriaďovateľ").

(2) Ak je zriaďovateľom jedna osoba, fond sa zriaďuje zriaďovacou listinou vo forme notárskej zápisnice. Ak je viac zriaďovateľov, fond sa zriaďuje zriaďovacou zmluvou; pravosť podpisov všetkých zriaďovateľov musí byť úradne overená. Zriaďovacia listina musí mať rovnaké obsahové náležitosti ako zriaďovacia zmluva.

(3) Zriaďovaciu zmluvu môže uzavrieť aj splnomocnenec, ktorý má na to plnomocenstvo. Plnomocenstvo s úradne overeným podpisom splnomocniteľa sa pripojí k zriaďovacej zmluve.

### § 4 Názov fondu

Názvom fondu sa rozumie názov, pod ktorým je fond zapísaný v registri fondov (ďalej len "register"). Názov fondu musí obsahovať označenie "neinvestičný fond", stačí však skratka "n.f."

### § 5

#### Náležitosti zriaďovacej zmluvy

(1) Zriaďovacia zmluva obsahuje

- a) názov a sídlo fondu,
- b) čas, na ktorý sa fond zriaďuje,
- c) účel, ktorý bude z prostriedkov fondu podporovaný,

d) meno a priezvisko (názov) a trvalý pobyt (sídlo) zriaďovateľov,

e) výšku peňažného vkladu (ďalej len "vklad") každého zriaďovateľa a lehotu splatenia vkladu,

f) určenie osoby, ktorá vykoná úkony súvisiace so vznikom fondu.

(2) Súčasťou zriaďovacej zmluvy je štatút fondu.

### § 6

#### Štatút fondu

(1) Štatút fondu obsahuje najmä

- a) názov a sídlo fondu,
- b) účel, ktorý bude z prostriedkov fondu podporovaný,
- c) určenie okruhu osôb, ktorým môžu byť poskytnuté prostriedky z fondu, alebo označenie územia, v ktorého rámci budú tieto prostriedky poskytované,
- d) orgány fondu a ich pôsobnosť,
- e) ustanovenia o obmedzení výdavkov na správu fondu,
- f) spôsob majetkového vypořádania pri zrušení fondu,
- g) určenie osoby, na ktorú prejdú oprávnenia zriaďovateľa pre prípad jeho smrti alebo zániku.

(2) Každý je oprávnený nahliadať do štatútu fondu a robiť si z neho výpisy alebo odpisy.

(3) Fond je povinný na požiadanie sprístupniť štatút fondu.

### § 7 Vklad zriaďovateľa

(1) Vkladom zriaďovateľa je súhrn peňažných prostriedkov, ktoré sa zriaďovateľ zaväzuje vložiť do fondu. Hodnota vkladu zriaďovateľa musí byť aspoň 2 000 Sk.

(2) Splatený vklad zriaďovateľa je majetkom fondu. Zriaďovateľ je povinný splatiť svoj vklad v lehote určenej v zriaďovacej zmluve.

### § 8

#### Správa vkladov do fondu

(1) Pred vznikom fondu spravuje splatené časti vkladov zriaďovateľ poverený v zriaďovacej zmluve. Vlastnícke právo k týmto vkladom prechádza na fond dňom jeho vzniku.

(2) Po vzniku fondu je zriaďovateľ spravujúci vklady povinný odovzdať ich bez zbytočného odkladu fondu. Ak fond nevznikne, je povinný ich vrátiť tomu zriaďovateľovi, ktorý ich vložil.

(3) Zriaďovateľ spravujúci vklady je povinný vydať písomné vyhlásenie o splatení vkladu alebo jeho časti jednotlivými zriaďovateľmi, ktoré sa prikladá k návrhu na zápis do registra. Ak uvedie vo vyhlásení vyššiu sumu, než je splatená, ručí za záväzky fondu až do výšky, v akej vklady neboli splatené.

#### § 9 - § 11

##### Vznik fondu

#### § 9

(1) Fond vzniká dňom, ku ktorému bol zapísaný do registra. Návrh na zápis fondu do registra sa musí podať do 60 dní odo dňa zriadenia fondu; príkladá sa k nemu zriaďovacia zmluva, štatút fondu, vyhlásenie o splatení vkladu alebo jeho časti jednotlivými zriaďovateľmi.

(2) Register vedie krajský úrad príslušný podľa sídla fondu (ďalej len "registrový úrad").

(3) Ústredný register vedie Ministerstvo vnútra Slovenskej republiky (ďalej len "ministerstvo").

#### § 10

(1) Registrový úrad vydá rozhodnutie o registrácii a vykoná zápis do registra, ak zriaďovacia zmluva a štatút sú v súlade so zákonom.

(2) Do registra sa zapisuje

a) názov a sídlo fondu,

b) identifikačné číslo,

c) účel, ktorý bude z prostriedkov fondu podporovaný,

d) výška vkladu každého zriaďovateľa a rozsah jeho splatenia,

e) názov banky a číslo účtu zriaďovateľa, na ktorom sú uložené splatené vklady a ostatné peňažné prostriedky,

f) meno, priezvisko a trvalý pobyt správcu fondu.

(3) Do registra sa zapíše bez zbytočného odkladu aj zmena alebo zánik zapisovaných skutočností.

(4) Identifikačné číslo prideliť fondu registrový úrad.

(5) Zápis do registra sa vykoná ku dňu určenému v návrhu na zápis. Ak sa rozhodnutie o vykonaní zápisu vydá neskôr alebo návrh neobsahuje deň, ku ktorému sa má zápis vykonať, zápis sa vykoná ku dňu vydania tohto rozhodnutia.

(6) Údaje zapísané do registra zašle registrový úrad do 10 dní od vykonania zápisu na zverejnenie v Obchodnom vestníku; okrem toho tieto údaje zašle ministerstvu na účely vedenia ústredného registra, ako aj Štatistickému úradu Slovenskej republiky na účely vedenia štatistického registra.

(7) Na konanie a rozhodovanie o registrácii sa vzťahujú ustanovenia všeobecných predpisov o správnom konaní, /1/ ak tento zákon neustanovuje inak.

#### § 11

(1) Do vzniku fondu konajú vo veciach súvisiacich so vznikom fondu za fond jeho zriaďovateľ, zriaďovateľa alebo niektorý z nich určený v zriaďovacej zmluve.

(2) Zo záväzkov, ktoré prevzali zriaďovateľa alebo niektorý z nich za fond do dňa jeho vzniku, sú zaviazaní zriaďovateľa spoločne a nerozdielne.

(3) Záväzky vzniknuté podľa odseku 2 prechádzajú na fond okamihom jeho vzniku, ak ich fond do troch mesiacov neodmietne.

#### § 12

##### Zrušenie fondu

(1) Fond sa zrušuje

a) uplynutím času, na ktorý bol zriadený,

b) dosiahnutím účelu, na ktorý bol zriadený,

c) dňom uvedeným v rozhodnutí zriaďovateľov alebo správnej rady o zrušení fondu, inak dňom, keď bolo toto rozhodnutie prijaté,

d) rozhodnutím zriaďovateľov alebo správnej rady o zlúčení alebo o splynutí fondu,



e) dňom uvedeným v rozhodnutí súdu o zrušení fondu, inak dňom, keď toto rozhodnutie nadobudlo právoplatnosť,

f) vyhlásením konkurzu alebo zamietnutím návrhu na vyhlásenie konkurzu pre nedostatok majetku.

(2) Súd môže na návrh štátneho orgánu alebo osoby, ktorá osvedčí právny záujem, rozhodnúť o zrušení fondu a o jeho likvidácii, ak fond

a) závažným spôsobom porušil alebo opakovane porušuje ustanovenia štatútu a všeobecne záväzných právnych predpisov,

b) v období dlhšom ako dva roky neplní účel, na ktorý bol zriadený, alebo dosiahol účel, na ktorý bol zriadený, a nebol podaný návrh na jeho výmaz z registra.

(3) Pred rozhodnutím o návrhu na zrušenie fondu môže súd určiť lehotu na odstránenie dôvodu, pre ktorý sa zrušenie navrholo.

## § 13

### Zlúčenie a splynutie

(1) Zriaďovateľ alebo správna rada môže rozhodnúť o zlúčení alebo o splynutí fondu s iným fondom alebo s nadáciou.

(2) Pri zlúčení prechádza majetok zrušeného fondu na fond, s ktorým sa fond zlúčil, alebo na nadáciu, s ktorou sa fond zlúčil.

(3) Pri splynutí prechádza majetok fondu na fond vzniknutý splynutím alebo na nadáciu vzniknutú splynutím.

(4) Zmeny, ktoré zo zlúčenia alebo zo splynutia vyplývajú a sú predmetom zápisu do registra, oznámi správca fondu do siedmich dní registrovému úradu.

## § 14

### Zánik a likvidácia

(1) Fond zaniká ku dňu výmazu z registra. Jeho zániku predchádza zrušenie s likvidáciou alebo bez likvidácie. (2) Likvidácia sa nevyžaduje, ak peňažné prostriedky fondu prechádzajú na iný fond alebo na nadáciu po zlúčení alebo po splynutí. V registri sa vykoná výmaz zaniknutého fondu a zápis fondu alebo nadácie vzniknutej

splynutím k tomu istému dňu. Výmaz zlučovaného fondu a zápis zmeny pri fonde alebo pri nadácii, s ktorou sa zanikajúci fond zlúčil, sa takisto vykonajú k tomu istému dňu.

(3) Likvidačný zostatok môže byť prevedený len na iný fond alebo na nadáciu.

(4) Odmenu likvidátora určí ten, kto likvidátora vymenoval.

(5) Náklady na likvidáciu sa uhradia z majetku fondu.

(6) Na zrušenie fondu s likvidáciou alebo bez likvidácie a na zánik fondu sa použijú primerane ustanovenia Obchodného zákonníka o zrušení a zániku obchodných spoločností, /2/ ak tento zákon neustanovuje inak.

## § 15

### Orgány fondu

Orgány fondu sú:

a) správna rada,

b) správca,

c) iné orgány, ak to ustanoví štatút.

## § 16

### Správna rada

(1) Správna rada je najvyšším orgánom fondu.

(2) Do výlučnej pôsobnosti správnej rady patrí

a) schvaľovanie rozpočtu fondu a rozhodovanie o použití prostriedkov fondu,

b) schvaľovanie ročnej účtovnej závierky a výročnej správy fondu,

c) rozhodovanie o zlúčení, splynutí a zrušení fondu, ak to ustanovuje zriaďovacia zmluva,

d) určenie výšky výdavkov fondu na jeho správu v súlade so štatútom,

e) vymenovanie likvidátora,

f) vykonávanie zmien štatútu, ak to umožňuje zriaďovacia zmluva.

(3) Správna rada rozhoduje aj o ďalších skutočnostiach v rozsahu a za podmienok určených v štatúte.

## § 17

Zloženie a vznik správnej rady

(1) Členom správnej rady môže byť len fyzická osoba, ktorá je spôsobilá na právne úkony a bezúhonná. Za bezúhonného sa nepovažuje ten, kto bol právoplatne odsúdený za úmyselný trestný čin.

(2) Členom správnej rady nemôže byť osoba, ktorej sa poskytujú prostriedky fondu.

(3) Členov správnej rady vymenúva a odvoláva zriaďovateľ, ak štatút neurčuje inak.

(4) Počet členov správnej rady, ich funkčné obdobie a spôsob vymenovania a odvolania ustanoví štatút.

(5) Členstvo v správnej rade je dobrovoľnou a neplatenou funkciou. Členom správnej rady patria náhrady preukázaných výdavkov, ktoré im vznikli pri výkone funkcie, podľa ustanovení osobitného predpisu. /3/

(6) Členstvo v správnej rade zaniká

a) smrťou,

b) uplynutím funkčného obdobia,

c) odstúpením,

d) odvolaním pre stratu predpokladov podľa odseku 1 alebo pre nezáujem člena o prácu v správnej rade, za ktorý sa považuje neospravedlnená neúčast' na troch po sebe idúcich zasadaniach.

(7) Na čele správnej rady je predseda. Predsedu správnej rady vymenúva a odvoláva zriaďovateľ.

(8) Podrobnosti o pôsobnosti, zvolávaní, rokovaní a uznášaní sa správnej rady ustanovuje štatút fondu, ak tento zákon neustanovuje inak.

(9) Na prijatie rozhodnutia o zlúčení, splynutí alebo o zrušení fondu je potrebný súhlas nadpolovičnej väčšiny všetkých členov správnej rady.

(10) Zo schôdze správnej rady sa vyhotovuje zápisnica, ktorú fond uschováva po určený čas štatútom, najmenej však päť rokov.

## § 18

Správca

(1) Správca je štatutárnym orgánom fondu, ktorý riadi jeho činnosť. Rozhoduje o všetkých záležitostiach fondu, ak nie sú týmto zákonom, zriaďovacou zmluvou alebo štatútom vyhradené do pôsobnosti iných orgánov fondu.

(2) Zriaďovacia zmluva, štatút alebo rozhodnutie správnej rady môžu obmedziť oprávnenie správcu konať v mene fondu; tieto obmedzenia však nie sú účinné voči tretím osobám, ak tieto osoby o tejto skutočnosti nevedeli alebo nemohli vedieť.

(3) Správcu volí a odvoláva správna rada; jeho funkčné obdobie určí štatút.

(4) Za správcu môže byť zvolená fyzická osoba, ktorá je spôsobilá na právne úkony a je bezúhonná.

(5) Funkciu správcu môže vykonávať člen správnej rady, len ak to ustanoví štatút.

## § 19

Majetok fondu a jeho nadobúdanie

(1) Majetok fondu tvoria vklady zriaďovateľov a ďalšie peňažné prostriedky, ktorými sú

a) peňažné dary a príspevky od fyzických osôb alebo od právnických osôb,

b) príjmy z verejných zbierok, /4/

c) dedičstvo v peňažnej forme alebo príjem z predaja dedičstva získaného v inej forme,

d) príjmy z lotérií a iných podobných hier, /5/

e) príjmy z organizovania kultúrnych, vzdelávacích, spoločenských alebo športových akcií,

f) príjmy z predaja vlastnej literatúry podporujúcej účel fondu,

g) úroky z peňažných vkladov v bankách,

h) príjmy zo štátnych dlhopisov,

i) príjem z likvidačného zostatku iného fondu.

(2) Majetkom fondu sú aj hnutelné a nehnuteľné veci potrebné na výkon správy fondu (§ 2 ods. 3).

(3) Príjmami fondu môžu byť aj dotácie zo štátneho rozpočtu, /6/ z rozpočtu štátneho fondu alebo z rozpočtu obce.

(4) Dotácie zo štátneho rozpočtu sa môžu fondu poskytnúť na rovnaký účel iba z jedného miesta, spravidla z toho, ktoré má vzťah k prevažujúcej činnosti fondu. Z dotácií zo štátneho rozpočtu sa nemôžu uhrádzať výdavky na správu fondu.

## § 20

### Verejná zbierka

(1) Fond je oprávnený usporiadať verejnú zbierku /4/ na získanie peňažných prostriedkov na financovanie svojho účelu (§ 2 ods. 1).

(2) Úmysel usporiadať verejnú zbierku /4/ písomne oznámi správca registrovému úradu s uvedením účelu, na ktorý sa použije jej výnos.

(3) Oznámenie podľa odseku 2 musí byť registrovému úradu odoslané najneskôr 15 dní pred začatím verejnej zbierky. /4/

(4) Registrový úrad zakáže usporiadanie ohlásenej verejnej zbierky, /4/ ak z oznámenia podľa odseku 2 vyplýva, že uvedený účel zbierky nie je v súlade s účelom fondu ustanoveným v jeho štatúte.

(5) Registrový úrad, ktorému bolo usporiadanie verejnej zbierky /4/ oznámené, môže jej konanie dočasne zastaviť, ak zistí, že fond nedodržiava právne predpisy o verejných zbierkach. /4/

(6) Ak tento zákon neustanovuje inak, na usporiadanie verejnej zbierky /4/ a spôsob jej konania sa primerane použijú ustanovenia právnych predpisov o verejných zbierkach. /4/

## § 21

### Výdavky fondu

(1) Výdavkami fondu sú

a) výdavky na financovanie účelu fondu v súlade so štatútom fondu,

b) výdavky na správu fondu.

(2) Výdavky fondu podľa odseku 1 sa rozpočtujú podľa jednotlivých cieľov a spôsobu použitia. Môžu sa rozpočtovať aj podľa subjektov, ktorým sa poskytujú.

(3) Výdavky na správu fondu podľa odseku 1 písm. b) zahŕňajú všetky výdavky fondu za účtovné obdobie súvisiace so správou fondu, výdavky na propagáciu účelu fondu a výdavky súvisiace s prevádzkou fondu vrátane mzdových prostriedkov a odmien vyplácaných zamestnancom fondu a náhrad výdavkov vyplácaných členom jeho orgánov, ktoré im vznikli pri výkone ich funkcií.

(4) Výšku výdavkov fondu podľa odseku 1 písm. b) určuje na každý účtovný rok správna rada, najviac však do 15% celkových výdavkov fondu za účtovné obdobie. Výdavky na organizovanie aktivít podľa § 20 ods. 1 zameraných na získanie peňažných prostriedkov na financovanie účelu fondu, výdavky za vykonaný audit, výdavky na zisťovanie spôsobu použitia prostriedkov fondu a úhrady za zverejnenie údajov zapisovaných do registra sa do takto určenej výšky výdavkov na správu fondu nezapočítavajú.

## § 22

### Rozpočet fondu

(1) Fond hospodári podľa schváleného rozpočtu.

(2) Rozpočet fondu obsahuje všetky rozpočtované príjmy a výdavky fondu. Rozpočet fondu sa zostavuje a schvaľuje na príslušný kalendárny rok.

(3) Návrh rozpočtu predkladá na schválenie správnej rade správca najneskôr mesiac pred začiatkom kalendárneho roka, na ktorý sa rozpočet zostavuje. Správna rada schvaľuje rozpočet fondu najneskôr do 31. marca kalendárneho roka.

## § 23 Použitie prostriedkov fondu

(1) Prostriedky fondu sa nesmú použiť na podnikanie a na financovanie činnosti politických strán a politických hnutí.

(2) Ak fyzická osoba alebo právnická osoba poskytla fondu dar alebo príspevok na konkrétny účel, fond je oprávnený použiť ho na iný účel len s predchádzajúcim písomným súhlasom tej osoby, ktorá dar alebo príspevok poskytla.

(3) Výnos z verejnej zbierky /4/ môže fond použiť len na účel, na ktorý sa verejná zbierka usporiadala, a vo vymedzenom rozsahu na správu fondu. O použití nevyčerpaných prostriedkov verejnej zbierky rozhodne správna rada fondu a o

svojom rozhodnutí informuje verejnú verejnú spoločnosť spôsobom ako pri vyhlásení verejnej zbierky.

(4) Osoba, ktorej fond poskytol prostriedky z rozpočtu fondu, je povinná

a) použiť prostriedky len na účel, na ktorý jej boli poskytnuté,

b) na požiadanie fondu do troch mesiacov preukázať, že prostriedky poskytnuté fondom použila na určený účel.

(5) Prostriedky fondu určené na financovanie všeobecne prospešného účelu nemôžu byť poskytnuté jeho zriaďovateľovi, členom orgánov fondu a ich blízkym osobám /7/ a ani členom orgánov právnických osôb, ktoré poskytli fondu dar alebo príspevok.

(6) Fond je oprávnený požadovať od osoby, ktorej poskytol prostriedky, vrátenie prostriedkov alebo ich časti, ak nesplnila povinnosť podľa odseku 4.

(7) Podrobnosti o podmienkach použitia prostriedkov fondu ustanoví štatút fondu.

## § 24

### Účtovníctvo

(1) Fond vedie účtovníctvo podľa osobitného predpisu. /8/

(2) Ročná účtovná závierka musí byť overená audítorom, ak úhrn celkových príjmov a výdavkov fondu za kalendárny rok prevyšuje sumu 5 000 000 Sk.

(3) Výtlačok ročnej účtovnej závierky overenej audítorom podľa odseku 2 zasiela fond na zverejnenie v Obchodnom vestníku /9/ najneskôr do 15. apríla.

## § 25

### Výročná správa

(1) Fond je povinný vypracovať výročnú správu za uplynulý kalendárny rok vždy do 31. marca.

(2) Výročná správa fondu obsahuje

a) prehľad činností vykonávaných v hodnotenom období s uvedením vzťahu k účelu fondu,

b) ročnú účtovnú závierku a vyhodnotenie základných údajov v nej zahrnutých a výrok audítora k nej, ak vznikla povinnosť jej overenia audítorom,

c) prehľad o daroch a príspevkoch poskytnutých fondu,

d) prehľad príjmov podľa zdrojov a ich pôvodu,

e) stav majetku a záväzkov fondu k 31. decembru,

f) celkové výdavky v členení na výdavky podľa jednotlivých druhov činností fondu a osobitne výšku výdavkov na správu fondu,

g) zmeny vykonané v štatúte a v zložení orgánov, ku ktorým došlo v hodnotenom období,

h) ďalšie údaje, ktoré určí správna rada.

(3) Výročná správa fondu musí byť zverejnená spôsobom, ktorý určí zriaďovateľ v štatúte. Jeden výtlačok výročnej správy zasiela fond registrovému úradu do 15. apríla.

## § 26

### Dohľad

(1) Registrový úrad dohliada, či fond plní účel, na ktorý sa zriadil; na tento účel vyhodnocuje obsah výročných správ a v prípade zistenia nedostatkov upozorňuje na ne orgány fondu, požaduje vykonanie nápravy, ako aj splnenie povinností uložených zákonom. Ak náprava nebola vykonaná, môže registrový úrad podať návrh na zrušenie fondu.

(2) Registrové úrady pri registrácii fondov a výkone dohľadu riadi ministerstvo.

## § 27

### Ochrana anonymity darcu

Ak darca trvá na zachovaní anonymity, jeho meno a priezvisko (názov) sa nesmú uvádzať v prehľade darcov ani inak oznámiť. § 28 Zdaňovanie fondu Na zdaňovanie príjmov a majetku fondu sa vzťahujú osobitné predpisy. /10/

§ 29

Platové pomery zamestnancov

Na platové pomery zamestnancov fondu sa vzťahuje osobitný predpis. /11/

zruší a nariadi jeho likvidáciu do troch mesiacov od uplynutia lehoty podľa odseku 1.

(6) Do nadobudnutia účinnosti zápisu fondu do registra podľa odseku 1 alebo počas premeny na inú právnu formu neziskovej organizácie podľa odseku 2 sa právne pomery fondu vzniknutého pred nadobudnutím účinnosti tohto zákona riadia doterajšími predpismi, ak tento zákon neustanovuje inak.

§ 30

Zahraničné fondy

Právnická osoba so sídlom mimo územia Slovenskej republiky, ktorá je fondom podľa práva štátu, na ktorého území má svoje sídlo alebo jeho organizačná zložka, môže na území Slovenskej republiky pôsobiť za rovnakých podmienok a v rovnakom rozsahu ako fond vzniknutý podľa tohto zákona, ak splní podmienky na zápis do registra ustanovené týmto zákonom.

(7) Ustanovenie § 2 ods. 1 a 2 a zákaz použiť prostriedky fondu na podnikanie (§ 23) sa počas platnosti medzinárodných zmlúv určujúcich podmienky poskytovania zahraničnej pomoci Slovenskej republike, ktorými je Slovenská republika viazaná, nevzťahujú na fondy, ktoré vznikli podľa § 20b Občianskeho zákonníka pred účinnosťou tohto zákona, ak ich zriadenie bolo podmienkou čerpania zahraničnej pomoci pre Slovenskú republiku a ku dňu účinnosti tohto zákona používajú svoje prostriedky na podporu podnikania.

Č.II

§ 31

Prechodné ustanovenia

(1) Fondy, ktoré vznikli podľa doterajších predpisov, sa považujú za fondy podľa tohto zákona, ak na návrh podľa § 9 budú do 31. augusta 1997 zapísané do registra.

(2) Fond, ktorý vznikol podľa doterajších predpisov, sa môže do 31. augusta 1997 premeniť na inú právnu formu neziskovej organizácie alebo rozhodnúť o svojom zrušení a vstupe do likvidácie.

(3) Zrušenie fondu, jeho vstup do likvidácie likvidátor alebo štátny orgán bez zbytočného odkladu oznámi okresnému úradu, ktorý vedie register podľa doterajších predpisov.

(4) Fond, ktorý sa premenil na inú právnu formu neziskovej organizácie, oznámi túto skutočnosť najneskôr do 31. augusta 1997 okresnému úradu, v ktorého obvode bol zaregistrovaný. Okresný úrad vykoná výmaz z registra, ktorý vedie podľa doterajších predpisov.

(5) Ak nebudú vykonané opatrenia podľa ustanovenia odseku 1 alebo odseku 2 alebo ak registrový úrad návrh na registráciu zamietne, okresný úrad, v ktorého obvode bol fond zaregistrovaný podľa doterajších predpisov, fond

Zákon Národnej rady Slovenskej republiky č. 207/1996 Z.z. o nadáciách sa dopĺňa takto:

§ 42 sa dopĺňa odsekom 6, ktorý znie:

"(6) Ustanovenie § 3 a 5 sa počas platnosti medzinárodných zmlúv určujúcich podmienky poskytovania zahraničnej pomoci Slovenskej republike, ktorými je Slovenská republika viazaná, sa nevzťahuje na nadácie, ktoré vznikli podľa § 20b Občianskeho zákonníka pred účinnosťou tohto zákona, ak ich zriadenie bolo podmienkou čerpania zahraničnej pomoci pre Slovenskú republiku a ku dňu účinnosti tohto zákona používajú svoje prostriedky na podporu podnikania."

Č.III

Odkazy

/1/ Zákon č. 71/1967 Zb. o správnom konaní (správny poriadok).

/2/ § 68 až 75 Obchodného zákonníka.

/3/ Zákon č. 119/1992 Zb. o cestovných náhradách v znení neskorších predpisov.

/4/ Zákon Slovenskej národnej rady č. 63/1973 Zb. o verejných zbierkach a o lotériách a iných podobných hrách v znení zákona Slovenskej národnej rady č. 194/1990 Zb. Vyhláška Ministerstva vnútra Slovenskej socialistickej republiky č. 64/1973 Zb., ktorou sa vykonávajú niektoré ustanovenia zákona Slovenskej národnej rady č. 63/1973 Zb. o verejných zbierkach a o lotériách a iných podobných hrách.

/5/ Zákon Slovenskej národnej rady č. 194/1990 Zb. o lotériách a iných podobných hrách v znení zákona Slovenskej národnej rady č. 68/1992 Zb., zákona Národnej rady Slovenskej republiky č. 249/1994 Z.z., zákona Národnej rady Slovenskej republiky č. 224/1996 Z.z. a zákona Národnej rady Slovenskej republiky č. 386/1996 Z.z.  
/6/ Zákon Národnej rady Slovenskej republiky č. 303/1995 Z.z. o rozpočtových pravidlách v znení zákona Národnej rady Slovenskej republiky č. 386/1996 Z.z.

/7/ § 116 Občianskeho zákonníka.

/8/ Zákon č. 563/1991 Zb. o účtovníctve v znení zákona Národnej rady Slovenskej republiky č. 272/1996 Z.z.

/9/ Nariadenie vlády Slovenskej republiky č. 100/1993 Z.z. o Obchodnom vestníku.

/10/ Napríklad zákon č. 286/1992 Zb. o daniach z príjmov v znení neskorších predpisov, zákon Slovenskej národnej rady č. 317/1992 Zb. o dani z nehnuteľností v znení neskorších predpisov, zákon Slovenskej národnej rady č. 318/1992 Zb. o dani z dedičstva, dani z darovania a dani z prevodu a prechodu nehnuteľností v znení zákona Národnej rady Slovenskej republiky č. 87/1993 Z.z.

/11/ Zákon č. 1/1992 Zb. o mzde, odmene za pracovnú pohotovosť a o priemernom zárobku v znení neskorších predpisov.

## **11.6. Other Laws**

### **11.6.1. The Act on Gambling**

THE ACT of March 16, 2005 on Gambling Games and on Amendment and Supplement to Some Acts

The National Council of the Slovak Republic has adopted a resolution on the following Act:

Article I

#### **PART I - GENERAL PROVISIONS**

##### **Section 1**

### **The Subject and Purpose of the Act**

This Act amends

the conditions for the operation of gambling games,

the rights and duties of the operators of gambling games and gamblers,

the conditions for the use of technical equipment designated for the operation of gambling games,

some conditions of the establishment and activity of

the National Lottery Company,

the engagement of the public administration and municipality bodies in the field of gambling games,

supervision over the operation of gambling games.

The purpose of this Act is in the public interest to create the conditions for the protection of public order during the operation of gambling games and securing community compensation of risks ensuing the operation of gambling games and participation in them.

### **Section 2**

#### **Definition of Terms**

For the purpose of this Act

the operator of a gambling game is understood as a legal person that was granted an individual license in accordance with this Act by a relevant body of the public administration or municipality, or a legal person that fulfilled the conditions of a general license issued by the Ministry of Finance of the Slovak Republic (hereinafter referred to as the "Ministry") and handed in a notification according to Section 19,

the operation of a gambling game is understood as the execution or contractual securing of execution of activities needful for the realization of a gambling game according to the game plan, and that is always in the currency of the operator of a gambling game,

the game plan is understood as a set of rules including the rules of a gambling game, the rules and the manner of stake taking and their amount, the rules and the manner of making a bet, if determination of a bet is also the essence of a gambling game, a number of lots and price of one lot, if they will be issued, the possibilities of a

return of a contribution, the rules, deadlines and the manner of payout of the winning, a Complaint Code and other requirements specified in this Act; a Complaint Code is understood as a set of rules determining the conditions of lodging a complaint including the manner and deadline for lodging a complaint,

the rules of a gambling game are understood as the conditions of participation in a gambling game, the manner of determination of the result of a gambling game, the winners, the winning and its amount,

a gambler is understood as a natural person that fulfilled the conditions of participation in a gambling game,

a license is understood as a General License and Individual License, unless in individual provisions of this Act there are stated only a general license or only an individual license, possibly individual licenses for the operation of individual types of gambling games,

a bet is understood as a value determined by a gambler, which will be compared with the value determining the result of a gambling game,

a stake is understood as a payment of cash or provision of another asset value that is needed for a gambler to take part in a gambling game,

prize principal is understood as a sum meant for a payout of prizes, which will be allotted to winning gamblers according to a gambling game rules,

a winning is understood as a result of one gambling game, on the basis of which a gamblers is entitled to a payout of funds or other asset values,

a premium game is understood as a part of a gambling game, in which it is played for jackpot, which is made of the parts of the gamblers' stakes according to the conditions determined in the game plan, whereas jackpot is one of possible winnings that will be obtained by a gambler according to the conditions determined in the game plan,

a state lottery is understood as a gambling game that is made of numerical lotteries, especially bingo and gambling games operated by means of the Internet

an applicant is understood as a legal person that submitted an application for granting an individual license,

a financial security is understood as the sum stipulated by this Act, with which an applicant and

the operator must have at their disposal only in accordance with this Act,

a gambling house is understood as a room or set of rooms constructionally connected with each other and interconnected, purpose fitted and set up for the operation of gambling games, where it is gambled especially on gambling machines or technical equipment operated directly by gamblers; a gambling house must be situated in an isolated area,

multiple gambling is understood as a gambling game implementation method, in which gamblers have apart from a single possible winning still a possibility of further winning,

casino is understood as a gambling house where board games, possibly gambling machines and gambling games are operated by means of technical equipment operated directly by gamblers in a casino.

### Section 3

#### Gambling Games

(1) Gambling games are the games in which a gambler may obtain a winning in cash, material prize, or prize in rights, if he fulfils the conditions prescribed by the game plan beforehand. A result of a gambling game depends solely or largely on luck or a previously unknown result of a certain circumstance or incident. The result of a circumstance or incident that determines the result of a gambling game must not be known to anyone beforehand and must not be tamperable by anyone and must not be at variance with the rules of a gambling game.

(2) Gambling games are

lottery games,

casino gambling games,

bet games,

gambling games operated by means of gambling machines,

gambling games operated by means of technical equipment operated directly by gamblers or operated by means of telecommunication equipment, and video games,

gambling games operated by means of the Internet,

games that are not gambling games according to letters a) to f), if they fulfil the conditions stipulated in Paragraph 1.

(3) Gambling games may be operated only on the basis of a license issued or granted according to this Act and under conditions stipulated by this Act.

(4) Gambling games are not considered to be sports competitions with prizes for participants,

games of a relaxation or sport character, even if a stake is necessary for participation in them, which is not refundable if the participant loses,

entertaining games with material prizes by means of a gambling device, if the stake does not exceed the sum of SKK 10,

games by means of a gambling device in which a winning is another game on the same gambling device,

quizzes based on answers to questions or proving knowledge and skill, if the result is determined primarily on the basis of proving knowledge and skill,

other games and raffles, if the gambling principal does not exceed the sum of SKK 50,000.

(5) Also promotional contests that are not an independent business activity and serve only for sales promotion of goods and services and during a payment of which a stake is not the condition according to this Act are not considered to be gambling games. Promotional contests are understood as contests, games, inquiries and other campaigns, in which the participants selected by random sampling obtain winnings and during which the purchase of certain goods, service or other fulfilment and a proof of this purchase to the organizer of the promotional contest or conclusion of a contractual relation with the provider of winnings to the promotional contest or participation on the promotional or advertising campaign is the condition for participation, and that is also indirectly through another person. The payments made for the purposes of obtaining the fulfilment from the organizer of the promotional contest or provider of winnings to promotional contest are not according to this Act considered to be stakes.

(6) Games that do not guarantee equal conditions to all gamblers including the possibility of winning, especially pyramid games or chain games, are prohibited.

(7) The operation of foreign gambling games on the territory of the Slovak Republic is prohibited.

Also individual sale of lots, taking bets and payout of winnings, including mediation of such activities, in gambling games according to Paragraph 2, the operator of which is a foreign entity and during which the stakes are paid abroad, are prohibited on the territory of the Slovak Republic .

#### Section 4 Lottery Games

(1) Lottery games are gambling games, during which the winnings are announced and allotted according to the rules stipulated by the game plan beforehand, whereas a winning is a consequence of

guessing a certain number, several numbers, combination of numbers, numerical order, symbol, picture (hereinafter referred to as "number") or

acquisition of a voucher, coupon, ticket, or other document, which contain a value, which will be compared with a value determining a result of a gambling game, and acquisition of which is a condition of participation in a gambling game in accordance with the conditions of a gambling game (hereinafter referred to as "lot").

(2) The value determining a result of a lottery game is set by a random determination of a number or lot (hereinafter referred to as "drawing of lots").

(3) Lottery games are especially

draw lotteries,

raffles,

numerical lotteries,

bingo,

instant lotteries.

(4) Draw lotteries are lottery games in which the operator of a gambling game issues the number of lots with serial numbers stipulated by the game plan and which enables a multilevel game. A multilevel game is understood as such manner of implementation of a gambling game, in which gamblers have apart from one possible winning also a possibility of further winning. If lots are allotted to several series, each series must contain identical numbers of lots and each lot must be marked besides a serial number also by the specification of a series . The selling price of each draw lottery lot must be identical in all series. All issued lots are included in the drawing of lots.

(5) Draw lotteries are divided according to the subject of winning especially to draw pecuniary



lotteries, draw pecuniary-in-kind lotteries and draw in-kind lotteries

(6) Raffles are lottery games, in which only sold lots are included in the draw. Winnings from raffles are drawn publicly according to the previously determined and declared rules, whereas a winner is a gambler that holds a lot with a number or another designation identical with a drawn number or another designation of a lot. The lots are sold and winnings from raffles are announced and issued on the day and in the place of drawing of lots.

(7) Numerical lotteries are lottery games, in which the operator of a gambling game is obliged to provide a gambler with a winning stipulated according to the rules stated in the game plan, if he submits a certificate of stake on a bet made, whereas these rules determine a winner according to the fact, whether the bet corresponds with drawn numbers from a limited number of publicly drawn numbers. During numerical lotteries neither the number of gamblers nor amount of gambling principal is determined beforehand. The winning is calculated according to the number of winners and aggregate amount of stakes by a proportion previously determined by the game plan, possibly it is determined by a stake multiple. One gambler can also make more bets, whereas also the stake amount that must be paid increases with the number of bets.

(8) Numerical lotteries are especially lotto, beano, and complementary game, whereas

lotto is a numerical lottery, in which the prize is calculated according to number of winner and aggregate amount of stakes by a proportion previously determined by the game plan, total sum appointed for winnings is allotted in more sequences and all winnings of that identical sequence must be of the same amount,

Beano is a numerical lottery, in which the winning is determined by a stake multiple according to the rules stated in the game plan,

Complementary game is a numerical lottery, which may be operated only together with another numerical lottery, in a public drawing of lots one winning number is drawn and the winners are those gamblers that have a completely or partially identical number on a lot, the total sum appointed for winnings is allotted in more sequences and all winnings of identical sequence must be of the same amount.

(9) Bingo is a lottery game operated in gambling houses, in which previously non-determined number of lots is drawn from a closed numerical sequence whereby the gamblers and gambling principal amount are not determined beforehand.

The amount of individual winnings is determined according to aggregate amount of stakes, prize principal, type of prize of bingo category and results of drawing of lots. Special bingo is a specific type of bingo. Special bingo is a bingo, in which the stakes are taken and winnings are paid out in the collection points. The drawing of lots and the entire course of a special bingo is realized centrally in one place, whereas its course and results are generally released by mass media means.

(10) Instant lotteries are lottery games in which a gambler finds out a possible winning after the purchase of a lot by rubbing down its marked, covered part. The lots must be marked with a serial number and the number of a series.

## Section 5

### Casino Gambling Games

(1) Casino gambling games are board games, during which the gamblers play against the casino representative or against each other on gambling tables; board games are especially roulette, card games and dice games. Casino gambling games are also gambling games operated by means of technical equipment operated directly by gamblers and by means of gambling machines.

(2) Roulette is a casino gambling game during which, by determination of numerical combinations, symbols or other signs a position in which a ball thrown into a mechanically rotating device stops. The winning is calculated from the amount of stakes and winning proportion according to the rules determined in the game plan beforehand.

(3) Card games and dice games are casino gambling games, during which the winner or the amount of the winning is determined on the basis of the dealt cards symbols or achieved number of points on dice, or a combination of values on dice.

## Section 6

### Bet Games

(1) Bet games are gambling games, in which the winning depends on guessing a result of a sports betting event or non-sports betting event or related circumstance. Sports betting event is sports competition, races, horse racing. Non-sports betting event is a social, political or another event of a public interest, if its good manners are not contradicted. Betting event can have at least two different results, which are not impacted in any way by the operator of a bet game.

(2) Bet games are especially totalizator, exchange bets and horse racing bets.

(3) Totalizator is a bet game in which the winning amount depends on the number of winners to the total amount of stakes ratio and previously determined proportion of winnings. Total sum appointed for winnings is allotted in more sequences; all winnings of the same sequence must be equally high.

(4) Exchange bets are bet games, in which the winning amount depends on a winning ratio and stake amount; the winning ratio is understood as an exchange rate, in which a bet was taken.

(5) Horse racing bets are bet games, in which the winning depends on guessing a sequence in performance tests of racing race horses and the winning amount depends on the number of winners to the total amount of stakes ratio in a previously determined proportion of winnings and on the winning to stake amount ratio.

#### Section 7

##### Gambling Games Operated by Means of Gambling Machines

Gambling games operated by means of gambling machines are gambling games, during the operation of which gambling machines are used. A gambling machine is electronically, electronic-mechanically or mechanically controlled device and makes a compact, functionally indivisible and program-controlled technical equipment with the control meant for one gambler only, which enables to obtain a winning according to the conditions stipulated by this Act. If a gambling machine has software enabling a simultaneous game in more gambling points and these gambling points can function independently and separately from each other, then each such point is regarded as an independent gambling machine.

#### Section 8

##### Gambling Games Operated by Means of Technical Equipment Operated Directly by Gamblers or Operated by Means of Telecommunication Equipment and the Operation of Video Games

(1) During gambling games operated by means of technical equipment, operated directly by gamblers or operated by means of telecommunication equipment 1 ) or during the operation of video games the number of gamblers is not determined beforehand and neither is the amount of stakes known beforehand; the winning is calculated from the amount of stakes or according to the conditions determined in the game plan.

(2) Technical equipment operated directly by a gambler- is such equipment that has at least three gambling points and enables such maximum number of gamblers to play a game, which is equal to the number of gambling points interconnected with a scoring unit. Gambling points are found in the same place as the scoring unit, they are connected with it continuously and it is not possible to use it separately. All gamblers of a gambling game operated on single technical equipment operated directly by a gambler, always play the same gambling game.

(3) Gambling games operated by means of telecommunication equipment are gambling games in which the use of telecommunication equipment, determined in the game plan, is the condition for participation. The stake is charged through a payment remitted by a gambler to the operator of telecommunication equipment.

(4) Video game is a gambling game in which gamblers are connected by terminal by means of electronic communication networks 2 ) to a central computer system of a gambling game operator. Each gambler plays a specific gambling game and gamblers can not play gambling games against each other. In the event of disconnection from the central computer system of a gambling game operator, the terminal is not functional.

#### Section 9

##### Gambling Games Operated by Means of the Internet

Gambling games operated by means of the Internet are gambling games, in which a gambler participates through connection to the Internet to the game server of the operator of a gambling game or a subject authorized by him, on which game systems are placed in software way, through which a gambling game is operated, whereas a gambler always plays against this game system. The transmission and collection of data and information connected with the operation of gambling games realized by means of the Internet is not considered to be a gambling game by means of the Internet.

## PART II - REGULATION OF GAMBLING GAMES

### CHAPTER ONE

#### ENGAGEMENT OF THE PUBLIC ADMINISTRATION AND MUNICIPALITY BODIES IN THE FIELD OF GAMBLING GAMES

#### Section 10

(1) Public administration bodies in the field of gambling games are:

The Ministry,

Tax Directorate of the Slovak Republic,

Tax Offices.

(2) The Ministry

exercises control according to a special regulation 3 ) over observance of this Act and other generally binding legal regulations by force of the Tax Directorate of the Slovak Republic, Tax Offices, municipalities of the Slovak Republic and authorized testing laboratories according to Section 30 Para. 5,

can exercise supervision over observance of this Act, other generally binding legal regulations and conditions determined in the license granted or issued according to this Act by the Ministry or municipality,

coordinates the Tax Directorate of the Slovak Republic methodically, Tax Offices and municipalities in the field of exercising supervision,

issues a General License and decides on granting an Individual License, as it is stipulated by this Act,

decides on issuance of authorization for professional examination with the statement of its extent,

issues authorizations for execution of an inspection for an authorized testing laboratory, if technical inspection is a part of supervision.

(3) The Tax Directorate of the Slovak Republic

a) creates, maintains and operates a tax information system in the field of the operation of gambling games,

keeps a central register of the operators of gambling games,

updates the database and provides information to the Ministry,

methodically coordinates the Tax Offices during the operation of the tax information system in the field of gambling games,

decides as the most superior body in the relation to Tax Offices in the administrative action according to a special regulation, 4 ) in case of

finances imposed to the operators of gambling games by them, within the extent of this Act.

(4) Tax Office

exercises supervision over observance of this Act, other generally binding legal regulations and conditions determined in the license granted or issued according to this Act by the Ministry and it is a second degree body of appeal for municipalities in the matters of individual licenses granted for the operation of gambling machines,

executes an administration of levies to the state budget,

can execute supervision over observance of this Act, other generally binding legal regulations and conditions determined in an individual license granted according to this Act by municipality; Tax Office shall write a report on the result of supervision and will send it to the municipality and the operator of a gambling game.

(5) Municipality

exercises supervision over observance of this Act, other generally binding legal regulations and conditions determined in an individual license granted according to this Act by the municipality,

executes administration of levies to the municipality budget,

decides on granting an individual license, if it is thus stipulated by this Act.

## CHAPTER TWO

### SUPERVISION

#### Section 11

Authorization and Duties of the Supervisory Body Employees

(1) Employees of the subjects authorized to exercise supervision according to Section 10 (hereinafter referred to as "supervisory body") are during the exercise of supervision authorized to

enter a registered office of the operator of a gambling game and a gambling house, real estate land and other objects or premises that are connected with the operation of gambling games within the range inevitably necessary for the purposes of a supervision exercise,

request from a subject under supervision provision of originals of documents in a specified period, other papers, statements and information

including technical data mediums necessary for the exercise of supervision,

secure documents, possibly a gambling machine, technical equipment, other devices or systems in well-founded cases according to Section 30 Par. 2 and withdraw them in order to secure evidence and other tasks connected with supervision,

require cooperation from a subject under supervision necessary for the exercise of supervision, if the purpose of supervision cannot be achieved otherwise,

invite the employees of an authorized testing laboratory, if technical inspection is also a part of supervision; the employees of an authorized testing laboratory are obligated to take part in this inspection.

(2) The employees of the supervisory body are during the exercise of supervision obliged to

prove their identity by authorization for exercise of supervision, whereas the employees of the Ministry prove their identity by authorization from the Finance Minister of the Slovak Republic, the employees of Tax Offices prove their identity by a service card warranting for exercise of supervision, the employees of Municipality prove their identity by authorization from the municipality Mayor,

issue a confirmation on withdrawal of the document originals, other papers, statements, information including technical data mediums, equipment and to secure their due protection from loss, damage and, misuse to the subject under supervision; if these documents or items are not necessary for further exercise of supervision, they are obligated to return them to the one from whom they were withdrawn and issue a confirmation of their return,

notify the subject under supervision on the result of supervision within a necessary extent and request from him a statement on all actual facts,

elaborate a report on the supervision result (hereinafter referred to as "report"), which must contain

the name and the registration office of a supervisory body and first name and surname of a natural person that performed supervision,

the name or business name of a subject under supervision, if it is a legal person, or the first name and surname of a subject under supervision, if it is a natural person,

the place, date and the time of the supervision exercise,

the period under supervision,

the subject of supervision,

established findings,

the first name and surname and signatures of a natural person, who elaborated the report, and statutory representatives and possibly authorized employees of the subject under supervision,

The date of report elaboration,

negotiate the report with a subject under supervision; if a subject under supervision refuses to sign the report, it is regarded as settled and this fact shall be stated by an employee of the supervisory body in the report,

hand in the report to the subject under supervision,

draw up a record in case of searching activity, which must contain the requirements stated in letter d) apart from signatures of the statutory representatives possibly, authorized employees of the subject under supervision,

report a suspicion of a crime to the bodies engaged in criminal proceedings and other facts to the bodies that are relevant according to special regulations. 5 )

## Section 12

### Subjects under Supervision

The subjects under supervision according to this Act are

the operators of gambling games,

natural persons authorized to conduct business and legal persons that share in the operation of gambling games or on the basis of a contractual or similar relation perform activities for the operator of a gambling game,

natural persons that on the basis of an employment relationship, similar legal relation or other contractual relation with the operator of a gambling game perform activities during the operation of gambling games,

natural persons and legal persons that operate gambling games without a license according to this Act.

## Section 13

### The Rights and Duties of the Subject under Supervision

(1) A subject under supervision is entitled apart from the rights stated in a special Act 3 )

to be present in person or through a plenipotentiary during the exercise of supervision,

to express himself in writing in the course of the exercise of supervision to all found facts,

to express himself in writing to the report containing the findings of the supervisory body within ten days from the delivery at the latest ; these statements form a component of the report.

(2) The subject under supervision is obliged to

create suitable material and technical conditions for the exercise of supervision and provide cooperation within an extent inevitable for the purpose of the supervision exercise,

turn up at report negotiations upon request of the supervisory body,

take measures to remove found shortcomings and causes of their occurrence in a specified period and to present to the supervisory body a list of these measures,

to present to the supervisory body in a stipulated period a written report on the fulfilment of measures accepted for the removal of found shortcomings).

#### Section 14

##### Confidentiality

(1) The employees of the supervisory body are obliged to maintain confidentiality on the facts that they discovered during performance of their activity. This obligation continues even after the termination of an employment relation or performance of activity.

(2) Provisions of a special regulation are not effected by the provision of Paragraph 1 . 6 )

(3) The persons according to Paragraph 1 may be relieved of an obligation to confidentiality by the head of the supervisory body.

(4) Infringement of confidentiality is not regarded to be a notification or making a subject of confidentiality available to

another supervisory body or another employee of the same body for the purpose of the exercise of supervision,

to the bodies relevant according to this Act to decide on remedial instruments for the purposes of decision-making on remedial instruments,

the Ministry for the purposes of the fulfilment of tasks according to this Act or special regulations, 7 )

the bodies effective in the criminal proceedings, criminal police service and financial police service of the Police Force on the basis of special regulations, 8 )

the bodies authorized to perform control activities of Tax Offices, municipalities and the Ministry or its Supreme body or body of appeal according to a special regulation 9 ) for the purposes of control and in connection with exercise of their effect,

the Court for the purpose of court proceedings, 10 )

a legal person established by the Ministry for processing information with the aid of computer technology,

The Ministry of Land Economy of the Slovak Republic for the purposes of report on the results of supervision in the operators of horse racing bets,

the representative authorized to represent the supervisory body in the proceedings before the Court,

an authorized testing laboratory in case it carries out a technical inspection or assessment of the device upon request or for the purposes of the supervisory body, the Ministry or bodies stated in letter d).

(5) Infringement of confidentiality is not regarded to be a notification or making a subject of confidentiality available with the written consent of this subject under supervision that a subject of confidentiality applies to.

#### Section 15

##### Termination of Supervision

Supervision is terminated as of the day of report negotiations with the subject under supervision.

### CHAPTER THREE

#### LICENSES

##### Section 16

Licenses according to this Act are:

a General License,

an Individual License, which are

a license for the operation of lottery games,

a license for the operation of casino gambling games,

a license for the operation of bet games,

a license for the operation of gambling games by means of gambling machines,

a license for the operation of gambling games by means of technical equipment operated directly by gamblers or operated by means of telecommunication equipment and operation of video games,

a license for the operation of gambling games by means of the Internet,

a license for the operation of state lottery,

a license for the operation of gambling games according to Section 3 Par. 2 letter g),

#### Section 17

(1) A license may be granted or issued only to a legal person with a registered office on the territory of the Slovak Republic. If legal persons with foreign property participation are concerned, a license may be granted or issued only to a legal person with foreign property participation with the registered office or permanent residence in a member state of the European Union or a member state of the Organization for Economic Cooperation and Development.

(2) A license may be granted or issued also for an established legal person prior to its entry in the Trade Register or similar public register, if it fulfils the conditions stipulated by this Act for granting and issuance of license. A license is valid as from the day of this legal person's entry in the Trade Register or similar public register. If a legal person does not submit a proposal for entry in the Trade Register or similar public register within 90 days from accepting a resolution on granting an individual license or as from the day of publication a general license or if the registered court or other relevant body does not enter a legal person in the Trade Register or similar public register, a legal person must return a license to the body that granted or issued a license.

(3) A license may not be transferred to another person, and that is not even as a component of the enterprise during transferring an enterprise or its part, and the license does not pass to a legal

successor in title in the event of fusion, merger, possible split of the operator of a gambling game.

(4) The conditions for granting or issuing a license must be fulfilled throughout the whole period of license validity.

#### Section 18

##### General License

(1) Draw in-take lotteries and raffles may be operated on the basis of a general license issued by the Ministry and after meeting the obligation to report according to Section 19. In the general license the Ministry will determine conditions for the operation of draw in-take lotteries and raffles.

(2) The Ministry shall issue the general license for a number of legal persons not determined beforehand according to Section 17 Par. 1 and 2, which after the fulfilment of the conditions specified therein, may operate a gambling game for which this license is issued. General license is issued for an indefinite period.

(3) The conditions stated in the general license are especially

game plan prerequisites,

the method and period of payment for a financial security according to Section 36,

method of payment of levy according to Section 37,

factual and content prerequisites of a lot,

conditions for drawing of lots,

the requirements that must be fulfilled by a natural person, that is responsible for the operation of a gambling game, concerning the experience and education of this person and its position in a legal person according to Section 17 Par. 1 and 2,

the method, extent and time of storage of documents concerning a draw in-take lottery and raffle,

prerequisites of a drawing in-take lottery and raffle notification.

(4) The conditions specified in the general license must correspond to the nature of a gambling game that the general license is issued for; they have to be adequate, transparent and must not disadvantage persons interested in the operation of gambling games on the basis of general license.

(5) The Ministry shall make a draft of the general license public in the manner according to a special regulation, at least 90 days before its expected declaration together with a call for submission of comments and information on where and in what deadline they may be applied to the draft of the general license; this deadline must not be shorter than 30 days as from the day of the release of this draft. The Ministry shall release the evaluation of comments to the draft of the general license in the manner according to a special regulation.

(6) The Ministry shall declare the general license by release in the Financial Bulletin of the Ministry. A general license shall come to force as of the day of its release, unless a latter date of coming to force is stated.

(7) Paragraphs 5 and 6 shall be applied adequately also when amending or rescinding the general license.

(8) In the case of amendment and rescinding of the general license, the operators of gambling games that fulfilled the obligation to report according to Section 19, terminate the operation of a draw in-take lottery and raffle according to the original general license.

#### Section 19 Obligation to Report

(1) A legal person that wishes to operate a draw in-take lottery or raffle is obliged to report on this intention to a locally relevant Tax Office 15 days before the initiation of their operation at the latest, unless a longer deadline is specified in the general license.

(2) The report must be in writing and it shall contain

the name or business name, registered office, legal form and information on the entry of a legal person in the Trade Register according to Paragraph 1, if such entry is requested for origination of a legal person, identification number of a legal person according to Paragraph 1, if it was assigned,

the first name and surname of a natural person or natural persons authorized to act on behalf of a legal person according to Paragraph 1,

game plan of a gambling game,

the date of beginning and termination of the operation of a gambling game,

the levy amount, if it is possible to assess before the beginning of the operation of a gambling game,

further details that are determined by the general license.

(3) The Tax Office shall on the basis of delivery of a full report according to Paragraph 1 register a legal person to the register of the operators of gambling games on the basis of the general license. If the report is incomplete, the Tax Office shall according to Paragraph 1 call on a legal person to complete it within ten days from the delivery of such report at the latest, whereas it shall determine a deadline, which must not be shorter than five days. The Tax Office, to which a legal person according to Paragraph 1 delivered a full report, shall confirm to this person the fulfilment of the obligation to report within seven days from the day of delivery.

(4) The operation of a gambling game by a legal person according to Paragraph 1 without delivery of the report within the specified deadline or without completion of an incomplete report is considered as the operation of a gambling game without license.

(5) The Tax Directorate shall submit to the Ministry as to 30 April and 30 October a list of legal persons according to Paragraph 1 recorded to the register of the operators of gambling games on the basis of the general license for a period of the previous six months. The Tax Directorate of the Slovak Republic shall state in this list, the name possibly business name, registered office and identification number of the operator of a gambling game, as well as the amount of levy, if it is already known. The Ministry releases the list of operators of gambling games on the basis of the general license on the Internet.

#### An Application for Granting an Individual License Section 20

(1) An application for granting an Individual License may be filed only by a joint-stock company or limited-liability company, if the application is filed by a joint-stock company, its shares must be issued as registered shares.

(2) The share capital of an applicant must be at minimum

SKK 1,000,000 in draw pecuniary lotteries,

SKK 1,000,000 in instant lotteries,

SKK 2,000,000 in bingo games apart from a special bingo,

SKK 2,000,000 in gambling games operated by means of gambling machines,

SKK 100,000,000 in bet games,

SKK 10,000,000 in gambling games operated by means of technical equipment operated directly by gamblers and in gambling games operated by means of telecommunication equipment and in the operation of video games,

SKK 50,000,000 in casino gambling games.

(3) The share capital must be paid-up only by a monetary deposit and must be paid-up on the day of filing of an application for granting Individual License at the latest.

(4) An applicant shall state in the application for granting an Individual License

the business name and registered office,

identification number if it was already assigned to the applicant,

the amount of the share capital,

a list of partners or shareholders, possibly allottees, in which there has to be quoted

the business name, registered office, identification number or first name, surname, permanent residence and birth number of the partner or shareholder, possibly allottee or the date of birth, if the birth number was not assigned,

the number and total nominal value of shares that are owned by a shareholder, possibly the number and total nominal value of shares that have been allotted by an allottee, or the amount of the partner's deposit and amount of his business share,

the details on voting rights of the shareholder or partner,

information on voting rights of the shareholder or partner, who has more than 10 % of voting rights in other legal persons including legal persons with the registered office outside the territory of the Slovak Republic, and the details on owners of such shareholder possibly allottee or partner,

the first names, surnames and birth numbers, or the date of birth if a birth number was not assigned, of members of the board, supervisory board, if it is established, executive heads, procurators and natural persons responsible for internal control,

the first name, surname and birth number, or the date of birth if a birth number was not assigned, of a professional competent natural person holding an office of a statutory body or a member of a statutory body that will be responsible for the operation of a gambling game,

regional extent of the operation and location of a gambling game,

description of technical equipment, device used during the operation of video games or telecommunication equipment for the operation of a gambling game,

description of other equipment and systems specified in Section 30 Par. 2, if they will be used during the operation of a gambling game,

a period during which a gambling game will be operated and the estimated date of the beginning of the operation of a gambling game.

(5) An applicant must prove

the payment of the share capital and financial security in the full amount by enclosing account statements with the bank or a branch of a foreign bank,

a well-arranged, credible and legal origin of the share capital and financial means presenting the financial security, and that is by quoting the facts on the origin of the share capital and these financial means,

professional competence of natural persons responsible for the operation of a gambling game, and that is by enclosing a professional curriculum vitae with the summary of special working experience and completion of vocational training and short-term attachments including statutory declarations that the data in a curriculum vitae are true, whereas these persons signatures on statutory declarations must be officially certified,

material-technical securing of the operation of a gambling game including securing electronic data transmission through a safe communication, if it will be used during the operation of a gambling game,

the number of employees and number of subjects with which the applicant will cooperate during the operation of a gambling game.

(6) An applicant shall enclose to the application for granting an individual license

an extract from the Trade Register, no older than three months from the day of filing an application for granting an individual license, if it concerns only the established companies, articles of partnership or establishment deed,

statutes,

a draft of an organizational structure of an applicant,



a draft of a business-financial concerning the operation of a gambling game, which must contain especially

the expected extent of the operation of a gambling game in terms of the volume of gained proceeds and possibilities of expansion in terms of financial, personnel and organizational possibilities of an applicant in the first three years,

the estimated expenditure expended for the operation of a gambling game,

the estimated financial sources that will be inevitable to expend during the operation of a gambling game, and the method of their acquisition,

the expected extent of liabilities arising in connection with the operation of a gambling game,

a written declaration of partners or shareholders, possibly their allottees, that their property was not declared bankrupt or proposal for bankruptcy was refused for lack of property,

the documents proving the integrity of natural persons responsible for the operation of a gambling game and natural persons that are members of a statutory body or are a statutory body,

the game plan in such form, so that it could be after its approval placed in the places of the operation of a gambling game, possibly was available to gamblers in other way,

a declaration of an applicant on undertaking the measures, so that persons younger than 18 years could not take part in a gambling game,

a document of the payment for administrative fee according to a special regulation, 11 )

a statement of account with the bank or a branch of a foreign bank or other confirmation, through which an applicant will prove that he paid the sum equivalent to the amount of a financial security, and a confirmation on the fulfilment of the obligation according to Section 36 Par. 2,

the documents on professional assessment of the equipment and system quoted in Section 30 Par. 2 that will be used during the operation of gambling games,

a certification of a locally relevant Tax Office according to applicant's registered office, that an applicant has no arrears of payment registered with the tax administrator.

(7) If the documents quoted in Paragraph 5 and Paragraph 6 letters b), c) and d) have been already submitted to the Ministry or municipality in other proceedings, the declaration on the fact that no changes occurred will be sufficient, whereas an applicant shall specify, in which proceedings these documents were submitted.

(8) A professionally competent natural person is considered to be a natural person that has a complete secondary education, unless this Act stipulates otherwise.

(9) A respectable person is for the purposes of this Act considered to be someone, who has not been finally convicted of

an economic criminal offence, criminal offence against order in public matters or criminal offence against property,

other intentional criminal offence.

(10) Integrity is proved by the extract from the Criminal Record. Natural persons that do not have a permanent resident permit on the territory of the Slovak Republic prove their integrity by adequate documents issued by the country, of which they are citizens, as well as the documents issued by the countries, in which they sojourned continuously for longer than three months in the last three years (hereinafter referred to as "foreign document"). Aliens with abode on the territory of the Slovak Republic and at the time of proving the integrity this permit has been valid for at least six calendar months, submit apart from a foreign document also an extract from the Criminal Record. Citizens of the Slovak Republic that do not stay on the territory of the Slovak Republic on long-term basis prove their integrity by a foreign document and extract from the Criminal Record. An extract from the Criminal Record, possibly foreign document must be in time of presentation no older than three months.

#### Section 21

(1) When applying for a license for operating ticket money lotteries, ticket money- and gift lotteries as well as instant lotteries the applicant must, aside from documentation and facts mentioned in Section 20, Par. 4, 6 and 10, also attach or mention the following

lottery ticket sample that meets the requirements set out in Section 41,

document of confirmation, by which the applicant for a license for operating ticket money lotteries, ticket money and gift lotteries and instant lotteries confirms that printing of lottery tickets is sufficiently secured from misuse,

the number of lottery tickets issued, and if more editions of tickets are made, also exact specification of the series plus the numbers of tickets issued in each edition,

time period of sale of lottery tickets.

(2) When applying for a license for operating winning number lotteries, the applicant must, aside from documentation and facts mentioned in Section 20 Par. 4, 6 and 10, state the way a player will place his bet and the way of proving the bet was placed by the player, and if identical sheets are to be used by players, on which the bet is stated, also a sample of such a sheet is to be attached.

(3) When applying for a license for operating betting games, the applicant must, aside from documents and facts mentioned in Section 20 Par 4, 6 and 10 attach or mention also the following

subject and the kind of betting game,

the amount of handling charge that is not a part of the bet, if it is to be required from players by the applicant,

addresses of betting agencies,

consent of the village/town in which the betting agency will be located,

affirmation of the applicant that there is no ownership, personnel or any other connection between them and sport organizations and clubs operating in Slovak Republic, whose scores will be subject of bets, while the signature of the natural person authorized to represent the applicant must be officially validated,

approval from the Ministry of Agriculture of the Slovak Republic for operating horse racing bets for races taking place in Slovakia.

(4) When applying for a license for operating bingo games, the applicant must, aside from documentation and facts mentioned in Section 20 Par. 4, 6 and 10 attach or mention also

a ticket sample,

the address of the game room in which bingo games will take place,

consent of the village/town for operating bingo game on its premises.

(5) When applying for a license for operating gambling games in a casino, the applicant must, aside from documentation and facts mentioned in Section 20 Par. 4, 6 and 10 attach or mention the following

the kind of gambling games that are to be operated in the casino,

game plan for the gambling games operated in the casino,

casino operating rules,

the number and kind of game tables,

counter samples,

currency used for games,

casino address,

statement of the village/town about the location of casino on its premises,

project for monitoring technology for supervision over the course of the gambling games and of daily accounting of betting games in the casino,

professional résumés of individuals mentioned in Section 6, including education and foreign language knowledge, including certificates of completed education, work experience and seminars, trainings and internships.

(6) „Qualification“ in the case of natural persons nominated to the board of directors of the operator of gambling games in a casino, for the positions of managers of a company that operates gambling games in a casino whose direct supervision is by the board, and in the case of natural persons responsible for internal supervision, means university education and at least three years of experience in the gambling games sector, or completed high school technical education and at least ten years of professional experience in the gambling games sector, of which at least three years in a managerial position directly responsible to the statutory body of the operator. The applicant must prove in the case of at least one natural person who is nominated for a managerial position directly responsible to the board of directors that this person also has five-year experience in the casino gambling games sector.

(7) When applying for a license for operating gambling games with the use of technical devices operated directly by gamblers and for video games, the applicant must, aside from documentation and facts mentioned in Section 20 Par. 4, 6 and 10, attach or mention also the following

the number of such technical devices or terminals and devices used for operating video games,

the addresses of locations, on which these devices or video games will be operated,

statement of a village/town to location of these technical devices or devices used for operating video games.

(8) When applying for a license for operating gambling games via telecommunication devices, the applicant must, aside from documentation and facts mentioned in Section 20 Par. 4, 6 and 10, attach or mention the following

a) specification of the telecommunication device that is to be used for operation of the gambling game,

b) business name, address and company ID number of the provider of the services via which the gamblers place their deposit.

(9) If an application for an individual license is incomplete, the ministry or town administration will no later than within 10 days from receiving such application instruct the applicant to complete it, and it shall state a deadline that has to be ten days and longer, and instructs the applicant that if the application is not completed, the proceedings will be halted.

(10) An applicant who wishes to operate gambling game according to Section 3 Par. 2, letter g), must state in the application for an individual license for this gambling game, aside from documentation and facts according to Section 20 Par 4, 6 and 10, also the data that is required in the application for individual license for operation of a gambling game that is the most similar, in principle, to the gambling game according to Section 3 Par. 2, letter a), The ministry or town administration, when deciding on issuing such a license, evaluates the terms of the application, in respect to the provisions of this law relating to the gambling game that is the most similar, in principle, to this gambling game.

(11) If the applicant for a license for operation of gambling games that are operated in the form of winning machines, technical devices operated directly by gamblers, telecommunication devices or video games wants to operate a gambling game that is in principle the most similar to one of the gambling games under Section 3 Par. 2, letter a) or c), the applicant must fulfil the requirements set out by this law for these gambling games as well.

(12) The operator of a gambling game is required to report any change in data and facts that are presented in the application for an individual license to the body that issued the license during the period of 15 days from the day they occurred.

(13) If the operator of a gambling game wishes to change any data and facts that are presented in the individual license, in documentation, based on

which the individual license was issued, in documents approved by ministry or town administration when issuing the individual license, or in those which are attached to individual license, the applicant must file a request for a license change. Appropriate provisions about issuing of individual license are used for proceedings for license change. Changes in individual license relating to permanent address change of natural persons mentioned in the license, or to a change of business address of the operator of the gambling game do not require ruling of the ministry or town administration on a change of the license, provided that these changes are reported and plausibly proved to the ministry or town administration by the deadline set out in Section 12.

#### Individual licenses

#### Section 22

(1) Unless otherwise noted, gambling games can be operated on the authority of an individual license issued by the ministry or town administration.

(2) Town administration issues individual license for operating gambling games in the form of winning machines that are located on the town's premises. In other cases, including the license for operating of winning machines in a casino, or if the deposits are made in foreign currencies, the individual license is issued by the ministry.

(3) An individual license is issued by the ministry or town administration to the applicant who presents a complete application and proves fulfilling of all conditions set out by this law..

(4) An individual license can be issued for the maximum period of

two years: in the case of ticket money and ticket money-and-gift lotteries or instant lotteries,

five years: in the case of betting games,

five years: in the case of bingo, with the exception of special bingo,

one calendar year: in the case of winning machines, with the exception of winning machines operated in a casino, in which case the individual license is issued for the period corresponding to the durability of these machines, but no longer than for the validity of the license for operating of gambling games in a casino,

five years: in the case of gambling games operated in the form of technical devices operated by gamblers themselves, or in the case of

gambling games operated via telecommunication devices, and for operating video games,

five years: in the case of gambling games that are subject to Section 3 Par. 2 letter g),

five years: in the case of state-run lottery,

ten years: in the case of gambling games in a casino.

#### Section 23

(1) Unless otherwise noted, the individual license is issued within 15 workdays at the latest from the day a full application for individual license is presented.

(2) Ruling on granting the individual license will include, aside from requisites that are subject to special law 4 ) also the kind of gambling game for the operation of which the individual license has been granted, number of the account to which tax according to Section 37 is to be paid, the approval of the game plan of the gambling game, lottery ticket sample, in the case tickets are to be used in operation of this gambling game, and also the launch date is set, as well as the period of time for which the individual license is granted.

(3) Ministry or town administration can revoke the individual license if the operation of the gambling game violates the provisions of this law or the conditions for granting the individual license. Ministry or town administration revokes the individual license, if facts appear or are revealed subsequently, because of which it would not be possible to issue the individual license, or if it becomes evident that data based on which the individual license was issued is not accurate.

#### Section 24

(1) The Tax Office that has local jurisdiction in the area in which a winning machine is to be operated based on license for operating gambling game in the form of winning machines will issue an ID card to the operator of the gambling game for each winning machine. The operator will place this card on the machine on a visible place for the purposes of supervision, in a way that the ID is not damaged when the machine is in operation. Operation of a winning machine can not be launched without the identification card.

(2) The identification card must include this data:

name and address of the operator of the winning machine,

serial number of the ID card,

number of certificate issued by authorized test office and credentials of this office,

winning machine type and its serial number,

number, date and validity of the license for operating of a winning machine,

initial counters used for evidence of bets and wins,

type of gambling game, program type and version,

issue date, stamp and signature of the officer of the Tax Office who issued the ID card.

#### License for operating gambling games in a casino Section 25

(1) License for operating gambling games in a casino is issued by the ministry. If a license for operating gambling games in a casino is to be granted to a joint stock company, all shares must be book shares (personal/registered shares); change of their status is not permitted.

(2) Reliability and public interest are special conditions for operating gambling games in a casino. Reliability is evaluated with regard to individuals according to Section 21 Par. 6 and the public interest is evaluated with regard to the place where the gambling games are to be operated. The applicant must prove in the application for a license for operating gambling games in a casino that he is reliable and that operating of gambling games in a casino in the selected location is not in conflict with public interest.

(3) A reliable person is a person who has not violated the generally binding legal norms during the last ten years and who has been fulfilling their duties and business activities in this regard, and who thus can guarantee that they will reliably and without violating generally binding legal norms exercise their duties to which they are nominated according to Section 21 Par. 6, including duties originating from generally binding legal norms.

(4) License for operating gambling games in a casino permits the operation of gambling games in a casino, in the extent limited by this license and under the conditions set out by this license.

(5) The term „casino“, its translations or other words that include these words in their nominative form can only be used (in business names or to describe a business entity that offers goods and services) only by an operator of gambling games who has a license according to this law, if it is not obvious from the context in which the word „casino“ is used that natural

person or legal person that is using the word publicly, is not an operator of any gambling game according to this law.

(6) Provision of Section 5 does not apply to legal persons whose brand or business name is established or acknowledged by law or international agreement.

#### Section 26

(1) The ministry will issue a license for operating gambling games in a casino to an applicant who presents a complete application for license for operating gambling games in a casino and who proves the fulfilment of all conditions set out by this law, provided that proper operation of gambling games in a casino is secured.

(2) The ministry will decide the issue of granting the license for operating gambling games in a casino within 60 days from the day of submitting a complete application for license for operating gambling games in a casino.

(3) The ministry will reject the application for a license for operating gambling games in a casino if the applicant fails to fulfil any of the conditions for granting the license according to Sections 20, 21 and Section 25 Par 2. Economical needs of the market cannot be the reason for not granting the license for operating gambling games in a casino.

(4) Ruling on granting the license for operating gambling games in a casino includes, aside from requisites according to a special law 4 ), the type of gambling games for which the license is issued, the operator is given the responsibility to provide monitoring technology in the casino for the purpose of gambling games supervision and supervision of daily accounting of bets in the casino, the date of launch of the operation of the gambling games is set, as well as the period for which the license is granted; and the following is approved

game plan of the gambling games operated in the casino,

operating rules of the casino,

the numbers and types of game tables,

samples of counters,

currency used in games,

casino address.

(5) License for operating of gambling games in a casino can include conditions that the operator of gambling games in a casino must fulfil before

launching the casino, as well as conditions that the operator of gambling games in a casino must fulfil when operating any permitted gambling game in the casino.

#### Section 27

(1) The operator of gambling games in a casino must file a motion at local court for entry of the licensed activity into the Commercial Register, based on the license for operating gambling games in a casino, or change thereof, within 10 days from the day this license or its amendment became effective, and present to the ministry a certificate of incorporation within 10 days from the day the court's decision on the entry, or change thereof, became effective.

(2) The ministry can revoke the license for operating gambling games in a casino if the gambling games in the casino are operated out of accord with the provisions of this law or set out by the license as for operating of gambling games in a casino. The ministry will revoke the license for operating gambling games in a casino if facts occur or are revealed, because of which it would not be possible to issue the license for operating gambling games in a casino, or if it subsequently becomes evident that the data based on which the license for operating gambling games in a casino is not accurate.

#### License for operating a state-run lottery

#### Section 28

(1) A license for operating a state-run lottery can be granted only to a national lottery company.

(2) An application for a license for operating state-run lottery is presented by a national lottery company at the ministry. The ministry decides on granting the license for operating a state-run lottery within 30 days from receiving the complete application for a license for operating the state-run lottery.

(3) Ruling on granting the license for operating state-run lottery will, aside from general requisites according to special law 4 ) include approval of the game plan, lottery ticket sample, if lottery tickets are to be used in operating the state-run lottery, launch of operation of state-run lottery will be set, as well as the period for which the license was granted. Also other conditions can be set for the operator of the state-run lottery. Ruling on granting the license for operating state-run lottery also includes especially the following:

the goal of its operation,

the number of tickets issued, price of one ticket, and the total amount of security, if the data is

known prior to launching of the state-run lottery and if tickets are used in the operation,

the deadline for presenting the final statement of the state-run lottery.

#### Section 29

Ruling on granting the license for operating a gambling game via internet might include technical conditions regarding the protection of gamblers, bet placement security and pay-off via telecommunication devices and other technical and security elements of servers and game systems, that have to be evaluated by experts according to Sections 30 through 34.

### CHAPTER FOUR EXPERT EVALUATION

#### Section 30

(1) Expert evaluation is an activity of an authorized test office to the extent of authorization for expert evaluations according to Section 31, after which the authorized test office issues a certificate in accordance with Section 32.

(2) Applicant of operator of gambling game is required to provide the expert evaluation of the following

gambling machines,

technical devices operated directly by gamblers,

terminals and other devices used for the operation of video games,

devices used for operation of bingo,

electronic connections among different locations on which the gambling games are operated and the headquarters where the games and their scores are evaluated,

connection and security of the connection with electronic communication channels, if they are used for the operation of a gambling game,

software that is used for operation of gambling game according to Section 3 Par. 2, letters d) and e) and its program versions.

(3) The applicant must provide expert evaluations of devices and systems according to Paragraph 2 before the application for individual license for operation of gambling games is filed. Operator of gambling game must provide expert evaluation of devices and systems according to Paragraph 2 after the period for which the certificate was issued had expired, according to Section 32.

(4) Devices and systems according to Paragraph 2 can be evaluated only by authorized test office; and only those devices and systems, according to Paragraph 2, for which it owns the authorization.

(5) Only a legal person that has permanent address in Slovakia, is authorized by The Bureau of Standards, Metrology and Testing according to a special law 12 ) and is accredited 13 ) to expert testing of devices and systems according to Paragraph 2 can become an authorized test office.

#### Section 31

(1) Authorization to expert evaluation can be given to a legal person according to Section 30 Par. 5 upon request.

(2) Authorization according to Paragraph 1 is given by the ministry for a limited period of time, at least for five years, when this period expires the ministry can prolong the validity according to Paragraph 1, when an inspection is carried out 3 ).

(3) The ministry issues a list of authorized test offices that were given the authorization according to Paragraph 1, mentioning the extent of such authorization, according to a special law. 6 )

(4) The ministry will revoke the authorization of an authorized test office according to Paragraph 1, if

the ministry finds out that the authorized test office wrongfully evaluated any device or system according to Section 30 Par. 2,

the authorized test office fails to fulfil the requirements set out in the authorization according to Paragraph 1.

#### Section 32

(1) The authorized test office, in the process of evaluation, checks and confirms that devices and systems mentioned in Section 30 Par. 2

are fit to use in operation of gambling games,

are safe in terms of protection of data that is to be entered into, transferred and processed via these devices,

fulfil the technical conditions set out by technical regulations 14 ) and

operation of gambling game with the use of these devices will be in accordance with gambling rules.

(2) In the case of devices and systems according to Section 30 Par. 2, letters a) to c) and in the case of other devices and systems that are interconnected for the purposes of playing bonus games, the authorized test office evaluates the system of generating of the bonus game and the conditions of evidence and payoff of bonuses.

(3) The authorized test office mentions the following in the certificate:

name of the operator of gambling game who will use the device according to Section 30 Par. 2 use in operating of gambling game,

owner of gambling machine, other device or system according to Section 30 Par. 2,

producer of the gambling game or program,

producer of gambling machine, if the machine is subject to expert evaluation,

kind, type or other description of the evaluated device or system according to Section 30 Par. 2 and its production and serial number, respectively,

statement to every evaluated fact according to Paragraphs 1 or 2,

conditions of use of the evaluated device or system, if it is necessary to fulfil them, so that the evaluated facts according to Paragraphs 1 or 2 were maintained throughout the whole use of the device or system in operation of gambling game,

approved rules of the respective game or program of a gambling machine,

period of time for which the certificate is issued,

date of issue,

order number of the certificate,

stamp, name, address and ID number of the authorized test office, that issued the certificate, as well as name, last name and signature of authorized persons of the authorized test office.

(4) The authorized test office, in evaluating facts according to Paragraph 2, will also indicate the following in the certificate, aside from data according to Paragraph 3

address of the game room in which the bonus game is operated,

type of gambling game, type of device and systems according to Section 30 Par. 2, letters a) through c) and types of other devices and

systems that are interconnected for the purposes of playing bonus game, authorization number of the authorized test office, program version,

producer of bonus game and program version,

number of devices and systems according to Section 30 Par. 2, letters a) through c) and number of other devices and systems that are interconnected for the purposes of playing bonus game and their serial numbers, e) system of generating of bonus game, the method of evidence and bonus pay-off.

### Section 33

(1) The authorized test office issues the certificate for limited period of time.

(2) The Authorized Test Office can set out in the certificate responsibility of the operator of gambling game to have repeatedly check the device or system according to Section 30 Par. 2 after a specified period of time of its use. Certificate validity is terminated if the operator of gambling game does not fulfil this requirement in the deadline specified by the test office.

### Section 34

The authorized test office must keep records of certificates issued that is presented to the ministry within ten days from the end of a calendar half-year.

## PART THREE OPERATION CONDITIONS FOR GAMBLING

### CHAPTER ONE GENERAL PROVISIONS

#### Section 35

(1) Operator of gambling game must fulfil the conditions for operating gambling games set out by this law and by conditions of the license, throughout the validity period of the license. The operator can not elude the responsibility if the conditions are not fulfilled.

(2) Only gambling games for which a license has been issued can be promoted in Slovakia .

(3) The operator of a gambling game must make sure that the employees and other individuals or legal persons who take part in operation of gambling games fulfil their responsibilities set out by this law. The operator of a gambling game and his employees are required to fulfil their responsibilities set out by special law. 15 )

(4) A natural person who takes bets or deposits from gamblers can not take part in the same game.

(5) The operator of a gambling game, except for operators of gambling games for which general license was issued or for which individual license for operating gambling games in the form of gambling machines was granted, must submit every year by May 31 the following to the ministry

financial statement for the previous fiscal period, 16 )

The Commercial Register statement, not older than 1 month on the day of its submission,

in the case of joint stock company, the list of shareholders,

affirmation of the operator that he fulfils the conditions for operating of gambling games set out by this law and the conditions of the license.

(6) Juveniles under 18 years of age can't take part in gambling. The operator of gambling game must take such measures so that these individuals could not take part in gambling games. The operator of a gambling game and supervision bodies can, for these purposes, ask for the person's identification. If gambling games are operated in a game room, the operator must provide continuous supervision; the operation is governed by operation rules of the game room.

(7) Deposits can be made both in cash and non-cash methods.

(8) In the case of capital stock pay-up, reimbursement of security, reimbursements of tax according to Section 37 and other reimbursements according to this law, the due date is set as follows

in the case of non-cash transfers from a bank account or from a branch of a foreign bank, it is the day when the write-off from the account of operator of gambling game was conducted,

in the case of cash payments it is the day when a bank, a branch of a foreign bank, post office, or other authorized person received the cash payment.

(9) The game plan of a gambling game must be posted in all rooms used for operation of a gambling game that are accessible for gamblers. Every page of the plan must have a stamp of the body that issued the individual license, as well as the date of game plan approval.

(10) The accepting of deposits and bets, pay-offs, draws and other procedures related to defining

a score of gambling game according to Section 3 Par. 2, letters b) through e) and also other procedures that take place in the course of operation of gambling game in public or in communication between the gambler and operator of a gambling game, except for making the scores public, are not allowed

on Good Friday, on December 24 and December 25,

on a day of national mourning,

outside the hours set out by the game plan.

(11) It is forbidden to operate gambling machines, technical devices operated directly by gamblers and video games in schools, on school campuses, in buildings of social welfare services for children and youth, in youth dormitories, healthcare facilities and state institutions. It is forbidden to operate gambling machines, technical devices operated directly by gamblers and video games, except for those in game rooms, within a 200-meter distance from schools, educational facilities, building of social welfare services for children and youth and youth dormitories.

(12) Operators of a gambling game and other natural persons and legal persons who take any part in the operating of gambling games and in evaluating must maintain absolute discretion about gamblers, their part in a game, and about information from expert evaluation.

(13) The obligation of discretion according to Section 12 does not apply to providing information

to a court for the purposes of proceedings, 10 )

to law enforcement agencies, bureau of investigation and financial crimes unit of the police force for purposes set out by special law, 8 )

to tax offices for the purposes of audit proceedings,

to competent institutions for the purposes of misdemeanour proceedings 17 ) or

in the case that a gambler acquits the persons mentioned in Section 12 of the discretion responsibility.

(14) Damages to the gambler in the course of operating a gambling game are the responsibility of the operator, according to a special law, 18 ) even if the damages were caused by third persons who were appointed by the operator of a gambling game to conduct activities related to operating of gambling games.



(15) All accounting operations conducted in relation to the operation of gambling games must be recorded separately from all other financial operations of the operator of gambling games. If the operator of gambling games operates more than one game, separate analytical evidence must be kept for each game.

(16) Operators of gambling games from the category of winning number lotteries, betting games, bingo, including special bingo and gambling games operated in a casino are required to account accepted deposits and pay-offs on a daily basis, if the operation of these gambling games requires doing so. The ministry can approve daily accounting of gambling games in a casino with the use of video technology. An operator of gambling machines, technical devices operated directly by gamblers and video games must keep monthly evidence of deposits and pay-offs separately for every machine, for every technical device operated directly by gamblers and for a video game device via which the gambler takes part in gambling on a video game.

(17) Gambling games that can be confused for state-run lotteries, or that are identical or similar, can only be operated by a national lottery company.

#### Section 36 Financial guarantee

(1) Financial guarantee must be kept by the operator of a gambling game during the whole period of validity of the license at the minimal amount set by this law. If the amount of guarantee dropped under the limit set by this law for any reason the operator must raise it within 30 days.

(2) The financial security must be deposited by the applicant in a separate account in a bank or branch of a foreign bank and during the whole period of validity of the license must be blocked in favour of the body that issued or granted the license to the operator. This blockage can be cancelled only with the prior written consent of a body that is authorized to give such a consent, if

the license expired and the operator of gambling game has all his obligations settled that can be paid from the financial assets constituting the financial guarantee,

the license of the operator of gambling games was revoked and the operator of gambling game has all his obligations settled that can be paid from the financial assets constituting the financial guarantee, or

upon request of the operator of a gambling game, even though he does not have all his obligations

settled that can be settled from the financial assets that constitute the financial guarantee; in such a case the body that issued individual license to the operator of gambling game or that issued the general license, can decide on the use of financial guarantee and on what obligations will be settled with this guarantee, confirmation of settling all obligations of the operator of gambling game is issued by a local tax office.

(3) During the validity of license the operator of a gambling game can use the financial guarantee only upon prior written consent of the ministry or town administration, when the operator does not have enough financial assets for tax according to Section 37 Par. 1 and to pay off gamblers.

(4) Minimum financial guarantee is as follows

for ticket lotteries and raffles 5 % of the sum calculated as the product of the number of tickets issued and price of one ticket,

for bingo, with the exception of special bingo, SKK 500,000 for one operation of bingo,

for betting games except for course bets, SKK 1,000,000,

for course bets, SKK 10,000,000,

for gambling machines, SKK 10,000 for each machine,

for gambling games in a casino, SKK 15,000,000,

for gambling games mentioned in Section 3 Par. 2, letter e), SKK 3,000,000.

(5) For the purposes of gambling games mentioned in Section 3 Par. 2 letter g) the ministry will set the amount of financial guarantee, based on the amount of financial guarantee for a gambling game that most resembles the gambling games in question.

#### Section 37 Tax

(1) Operator of a gambling game must pay tax, which amount is as follows

for ticket lotteries 15 % of the financial guarantee to the state budget,

for raffles 15 % of the sum calculated as the product of the number of tickets issued and price for one ticket to the state budget,

for number lotteries 17 % of the financial security to the state budget,

for instant lotteries 20 % of the sum calculated as the product of the number of tickets sold and the price for one ticket, minus the total amount of pay-off during the whole period of instant lottery ticket sales, to the state budget,

for betting games, except for horse racing, 5 % of the financial guarantee, while in the case of course bets 4.5 % of the financial guarantee to the state budget and 0.5 % to the town budget,

for bingo 4.5 % of the financial guarantee, of which 4 % of the financial guarantee to the state budget and 0.5 % of the financial guarantee to the budget of the town in which the bingo game room is located,

for special bingo 4 % of the financial guarantee to the state budget,

for horse racing 1 % of the financial guarantee to the state budget,

for betting games in a casino 27 % of the financial guarantee, of which 24 % of the financial guarantee to the state budget and 3 % of the financial guarantee to the budget of the town in which the casino is located,

for gambling games operated via gambling machines SKK 45,000 per calendar year and per machine to the state budget,

for gambling games operated via technical devices operated directly by gamblers and for video games 27 % of the financial guarantee, of which 24 % of the financial guarantee to the state budget and 3 % of the financial guarantee to the budget of the town,

gambling games operated via telecommunication devices, 10 % of financial guarantee to the state budget,

gambling games operated on the internet 27 % of the difference between accepted bets and pay-offs to the state budget.

(2) In the case of gambling games that are not mentioned in Paragraph 1, the amount of tax will be set by the ministry. When doing so, the ministry must take into consideration the tax amount set out in Paragraph 1 for the game that resembles the most the gambling game for which the tax is being evaluated.

(3) The tax, according to Paragraph 1, except for tax according to Paragraph 1, letter a), b), d) and j), is paid by the operator of gambling game as prepayment, monthly by the 25th day from the ending of a calendar month, based on preliminary monthly calculation of tax submitted at the same time to the local supervision body. The operator of

a gambling game will elaborate, by March 31 at the latest, the annual calculation of tax for the previous year, this calculation is based on the total numbers defining the tax for the whole previous calendar year. The operator of a gambling game submits the calculation to the local supervision body and then to the ministry or town administration, when the supervision body confirms it. The operator of a gambling game will pay the arrears of taxes to the local supervision body that arose as a difference between the yet-paid tax and the sum calculated during annual calculation of monthly prepayments.

(4) Overpayments made by the operator of a gambling game that are discovered in the course of calculation according to Section 3 will be returned by the local supervision body to the operator of a gambling game when the annual calculation is completed, upon written request, within 30 days. If the operator of gambling game does not request the overpayment in writing, it becomes prepayment for tax for the next calendar year. Overpayment worth less than SK 100 is not returned and it becomes prepayment for tax for the next calendar year. Overpayment can be returned up to three years from the end of the calendar year in which it originated.

(5) Monthly prepayments are not subject to rounding. In the annual calculation the tax is rounded to the nearest crown.

(6) The operator of a gambling game mentioned in Paragraph 1 letters. a), b) and d) must pay the tax within 15 days from calculation of the gambling game.

(7) The operator of gambling machines must pay the tax in parts, half of the tax by June 1 of the calendar year and the other half by September 1 of the calendar year. If the operator of a gambling machine is granted license during the year after the deadline for the tax or part thereof, he must pay the proportion of the tax or the tax for this machine within 15 days from the license issue, while he must pay the remaining part of the tax according to a set schedule, by the end of the calendar year at the latest. If the operator of gambling machine terminates his activities during the year, he must pay the tax in full for the respective year by the end of the operation of the gambling machine, at the latest.

(8) Income from the tax, according to Paragraph 1, is used to finance public services, for example healthcare, social work and assistance, humanitarian care, production, development and protection of cultural heritage, support for art and cultural activities, education, development of sport, environment protection and public health.

(9) The town administration that issued a license for operating gambling games in the form of gambling machines and that subsequently revoked the license can decide that after the tax liability is fulfilled and tax according to Paragraph 1 letter j) is paid by the operator of gambling machines, the earnings from gambling will be contributed to the budget of the town, the same decision can be made in the case of natural person or legal person that has operated gambling machines without license and the town would have been able to issue the license. Earnings from gambling mean the difference between bets placed by gamblers during the year and pay-offs.

(10) Tax Office can decide that earnings from a gambling game operated in the area under its jurisdiction by a natural person or legal person with no license, that could have been issued by the ministry, be contributed to the state budget.

(11) Ministry that issued or granted a license and subsequently revoked it, can decide that earnings from gambling games be contributed to the state budget.

#### Section 38

##### Game room operating rules

If a gambling game is operated in a game room, the operator must elaborate the operating rules of the game room that include especially

open hours,

rights and responsibilities of gamblers,

rights and responsibilities of permanent supervision in the game room, d) identification of the permanent supervision.

## CHAPTER TWO

### LOTTERY GAMES

#### Section 39

(1) Financial guarantee in the case of raffles, ticket lotteries, instant lotteries and other lotteries, in which there are tickets, except for bingo, is product of the number of tickets issued and the price for one ticket.

(2) Financial guarantee in the case of number lotteries is the sum corresponding to the amount of bets placed.

(3) Financial guarantee in the case of bingo and special bingo is the product of the number of tickets sold and the price for one ticket.

(4) The probability of winning in ticket lotteries, raffles and instant lotteries can not be lower than 1 : 200.

(5) The lowest prize in raffles and ticket lotteries must be worth the same as the price for the ticket.

(6) Total value of prizes in ticket lotteries, raffles and instant lotteries can not be lower than 30 % of the financial guarantee.

#### Section 40

(1) Lottery tickets can not be sold in public transportation vehicles.

(2) Lottery tickets can be sold in buildings only with the consent of the building administrator. Such a consent is not necessary if the building or premises are being used by an operator of a gambling game who is a license owner.

(3) When selling lottery tickets in the streets, the vendor must have his ID card and also an ID issued by the operator of the gambling game, or by legal person or natural person that administrates the distribution and sale. These ID cards must be submitted to the supervision body upon request.

(4) In the case of lottery ticket material prize lotteries, with financial guarantee up to do SKK 200,000 and in the case of raffles, the tickets must be numbered and have stamps of the operator.

#### Section 41

(1) The use of state symbols on lots is prohibited. 19 )

(2) A lot, except for the lot referred to in Section 4, for lottery games with the game principal exceeding SKK 200,000, except for lots for ruffles, shall contain

name and registered office of the game operator,

number of the license and the date of effect of the decision on granting an individual license or the day of announcement of a general license,

quantity of issued lots, price of one lot, aggregate game principal or the information to specify the aggregate game principal,

quantity and amount of prizes, or a manner to set the quantity and amount of prizes,

specification of the event or circumstance determining the winning,

manner of publishing the list of drawings if required by the game plan,

specification of the place where prizes are handed down,

deadline for taking out prizes,

sequential number and series number of the lot if more series of lots are issued,

time period for selling lots.

(3) Prior to releasing lots for sale, it is necessary to verify their quantity and the correctness of numeration by random sampling with the participation of the state supervisory body and to write down a report on it.

(4) The content of a lot which Section 2 does not refer to will be determined by the Ministry in the license.

#### Section 42

(1) Drawing lots of a lottery game shall be public. Drawing lots of a lottery game with the game principal

exceeding SKK 200,000 shall be carried out with the participation of the supervisory body,

up to SKK 200,000 shall be carried out with the participation a notary.

(2) The supervisory body or notary participating in drawing lots according to Section 1 shall certify that the course of drawing lots was in compliance with the game plan and this Act.

#### Section 43

(1) A qualified natural person, responsible for the operation of a lottery, shall appoint a responsible representative.

(2) The responsible representative ensures regular course of the lottery. The lottery operator shall not become involved in the course of the lottery without the approval of the responsible representative.

(3) The responsible representative shall adhere to instructions of the supervisory body and advise it of all material circumstances occurred in

conjunction with operation of gambling and measures adopted.

(4) The responsible representative together with the supervisory body shall verify if the drawing urn contains

in numeric lottery, all numbers of the game plan,

in lot lottery, all issued lots,

in raffle, all sold lots.

(5) The responsible representative shall take all measures to provide that lots returned by post or another manner prior to, in the course of, or immediately after, drawing, cannot be misused. The responsible representative shall keep lots in a secured place in the course of the lottery. After termination of the lottery in which lots are used the responsible representative together with the supervisory body shall destroy unsold lots.

(6) The responsible representative shall write down a report on the course of drawing lots, containing predominantly data on the course of drawing lots and a list of winning lots.

(7) After the end of drawing lots, the responsible representative shall secure prizes associated with unsold lots in lotteries against loss, destruction or damage and he shall secure prizes that were not handed down in a raffle.

(8) In lot lotteries the responsible representative shall publish the list of prizes in the press and inform the public thereof. In a raffle, after drawing lots, the responsible representative shall inform the public of the winning lots and shall arrange publication of the written list of winning lots.

#### Section 44

(1) The deadline to exercise the right to a prize in a lottery shall not be shorter than 30 days and not longer than 60 days from the day following the drawing lots.

(2) An operator of a lottery shall pay the exercised right to winners immediately or not later than within five days from the day that the right to a price was exercised.

#### Section 45

Unsold lots may only be rejected in the presence of the supervisory body after one year elapsing from the first day of a calendar month following the day that the lottery account was submitted at the latest.

## CHAPTER THREE GAMBLING GAMES IN CASINO

### Section 46

(1) In a casino it shall be permitted to play only gambling games specified in the license to operate gambling games in a casino, and in the specified scope only.

(2) In a casino a person not admitted to the gambling game according to the game plan and rules of operation shall not be allowed to play.

(3) Persons employed in a casino shall not be permitted to take part in bet games as gamblers in the casino where they are employed. Persons employed in a casino performing specialist activities for bet games in casinos shall not be permitted to take part in bet games as gamblers in casinos based in the Slovak Republic .

(4) The game currency of the casino shall be the one prescribed by the Ministry in the license to operate games in a casino. Gaming chips used in casinos, value-marked, are approved by the Ministry according to specimen gaming chips submitted by the casino operator to the Ministry when filing the application for granting a license. The casino operator shall submit one set of gaming chips approved by the Ministry to the supervisory body for inspection purposes.

(5) In casinos gaming chips shall be conclusively recorded by kinds or types of chips. Spare gaming chips that are not used shall be placed separately and recorded so as to be able to be produced any time for inspection. These spare gaming chips may only be used with the approval of the supervisory body. The body shall be informed of any acquisition of gaming chips.

(6) Each casino shall use specifically marked chips. Identically marked chips may only be used in casinos operated by one operator of gambling games.

(7) Gaming chips, gratuities for employees deposited in separate cases, proceeds at tables deposited in separate cases, proceeds and chips in the principal cash desk, money and chips deposited in safes or other similar devices, shall be accounted for every table daily after the end of the casino operation.

(8) Gratuities are a financial gift of a gambler to employees of the casino.

(9) Casino employees are required to put the gratuities into a separate case after finishing a game; gratuities are subject to accounting and separate recording after the end of the casino operation.

(10) The gratuities shall not make part of the game principal, unless otherwise stipulated below. The operator of gambling games in a casino shall distribute the gratuities among the casino employees. Persons with property participation in the company operating the casino, authorized agents, members of the board of directors or supervisory board are excluded from the distribution of gratuities, unless they are simultaneously in employment, membership relations or business relations with the company operating the casino.

(11) The operator of gambling games in the casino shall distribute the gratuities among the employees as set out in Section 10 according to the rules which he is required to submit to the supervisory body when requested. The rules for distribution of gratuities shall not be changed during a calendar year.

(12) After the end of a calendar year undistributed gratuities shall be added to the game principal for that period.

(13) The game principal for games in casinos is the amount of deposits after deduction of the paid winnings.

## CHAPTER FOUR BET GAMES

### Section 47

(1) The operator of bet games shall not enter into contracts with domestic legal persons, domestic natural persons and foreign persons for the exclusive right to make bets for certain competitions, contests or matches.

(2) The operator of bet games shall not accept bets for races wherein an animal, vehicle, etc. takes part that is owned or co-owned by him. This shall also apply in case the owner or co-owner is a person authorized to accept bets, or a person in employment, membership relation or similar legal relation with the operator of bet games, or a spouse of such a person.

(3) If in the license to operate stake games the Ministry authorized more than one state office to the operator of odd bets, the operator of the stake game shall ensure their electronic connection with the central computer system within the period of time stipulated in that license.

(4) The game principal for stake games is the sum of deposits.

## CHAPTER FIVE

## GAMBLING MACHINES

### Section 48

(1) The gambling machine according to Section 7 shall conform to the following requirements:

the deposit is realized by inserting a coin, banknote or credit key,

the values of deposit and prize (winning) are automatically registered by built-in meters,

it can work only when the mechanical and electronic meters are connected simultaneously, and after disconnecting the mechanical meter, the gambling machine must signal failure and must not accept other deposits and pay prizes,

it has a built-in system of at least double independent check of deposits and paid prizes,

the time that elapse from the moment of a start-up to the end of a gambling game is at least three seconds,

the time elapsed from the manufacture of a gambling machine does not exceed six years, except for gambling machines operated in a casino,

the winning ratio, which for the purposes of operating gambling machines means a ratio of financial values of games won to the financial value of actually played gambling games, expressed in per cent, and which must not be lower than 70 %; the winning ratio expresses the probability of return of input deposits.

(2) In a gambling machine the option of the combination for winning or losing is performed by mechanical, electronic and mechanical or electronic device and the gambling machine or the operator of the gambling game pay the prize to the gambler.

(3) A deposit must not be higher than SKK 2 per gambling game and the prize must not exceed SKK 300 per gambling game; it does not apply to gambling machines operated in casinos.

(4) A player may pay several deposits at once, in such a case the gambler shall have the possibility to take deposits for the games that were not played anytime after finishing a game.

(5) A game on gambling machines shall be understood to mean to begin a gambling game by setting on the mechanical, electronic and mechanical or electronic device determining the result of a gambling game and display of the gambling game result on the winning device or possibly payment of the prize. During a gambling

game further deposits may not be made. After finishing each gambling game, the gambler shall have the possibility to take the whole prize. Each gambling game must offer the gambler the possibility to win.

(6) An operator of a gambling machine shall ensure that the correctness of the winning ratio of a gambling machine is checked at least every 12 months by an authorized testing laboratory. The authorized testing laboratory is authorized to perform random checks of the winning ratio and function of gambling machines in the presence of supervisory bodies and to withdraw the license according to Section 32 provided that violation of the conditions as stipulated by this Act is established, and it shall notify the body that granted a license to operate gambling games on gambling machines to the operator of the gambling machine of that fact. The costs incurred in conjunction of that check are paid by the operator of a gambling machine only if some discrepancies were established.

(7) The authorized testing laboratory shall issue a certificate specifying the winning ratio at the request of the operator of a gambling machine and confirming that the winning ratio conforms to this Act.

### Section 49

If operators of gambling games operate five and more winning machines in one room or in a set of rooms structurally related and connected, the rooms shall be regarded as a gambling-house and the operator of gambling games must fulfil all obligations as stipulated by this Act for a gambling-house.

### Section 50 Premium game

(1) In gambling-houses with gambling machines it is possible to introduce a system of a premium game based on pooling a certain part of the deposit in a premium game through connection of gambling machines located in a gambling-house, and that part of the deposit is determined for a premium game.

(2) The premium game may be operated on at least eight gambling machines of an operator of gambling games by means of gambling machines and the amount of a premium prize must not exceed SKK 100,000; it does not apply to operation of the premium game by means of gambling machines in a casino.

(3) If the premium game is operated in a gambling-house by several operators of gambling games by means of gambling machines, the certificate according to Section 32 is issued for

each operator of gambling games by means of gambling machines separately.

(4) The amount of the premium prize shall be visibly placed on the electronic board.

## CHAPTER SIX

### OPERATION OF GAMBLING GAMES BY MEANS OF TECHNICAL FACILITIES OPERATED DIRECTLY BY GAMBLERS, THROUGH TELECOMMUNICATION FACILITIES AND OPERATION OF VIDEO-GAMES

#### Section 51

(1) When publishing the information on a gambling game, operators of gambling games by means of telecommunication facilities must specify the place where a gambler may familiarize himself with the game plan.

(2) When operating gambling games by means of technical facilities operated directly by gamblers, the minimum deposit amounts to SKK 2 and the maximum deposit amounts to SKK 1,000 per position. The jackpot must not exceed SKK 100,000.

(3) When operating video-games, the minimum deposit amounts to SKK 2 and the maximum deposit amounts to SKK 1,000 per gambling game.

(4) When operating gambling games through telecommunication facilities, the provider of the service through which the gambler participates in a gambling game shall keep separate accounts of the sums included in the gambler's deposit.

(5) For gambling games operated by means of telecommunication facilities, the game principal is a sum of deposits. For video-games and technical facilities operated directly by gamblers, the game principal is a difference of received deposits and prizes paid out.

(6) If an operator of gambling games operates five or more gambling places at technical facilities operated directly by gamblers in a room or a set of rooms, structurally related and connected, the rooms shall be regarded as gambling-house and the operator of these gambling games shall must fulfil all obligations as stipulated by this Act for a gambling-house.

## PART FOUR - NATIONAL LOTTERY COMPANY

### Section 52

(1) The national lottery company is a joint-stock company based in the territory of the Slovak

Republic whose founder and shareholder is the Slovak Republic, represented by the Ministry.

(2) The trade name of the national lottery company must contain the identification "national lottery company" or the abbreviation "n.l.s." The identification "national lottery company" or its translations must not be used by any legal person or natural person.

(3) Any transfer of shares of the national lottery company to other legal persons or natural persons is prohibited.

(4) The registered capital of the national lottery company is minimum SKK 10,000,000. The shares of the national lottery company shall be issued as booked personal shares.

(5) The national lottery company cannot issue bonds with the related right to their exchange for company shares or the right to preferential subscription of shares of the national lottery company in case they may be acquired by other legal persons or natural persons to whom the shares of the national lottery company referred to in Section 3 cannot be transferred.

(6) The national lottery company or its part 20 ) may be sold only to another national lottery company. The national lottery company may merge or consolidate only with another national lottery company.

### Section 53

(1) The national lottery company shall operate one of the gambling games forming the state lottery. The national lottery company may also operate other gambling games according to this Act and conduct a business activity related to operating gambling games.

(2) The national lottery company is entitled to conduct activities according to Section 1 after granting a license to operate a state lottery.

## PART FIVE - SANCTIONS

### Section 54

(1) If supervisory bodies, within execution of their competence according to this Act, establish that supervised entities violated the provisions of this Act, specific acts or other legal regulations of binding force related to operation of gambling games, conditions of operation of gambling games according to the granted or issued license, obligations according to the game plan, including rules of gambling games, or non-fulfilment of obligations assigned by a lawful decision of the supervisory body, the following sanctions shall be imposed on them:

measures for removal or remedy of the established discrepancies, including the period for their fulfilment and the duty to inform the supervisory body on their fulfilment within the determined period,

submission of special statements, reports and notices,

termination of non-permitted activity,

suspension of operation of a gambling game,

fine,

sanction interest in the amount and in the cases according to Section 2,

suggestion to the ministry or municipality for withdrawal of the individual license.

(2) The competent supervisory body shall impose an obligation on an operator of a gambling game to pay a sanction interest if the payments according to Section 37 were not paid by the operator of a gambling game timely or adequately, namely amounting to 0.1 % of the due amount per every, even started, day of delay from the day following the due day of payment to the day that the due amount is credited to the respective account of the tax office or municipality. The competent supervisory body shall not impose the sanction interest if the sanction interest in aggregate does not exceed SKK 100 per calendar year. The sanction interest shall be rounded up to whole crowns. The sanction interest imposed by a tax office is a revenue of the national budget. The sanction interest imposed by a municipality is a revenue of the municipal budget.

(3) If, during performing supervision, it is established that in conjunction with violation of provisions of this Act a property benefit was acquired by a legal person or a natural person violating provisions according to this Act, or by their related or controlled persons, the Ministry shall impose an obligation on the legal or natural persons acquiring a property benefit to pay a sum equal to the value of the property benefit acquired in such a manner to the state budget.

(4) If a tax office performed supervision according to Section 10 Par. 4 letter c) based on which a fine or another sanction according to Section 1 should be imposed, the fine or sanction shall be imposed and enforced by the municipality; the municipality shall inform the tax office performing supervision according to Section 10 Par. 4, letter a) on imposition of the fine or sanction,

(5) A fine from SKK 20,000 to SKK 500 shall be imposed by the supervisory body on a legal

person of a natural person for obstructing performance of supervision according to this Act.

(6) The supervisory body may suspend operation of a gambling game, if, when performing the supervision, it established

discrepancies that may affect regular operation of a gambling game, namely till they are removed,

non-fulfilment of any of the conditions defined in the license,

violation of the conditions defined in the license, or

non-observance of the provisions of this Act.

(7) The supervisory body shall make a record of suspension of the operation of a gambling game. When suspending the operation of a gambling game, the supervisory body is authorized to seal gambling machines or other devices or systems used in the operation of a gambling game.

(8) If an operator of a gambling game remedies the discrepancies due to which the operation of a gambling game was suspended, he may continue the operation of a gambling game only after prior written approval of the supervisory body that suspended the operation of a gambling game. The supervisory body shall promptly notify the body that granted an individual license to the operator of a gambling game or issued a general license of suspension of a gambling game, sealing a gambling machine or another device and system used in the operation of a gambling game, as well as the approval to continue the operation of a gambling game, if such a body is not the supervisory body.

(9) When imposing sanctions, the supervisory bodies shall assess the nature, seriousness, manner, extent of fault, duration and consequences of violation of obligations and it shall take into account that the person referred to in Section 3 and supervised entity established themselves the violation of an obligation and the legal state was recovered before a decision on a sanction was issued.

(10) Sanctions under this Act may be imposed within two years from the day that the supervisory body established violation of an obligation but not later than within five years from the day that an obligation was violated. Sanctions may be imposed simultaneously and repeatedly. By imposition of sanctions under this Act, the liability according to specific regulations is not affected. 21 )

(11) If within two years from the day of effect of a decision on imposing a fine the obligations for



which the fine was imposed are violated again, the supervisory body may impose a fine up to its double.

(12) A fine is due within 30 days from the day of effect of the decision on its imposition. A fine imposed under this Act is a revenue of the state budget, except for fines imposed by a municipality that are revenues of the municipal budget.

#### Section 55

##### Offences

(1) With regard to gambling games, an offence is committed by a person that

acts against this Act, granted or issued license or game plan and is in employment with an operator of a gambling game or in a similar legal relation with him,

operates a gambling machine without an identification card according to Section 24.

(2) Supervisory bodies shall impose the following fines for committing offences according to Section 1:

from SKK 5,000 to SKK 20,000 for committing the offence referred to in Section 1 letter a),

SKK 5,000 for committing the offence referred to in Section 1 letter b).

(3) the provision of Section 54 Par. 12 applies to offences equally.

(4) Offences according to Section 1 are discussed by supervisory bodies and the general regulation on offences applies to their discussion 17 )

#### Section 56

##### Administrative offences

(1) Supervisory bodies shall impose a fine from SKK 500,000 to SKK 3,000,000 on an operator of a gambling game operating a gambling game without a license.

(2) Supervisory bodies shall impose a fine from SKK 100,000 to SKK 500,000 on an operator of a gambling game operating a gambling game against this Act, conditions for operation of a gambling game as defined in the license, the game plan or not fulfilling the obligations imposed by a lawful decision of the supervisory body.

(3) Provisions of Section 54 Par. 9 to 12 apply to administrative offences equally.

## PART SIX - JOINT, TEMPORARY AND FINAL PROVISIONS

### CHAPTER ONE

#### Section 57

##### Joint provisions

(1) The general regulation on administrative proceedings 4 ) shall be applied to proceedings under this Act, unless otherwise stipulated by the Act.

(2) The general regulation on administrative proceedings shall not apply to

issue of general licenses according to Section 18,

notification duty according to Section 19,

specialized assessment according to Section 30,

suspension of operation of a gambling game according to Section 54 Par. 6.

(3) The Business Code applies to applicants and operators of gambling games, unless otherwise stipulated by this Act.

(4) If the term "lottery and other similar games" is used in legal regulations of binding force, it is understood to mean "gambling games".

### CHAPTER TWO

#### TEMPORARY PROVISIONS AND FINAL PROVISIONS

#### Section 58

##### Temporary provisions

(1) Proceedings for issue of permission to operate a lottery or another similar game commenced before the effectiveness of this Act shall be finished according to the existing regulations. Proceedings commenced according to existing regulations which with respect to the provisions of this Act do not have to be finished shall be discontinued by the bodies that commenced them.

(2) Proceedings for imposition of a fine commenced before the effectiveness of this Act shall be finished according to the existing regulations.

(3) Permission to operate raffles and lot in-kind lotteries issued according to existing regulations are regarded as general licenses according to Section 18 and fulfilment of the notification duty according to Section 19.

(4) Unless otherwise stipulated by this Act, operators of gambling games for which individual licenses are required under this Act and who were issued permission according to existing regulations, except for operators of gambling machines, must ask the Ministry for granting individual licenses under this Act by 30 September 2005, otherwise their permission issued according to existing regulations shall expire after the period for which they had been issued expires, but not later than as of 1 October 2005. If an application for granting an individual license was delivered to the Ministry within the period as per the first sentence, the permission according to existing regulations shall expire on the day that the decision of the Ministry on granting an individual license under this Act comes into effect.

(5) Applicants holding valid permission issued according to existing regulations as of the day that this Act comes into effect, who paid the registered capital in according to existing regulations, shall prove payment of the registered capital by attaching statements of account at a bank or branch of a foreign bank or other documents proving the amount and payment of the registered capital.

(6) Permission issued to operators of gambling machines according to existing regulations remains in force by 31 December 2005.

(7) Operators of lotteries or of other similar games who were issued permission according to existing regulations must pay a levy in the amount and within the period as stipulated by this Act from 1 July 2005.

(8) Authorization to accept stakes issued according to existing regulations expires as of 1 October 2005.

(9) Certificates of gambling machines issued by the authorized testing laboratory before this Act comes into effect shall remain in force by 31 December 2005 at the latest.

(10) The Ministry according to Section 18 Par. 5 shall publish a draft of the general license. The existing regulations shall apply to operation of raffles and lot in-kind lotteries till the effectiveness of the general license.

(11) Authorized testing laboratories must ask the Ministry for the issue of authorization for specialized assessment under this Act by 30 June

2005, otherwise their authorizations for specialized assessment issued according to existing regulations shall expire after the period for which they had been issued expires, but not later than as of 30 September 2005. If the application for the issue of permission for specialized assessment under this Act was delivered to the Ministry within the period as per the first sentence, the authorization for specialized assessment issued according to existing regulations expires on the day that the decision of the Ministry on the application for the issue of the authorization for specialized assessment under this Act comes into effect.

#### Section 59

#### Cancelling provision

Act of the Slovak National Council No. 194/1990 Coll., on lotteries and other similar games, as amended by Act of the Slovak National Council No. 68/1992 Coll., Act of the National Council of the Slovak Republic No. 249/1994 Coll., Act of the National Council of the Slovak Republic No. 224/1996 Coll., Act of the National Council of the Slovak Republic No. 386/1996 Coll.,

Act No. 55/1999 Coll., Act No. 332/2000 Coll., Act No. 218/2001 Coll., Act No. 553/2001 Coll., Act No. 182/2002 Coll. and Act No. 433/2002 Coll., is cancelled.

#### Art. II.

Act of the National Council of the Slovak Republic No. 145/1995 Coll., on administrative fees, as amended by Act of the National Council of the Slovak Republic No. 123/1996 Coll., Act of the National Council of the Slovak Republic No. 224/1996 Coll., Act No. 70/1997 Coll., Act No. 1/1998 Coll., Act No. 232/1999 Coll., Act No. 3/2000 Coll., Act No. 142/2000 Coll., Act No. 211/2000 Coll., Act No. 468/2000 Coll., Act No. 553/2001 Coll., Act No. 96/2002 Coll., Act No. 118/2002 Coll., Act No. 215/2002 Coll., Act No. 237/2002 Coll., Act No. 418/2002 Coll., Act No. 457/2002 Coll., Act No. 465/2002 Coll., Act No. 477/2002 Coll., Act No. 480/2002 Coll., Act No. 190/2003 Coll., Act No. 217/2003 Coll., Act No. 245/2003 Coll., Act No. 450/2003 Coll., Act No. 469/2003 Coll., Act No. 583/2003 Coll., Act No. 5/2004 Coll., Act No. 199/2004 Coll., Act No. 204/2004 Coll., Act No. 347/2004 Coll., Act No. 382/2004 Coll., Act No. 434/2004 Coll., Act No. 533/2004 Coll., Act No. 541/2004 Coll., Act No. 572/2004 Coll., Act No. 578/2004 Coll., Act No. 581/2004 Coll., Act No. 633/2004 Coll., Act No. 653/2004 Coll., Act No. 656/2004 Coll. and Act No. 725/2004 Coll., is amended as follows:

1. Item 140 in the Annex "Tariff of Administrative Fees" reads as follows:

"Item 140

granting an individual license to operate the following gambling games:

numeric lotteries SKK 10,000

instant lotteries SKK 10,000

gambling machines, each SKK 45,000

stake games except for odd bets SKK 10,000

lot pecuniary lotteries or lot pecuniary in-kind lotteries SKK 10,000

odd bets SKK 100,000

gambling games in casinos SKK 1,000,000

bingo, including special bingo SKK 100,000

games operated by means of technical facilities operated directly by gamblers or operated through telecommunication facilities and video-games SKK 100,000

gambling games not specified in points one to nine SKK 100,000

notification of an operator of lot in-kind lottery or raffle SKK 1,000

change of a license based on a notice or at the request of the operator of a gambling game for all gambling games SKK 1,000

issue of the identification card of a gambling machine SKK 500

issue of the identification card of a gambling machine as replacement for a lost, destroyed, damaged, or stolen identification card SKK 500."

2. Item 141 of the Annex "The Tariff of Administrative Fees" reads as follows:

"Item 141

The issue of authorization for specialized assessment under Act No. 171/2005 Coll., on gambling games and on amendment and supplement of some acts SKK 50,000."

Art. III.

Act No. 40/1964 Coll., Civil Code, as amended by Act No. 58/1969 Coll., Act No. 131/1982 Coll., Act No. 94/1988 Coll., Act No. 188/1988 Coll., Act No. 87/1990 Coll., Act No. 105/1990 Coll., Act No.

116/1990 Coll., Act No. 87/1991 Coll., Act No. 509/1991 Coll., Act No. 264/1992 Coll., Act of the National Council of the Slovak Republic No. 278/1993 Coll., Act of the National Council of the Slovak Republic No. 249/1994 Coll., Act No. 153/1997 Coll., Act No. 211/1997 Coll., Act No. 252/1999 Coll., Act No. 218/2000 Coll., Act No. 261/2001 Coll., Act No. 281/2001 Coll., Act No. 23/2002 Coll., Act No. 34/2002 Coll., Act No. 95/2002 Coll., Act No. 184/2002 Coll., Act No. 215/2002 Coll., Act No. 526/2002 Coll., Act No. 504/2003 Coll., Act No. 515/2003 Coll., Act No. 150/2004 Coll. and Act No. 404/2004 Coll., is amended and supplemented as follows:

Section 846 reads as follows:

"Section 846

The provision of Section 845 does not apply to gambling games according to a specific regulation.7a)".

The footnote 7a) shall read as follows:

" 7a ) Act No. 171/2005 Coll., on gambling games and on amendment and supplement of some other acts."

Art. IV.

Act No. 367/2000 Coll., on protection against legalization of revenues from criminal activities and on amendment and supplement of some acts, as amended by Act No. 566/2001 Coll. and Act No. 445/2002 Coll., is amended as follows:

1. In Section 3 letter e) the words "casinos, stake offices," are deleted.

2. Section 3 letter f) reads as follows:

"f) the operator of a gambling game, 15 ) ". Footnote 3aa) reads as follows:

" 15 ) Act No. 171/2005 Coll., on collective investment and on amendment and supplement of some other acts."

3. Chapter 6 is supplemented with Paragraph 4, reading as follows:

" (4) The obligations of the obliged person according to Section 1 letters b) and c) and Section 3 letters c) and d) also apply to legal and natural persons who are no longer obliged persons."

4. In Chapter 13 Par. 1, 2 and 5 the words "obliged person" in all forms are replaced by the words "a legal person or a natural person" in the respective form.

Art. V

Act No. 523/2004 Coll., on budgetary rules for public administration and on amendment and supplement of some acts, as amended by Act No. 747/2004 Coll., is amended and supplemented as follows:

1. Par. 10 of Chapter 8 shall be worded as follows:

"(10) Means provided from the state budget and from the budget of the European Union are not subject to execution of the decision according to specific regulations 14 ). Tangible assets and intangible assets acquired from the means provided from the state budget and from the budget of the European Union are not subject to execution of the decision according to specific regulations, 14 ) except for execution of the decision on assets acquired from the means from the state budget and from the budget of the European Union, as stipulated by a contract according to Section 20 Par. 2."

2. In Chapter 24 Par. 11 the word "shall pay" in the introductory sentence is replaced by the words "shall pay and settle".

3. Chapter 24 Par. 11 shall be supplemented with letter (c), worded as follows:

"d) from the reproduction fund of a non-profit making organization if a loss cannot be settled even according to letter c)."

4. In Chapter 24 Par. 12 the words "letter c)" are replaced by the words "letter d)".

5. Chapter 25 Par. 4 shall be supplemented with letter (c), reading as follows:

"e) settlement of a loss from the main activity."

6. Par. 8 of Chapter 31 shall be worded as follows:

"(8) The levy, penalty, and fine for not keeping financial discipline by a legal person or a natural person are revenues of the respective type of the public administration budget from which they were provided; a levy, penalty and fine for not keeping financial discipline when using means of the state budget are revenues of the state budget. A penalty and fine for not keeping financial discipline by a public administration entity when using financial means provided from

the budget of another public administration entity, are revenues of the state budget."

7. Chapter 37a shall be inserted after Chapter 37 and shall read as follows:

"37a

Temporary provisions on amendments effective from 1 May 2005

(1) Provision of Section 31 Par. 8 in the wording effective after 1 May 2005 applies to a levy, penalty and fine for not keeping financial discipline imposed after 1 January 2005.

(2) Provision of Section 37 Par. 7 also applies to economic activities, method of use and provision of means from the state budget for implementation of joint programs of the Slovak Republic and European Communities under international contracts made by 1 May 2004."

Art. VI

Act No. 564/2004 Coll., on budgetary determination of income tax proceeds to local authorities and on amendment and supplement of some acts is amended as follows:

In Chapter 4 Par. 4 the words "15 August" are replaced by the words "31 October".

Art. VII

Act No. 582/2004 Coll., on local taxes and the local fee for communal waste and small building waste, as amended by Act No. 733/2004 Coll. and Act No. 747/2004 Coll., is amended as follows:

Chapter 104 shall be supplemented with Par. 15 and 12, reading as follows:

"(11) The tax administrator must notify the Ministry of Finance of the Slovak Republic of the total sum of the imposed tax from real estate for the tax period of 2005, established based on filed tax returns pursuant to the situation as of 1 May 2005, by 31 May 2005.

(12) The tax administrator must notify the Ministry of Finance of the Slovak Republic of the total sum of the imposed tax from real estate for the tax period of 2006, established based on filed tax returns pursuant to the situation as of 1 May 2006, by 31 May 2006."

Art. VIII

Act of the Slovak National Council No. 369/1990 Coll., on the general system, as amended by Act of the Slovak National Council No. 96/1991 Coll., Act of the Slovak National Council No. 130/1991

Coll., Act of the Slovak National Council No. 421/1991 Coll., Act of the Slovak National

Council No. 500/1991 Coll., Act of the Slovak National Council No. 564/1991 Coll., Act of the Slovak National Council No. 11/1992 Coll., Act of the Slovak National Council No. 295/1992 Coll., Act of the National Council of the Slovak Republic No. 43/1993 Coll., Act of the National Council of the Slovak Republic No. 252/1994 Coll., Act of the National Council of the Slovak Republic No. 287/1994 Coll., Act No. 229/1997 Coll., Act No. 225/1998 Coll., Act No. 233/1998 Coll., finding of the Constitutional Court of the Slovak Republic No. 185/1999 Coll., Act No. 389/1999 Coll., Act No. 6/2001 Coll., Act No. 453/2001 Coll., Act No. 205/2002 Coll., Act No. 515/2003 Coll., Act No. 369/2004 Coll., Act No. 535/2004 Coll., Act No. 583/2004 Coll., Act No. 615/2004 Coll. and Act No. 757/2004 Coll. is amended and supplemented as follows:

In Chapter 27 Par. 2 letter n), the following words shall be added: "unless a specific regulation 18aa ) stipulates otherwise."

Footnote 3aa shall be worded as follows:

" 18aa) For example Act No. 171/2005 Coll., on gambling games and on amendment and supplement of some other acts."

Art. IX Effectiveness

This Act comes into effect on 1 January 2005.

1 ) Section 3 Par. 1 of Act No. 610/2003 Coll., on electronic communication.

2 ) Section 4 Par. 1 of Act No. 610/2003 Coll.,

3 ) The National Council of the Slovak Republic Act No. 18/1996 of Coll., on the control of the public administration as amended.

4 ) Act No. 71/1967 Coll., on administrative proceedings (administrative order) as amended.

5 ) For instance, the Code of Criminal Procedure, Act of the Slovak National Council No. 372/1990 Coll., on offences as amended, Act of the Slovak National Council No. 511/1992 Coll., on administration of taxes and fees and on changes in the system of territorial financial bodies as amended, Act No. 367/2000 Coll., on protection from legalization of income from criminal activity and on amendment and supplement to some Acts as amended.

6 ) Act No. 211/2000 Coll., on free access to information and on amendment and supplement of some Acts (The Act on freedom of information)

7 ) For instance, Act No. 150/2001 Coll., on tax bodies and by which Act No. 440/2000 Coll., on administration of financial control is amended and supplemented as amended by Act No. 182/2002 Coll., Act No. 152/1998 Coll., on complaints.

8 ) The Code of Criminal Procedure, as amended Act of the National Council of the Slovak Republic No.171/1993 on Police Forces as amended.

9 ) Act of the National Council of the Slovak Republic No. 39/1993 Coll., on the Highest Auditing Body of the Slovak Republic as amended. Act No. 575/2001 Coll., on organization of activities of the Government and organization of the central public administration, as amended. Act of the National Council of the Slovak Republic No. 10/1996 Coll. of Act as amended.

10 ) For instance, the Civil Rules of the Court as amended, Act No. 328/1991 Coll., on bankruptcy and settlement, as amended, Section 8 of Act No. 65/2001 Coll.. on administration and recovery of court debts.

11) Slovak National Council Act No.18/1995 of Code on Prices as amended.

12 ) Section 11 of act number 264/1999 Coll., on technical requirements on products and on conformation evaluation, as amended.

13 ) Sections 19 and 13 of Act No. 264/1999 of Code as amended by Act No. 436/2001 of Code.

14 ) Sections 19 and 14 of Act No. 264/1999 of Code as amended by Act No. 436/2001 of Code. Regulation of the Slovak government number 245/2004 Coll., on technical requirements on products in terms of electromagnetic compatibility. Regulation of the Slovak government number 308/2004 Coll. that sets out details for technical requirements and procedures of conformity evaluation for technical devices that are used at a certain range of voltage.

15 ) Act No. 367/2000 of Code as amended.

16 ) Act no. 431/2002 Coll., on State Subsidy, as amended.

17 ) Slovak National Council Act number 372/1990 Coll. as amended.

18 ) Civil Code.

19 ) Section 1 of Act of the National Council of the Slovak Republic No. 63/1993 Coll., on state symbols of the Slovak Republic and their use.

20 ) Section 476 to 488 of Business Code.

21 ) For example the Penal Act, Labour Code, Civil Code, Business Code.

## 12. Slovenia

### 12.1. Law on Associations

### 12.2. Law on Foundations

#### ЗАКОН О ФОНДАХ

#### I. I. ОБЩИЕ ПОЛОЖЕНИЯ

##### Статья 1

(Термин)

Фонд (на словенском языке «установа») представляет собой имущество, предназначенное на определенные цели. В соответствии с настоящим Законом фонд является юридическим лицом частного права.

##### Статья 2

(Цель)

Цель фонда является преимущественно общественно-полезной или благотворительной, а. характер такой деятельности, как правило, постоянный.

Цель фонда обычно считается преимущественно общественно-полезной, если фонд создан для осуществления деятельности в области науки, культуры, спорта, образования и обучения, здравоохранения, ухода за детьми и инвалидами, социального благосостояния, защиты окружающей среды, сохранения природных богатств и культурного наследия, в области религии и других подобных целей.

Цель фонда считается благотворительной, если фонд создан для оказания помощи людям, нуждающимся в ней.

Условия параграфов 1 и 3 настоящей Статьи выполняются, если круг лиц, получающих пожертвования ограничен, но точно не определен по именам или не ограничен только членами семьи.

Фонд может осуществлять деятельность, необходимую для достижения цели, ради которой был создан фонд, или оказания поддержки в осуществлении такой

деятельности, если иное не предусмотрено законодательством.

##### Статья 3

(Орган ответственный за работу фондов)

В процессе создания, работы и прекращения деятельности фондов, министерство, в сферу деятельности которого входит цель, ради которой был создан фонд, (далее «Орган ответственный за работу фондов») наделено, компетенцией, установленной настоящим Законом.

В случае если фонд создан для достижения нескольких целей, ответственным считается министерство, в сферу деятельности которого входит доминирующая цель.

В случае если невозможно назначить ответственное министерство, ответственным считается министерство, отвечающие за вопросы администрирования.

#### II. II. СОЗДАНИЕ ФОНДА

##### Статья 4

(Учредители)

Фонд может быть создан отечественным или иностранным физическим или юридическим лицом (далее «Учредитель»).

##### Статья 5

(Обязательные условия создания фонда)

Учредитель может создать фонд на основании законного акта при жизни или по завещанию (далее «Акт о создании фонда»).

Фонд получает статус юридического лица, когда Орган ответственный за работу фондов дает свое согласие в отношении Акта о создании фонда.

##### Статья 6

(Акт о создании фонда)

Акт о создании фонда включает в себя:

1. имя и место проживания учредителя;
2. название или месторасположение фонда;
3. ведомость о наличии первоначального имущества с указанием его стоимости;

4. цель фонда;

5. способ и порядок назначения членов опекунского совета;

6. поименный список членов первого состава опекунского совета.

Акт о создании фонда может включать в себя положения, имеющие важное значение для работы фонда.

Если фонд был создан на основании законного акта по завещанию без указания в акте названия, адреса и назначения членов первого состава опекунского совета, в этом случае они назначаются Органом, ответственным за работу фондов.

Если Акт о создании фонда не содержит положений о способе и порядке назначения членов опекунского совета, такие положения оговариваются в соответствии с правилами фонда.

#### Статья 7

(Законный акт при жизни)

Акт о создании фонда при жизни учредителя составляется в форме нотариально заверенного акта.

Нотариус должен незамедлительно или в течение максимум 15 дней передать нотариально заверенный акт Органу ответственному за работу фондов.

К нотариально заверенному акту прилагается подтверждение фактического наличия имущества, предназначенного для создания фонда и согласие членов первого состава опекунского совета с их назначением.

На дату оформления нотариально заверенного акта учредитель не может отменить Акт о создании фонда или предоставить первоначальное имущество или соответствующие выгоды в большем объеме.

#### Статья 8

(Законный акт по завещанию)

Акт создания фонда по завещанию должен оформляться в соответствии с условиями одной из форм завещания, согласно законодательству о наследстве.

Суд, официально оформивший завещание, безотлагательно представляет Акт о создании

фонда согласно предыдущему параграфу Органу ответственному за работу фондов.

#### Статья 9

(Первоначальная собственность)

Первоначальная собственность может включать в себя наличные деньги, движимое и недвижимое имущество и другие имущественные права.

Если первоначальной собственностью являются наличные деньги, они должны быть переведены на соответствующий счет (в Учреждение Республики Словения по Платежным Операциям, Контролю и Информации или в банк).

Если первоначальная собственность включает в себя движимое и недвижимое имущество и другие имущественные права, в этом случае нужно представить официальную оценку присяжного судебного оценщика.

Учредитель передает в дар первоначальную собственность таким образом, чтобы Орган ответственный за работу фондов, опекуны фонда были способны управлять этой собственностью в соответствии с законодательством и другими нормами.

Стоимость первоначального имущества должна быть соответствующей для выполнения цели фонда.

В рамках общего учета деятельности фонда отдельные записи должны вестись по первоначальной собственности.

Первоначальная собственность может быть увеличена в соответствии с Актом о создании фонда и Правилами фонда.

#### Статья 10

(Доверительное управление имуществом)

Если после исполнения Акта о создании фонда имущество необходимо передать в доверительную собственность, Органом ответственным за работу фондов назначается доверительный собственник.

#### Статья 11

(Разрешение создания фонда)

Орган ответственный за работу фондов выдает разрешение при условии, что:

1. 1. Акт о создании фонда соответствует условиям, определенным настоящим Законом и другими законодательными актами;

2. 2. Целью фонда является осуществление общественно полезной или благотворительной деятельности;

3. 3. Имеется в наличии первоначальная собственность;

4. 4. Создание фонда не противоречит общественному порядку.

#### Статья 12

(Утверждение акта о создании фонда)

Утверждение Акта о создании фонда принимается Органом, ответственным за создание фондов, в течение 30 дней с даты получения Акта о создании фонда.

Утверждение Акта о создании фонда публикуется Органом, ответственным за работу фондов, в Официальном органе печати Республики Словения.

Публикация осуществляется за счет фонда.

В день утверждения Акта о создании фонда имущество передается фонду, и фонд, тем самым, может начать выполнение своей цели, ради которой он был создан. Подтверждение о положительном решении, упомянутое в первом абзаце настоящей Статьи, немедленно передается Органом, ответственным за работу фондов, в министерство, ответственное за административные функции.

Против решения Органа ответственного за создание фондов может быть подана апелляция. Решение по апелляции принимается Правительством Республики Словения.

#### Статья 13

(Запись фонда в Регистре)

После получения Акта о создании фонда, министерство, ответственное за администрирование, делает соответствующую запись в Регистр фондов согласно его официальной обязанности.

Регистр фондов является общедоступным, включая документы фонда, на основании которых делаются записи в Регистр фондов.

#### Статья 14

(Информация необходимая для регистрации)

Образование фонда, изменения его статуса и прекращение деятельности, а также, другая информация, имеющая важное значение для правовых отношений, а именно:

- имя и место проживания учредителя;

- название и месторасположение фонда;

- цель фонда;

- первоначальная собственность;

- дата и номер Акта о создании фонда;

- имена лиц, уполномоченных представлять интересы фонда;

- изменения статуса и прекращение деятельности фонда.

Более подробные положения о порядке ведения и содержании учетной документации фонда предписываются министерством, ответственным за администрирование.

#### Статья 15

(Название фонда)

Название фонда должно включать в себя слово «фонд». Кроме того, название фонда должно указывать цель, учредителя и другие детали, позволяющие отличить его от ранее созданных фондов, зарегистрированных в Регистре фондов.

Что касается возможности использования названия республики, муниципалитета или города, имени исторического или иного лица, а также, в отношении защиты названия, применяются положения, действующие для учреждений.

#### Статья 16

(Месторасположение фонда)

Местом расположения фонда должна быть Республика Словения и должна определяться учредителем.

III. III. ИЗМЕНЕНИЕ НАЗВАНИЯ,  
МЕСТОРАСПОЛОЖЕНИЯ

ИЛИ ЦЕЛИ ФОНДА

#### Статья 17

(Изменение названия, месторасположения или цели)



Название, месторасположение или цель фонда могут быть изменены опекуном советом в соответствии с Актом о создании фонда.

Если Акт о создании фонда не содержит положений об изменении названия, месторасположения или цели, опекунский совет, в случае такого изменения, учитывает желание и намерение учредителя, а также обязанность предусмотрительного администратора управлять собственностью с должным старанием.

#### IV. IV. УПРАВЛЯЮЩИЕ ДОКУМЕНТЫ ФОНДА

##### Статья 18

(Регламентирующие документы фонда)

Фонд должен иметь свои правила и Регламентирующие положения (далее «Регламентирующие положения»), которые утверждаются учредителем в течение 30 дней после одобрения Акта о создании фонда.

Если Регламентирующие положения не были утверждены учредителем в течение срока определенного в предыдущем параграфе, они утверждаются опекуном советом.

Регламентирующими положениями регулируются в частности:

- - организация фонда;
- - органы управления фондом;
- - правила принятия решений;
- - положения об управлении и представлении интересов фонда;
- - способ использования доходов.

Регламентирующие положения представляются Органу, ответственному за работу фондов, в течение трех месяцев после утверждения Акта о создании фонда.

Если опекунский совет не представил Регламентирующие положения в течение срока, определенного в предыдущем параграфе, Орган, ответственный за работу фондов, может освободить опекунский совет от его обязанностей и назначить новый состав совета в соответствии с Актом о создании фонда.

##### Статья 19

(Поправки к Регламентирующим положениям)

Поправки в Регламентирующие положения могут быть внесены в соответствии с Актом о создании фонда.

Опекунский совет обязан представить поправки к Регламентирующим положениям на рассмотрение Органа, ответственного за работу фондов.

Если Орган ответственный за работу фондов установит, что поправки к Регламентирующим положениям противоречат Акту о создании фонда или законодательству, он предъявляет опекунному совету требование изменить поправки к Регламентирующим положениям в течение 30 дней.

Если опекунский совет не вносит изменений в поправки к Регламентирующим положениям в течение срока, указанного в предыдущем параграфе, Орган, ответственный за работу фондов, вправе освободить его от своих обязанностей.

##### Статья 20

(Другая документация фонда)

Фонд может иметь другие документы для более детального регулирования вопросов, связанных с его деятельностью в соответствии с Регламентирующими положениями.

#### V. V. ОГАНЫ УПРАВЛЕНИЯ ФОНДОМ

##### Статья 21

(Виды органов управления)

Фонд управляется опекуном советом.

В соответствии с Актом о создании фонда и Регламентирующими положениями, фонд, также, может иметь другие органы управления.

При условии, когда фонд имеет несколько учредителей, они могут сформировать общий совет учредителей, который, однако, не сможет принимать на себя обязательства опекунского совета.

##### Статья 22

(Опекунский совет)

В состав опекунского совета должны входить не менее трех членов.

Члены опекунского совета назначаются в соответствии с Актом о создании фонда и Регламентирующими положениями. Если иное не устанавливается Актом о создании фонда и

Регламентирующими положениями, члены опекунского совета назначаются на определенный срок.

В случае если, согласно Акту о создании фонда и Регламентирующим положениям, не представляется возможным назначить опекунский совет, то он назначается Органом, ответственным за работу фондов.

Членами опекунского совета не могут быть:

- - Несовершеннолетние и недееспособные лица;
- - Лица, работающие в фонде;
- - Лица, осуществляющие контроль над деятельностью фонда.

Кандидаты в члены опекунского совета должны дать свое предварительное согласие на членство в совете.

#### Статья 23

(Отстранение опекунского совета или его членов от своих обязанностей)

При невыполнении опекунским советом своих обязательств в соответствии с законодательством, Актом о создании фонда или Регламентирующими положениями, Учредители или Доноры могут выдвинуть предложение о досрочном отстранении совета от своих обязанностей.

Орган, ответственный за работу фондов, принимает решение о досрочном отстранении совета от своих обязанностей.

Орган ответственный за работу фондов может отстранить опекунский совет от своих обязанностей в случае невыполнения обязательств, определенных в первом параграфе настоящей Статьи.

В соответствии с первым, вторым и третьим параграфами настоящей Статьи член опекунского совета может быть, также, отстранен от своих обязанностей, если его действия вступают в конфликт с интересами фонда.

Против решения Органа, принятого в соответствии с параграфами 2 и 3, может быть подана жалоба. Жалоба рассматривается Правительством Республики Словения.

#### Статья 24

(Обязанности опекунского совета)

Опекунский совет обеспечивает выполнение цели фонда, представляет интересы фонда и выполняет другие задачи в соответствии с настоящим Законом, Актом о создании фонда и Регламентирующими положениями.

В состав опекунского совета входит председатель, который выбирается членами совета.

Председатель опекунского совета представляет интересы фонда и действует от имени фонда в пределах, определенных Актом о создании фонда и Регламентирующими положениями.

Опекунский совет управляет собственностью фонда с должным усердием предусмотрительного администратора.

#### Статья 25

(Принятие решений опекунским советом)

Если иное не определено Регламентирующими положениями, решения опекунского совета принимаются большинством голосов его членов. В случае равенства голосов, голос председателя является решающим.

Член опекунского совета не может принимать решения по вопросам, в отношении сторон или его самого, его супруга (и) или его родственники в третьем колене.

#### Статья 26

(Выплата вознаграждения членам опекунского совета и оперативные расходы фонда)

Члены опекунского совета имеют право на получение компенсации за командировочные расходы, суточного довольствия и вознаграждения, определенного попечительским советом, принимая во внимание ставки, определенные в Акте создания фонда или Регламентирующих положениях.

Орган, ответственный за работу фондов, может определить наибольшую сумму, для выплаты расходов и вознаграждений, упомянутых в предыдущем параграфе.

Другие расходы, предусмотренные в процессе деятельности фонда (зарботная плата, командировочные, суточные довольствия работников, другие оперативные расходы) не должны превышать сумму, определенную соглашениями в области государственного управления, если иное не определено Актом о создании фонда и Регламентирующими положениями.

## VI. VI. СОБСТВЕННОСТЬ ФОНДА

### Статья 27

#### (Доход фонда)

Доход фонда формируется в процессе управления первоначальной собственностью, имуществом, переданным в дар, из других пожертвований, доходов, полученных от осуществления деятельности и за счет других средств.

Доход фонда используется исключительно в целях выполнения цели фонда и осуществления деятельности фонда.

Имущество может быть передано в дар фонду отечественными и иностранными физическими или юридическими лицами (донорами).

### Статья 28

#### (Уменьшение стоимости первоначального имущества)

Стоимость первоначального имущества может быть уменьшена, если такое уменьшение предусмотрено Актом о создании фонда или если опекунский совет принимает решение о таком уменьшении в связи с исключительными обстоятельствами. Решение опекунского совета вступает в силу после получения одобрения Органа, ответственного за работу фондов.

### Статья 29

#### (Ограничения использования недвижимости)

Фонд может использовать недвижимое имущество, если такое использование одобрено Органом, ответственным за работу фондов.

## VII. VII. КОНТРОЛЬ

### Статья 30

#### (Контроль и управление собственностью)

Фондом ведутся бухгалтерские книги и составляются годовые отчеты в соответствии с правилами, определяющими порядок ведения бухгалтерских записей и составления финансовых отчетов для учреждений.

Ежегодно к концу марта опекунский совет представляет отчет о своей работе и управлении финансами за предыдущий календарный год.

Отчет об управлении финансами представляется также другим компетентным

органом. Контроль над управлением финансами осуществляется компетентными государственными органами или уполномоченными организациями. Необходимо осуществлять специальный контроль за первоначальной собственностью, стоимость которого может быть уменьшена только по условиям, определенным в Статье 28 настоящего Закона.

Орган, ответственный за работу фондов, может потребовать проведения проверки управления финансами аудитором, имеющим соответствующий сертификат.

## VIII. VIII. ЗАКРЫТИЕ ФОНДА

### Статья 31

#### (Причины закрытия фонда)

Деятельность Фонда должна быть прекращена в случае, если:

- - стоимость имущества недостаточна для проведения дальнейшей деятельности фонда;
- - выполнение цели фонда становится невозможным;
- - в других случаях, когда Орган, ответственный за работу фондов, установил отсутствие условий для дальнейшей деятельности фонда;
- - цель, ради которой был создан фонд, выполнена.

### Статья 32

#### (Последствия прекращения деятельности)

Опекунский совет или Орган, ответственный за работу фондов, принимает решение о прекращении деятельности фонда, с учетом пожеланий и намерений учредителей.

Решение опекунского совета вступает в силу после получения соответствующего решения от Органа, ответственного за работу фондов.

В отношении решения Органа, ответственного за работу фондов, о прекращении фонда может быть подана жалоба. Жалоба рассматривается Правительством Республики Словения.

Орган, ответственный за работу фондов, информирует суд о прекращении деятельности фонда.

Суд начинает процессуальные действия по ликвидации и банкротству в соответствии с

Законом о конфискации, банкротстве и ликвидации.

В соответствии с волей и намерениями учредителей оставшееся имущество банкрота распределяется среди других фондов с такой же целью. При отсутствии таких фондов, имущество распределяется среди других фондов со схожей целью. Информация о ликвидации фонда публикуется в официальной печати Республики Словения, и фонд исключается из регистра фондов.

#### IX. IX. ОСОБЫЙ ОРГАН УПРАВЛЕНИЯ ФОНДОМ

##### Статья 33

(Опекун)

В целях выполнения конкретных обязанностей, связанных с работой или закрытием фонда, Орган, ответственный за работу фондов, назначает опекуна фондов, или, если необходимо, опекуна для конкретного фонда.

Опекун должен быть специалистом в соответствующей области и может быть назначен из числа лиц, не являющихся представителями Органа, ответственного за работу фонда.

Опекун осуществляет контроль за собственностью фонда с даты представления Акта о создании фонда Органу, ответственному за работу фондов, до даты выдачи соответствующего одобрения, а также, в случаях, когда опекунский совет еще не назначен, и выполняет другие назначения или указания компетентного министра.

#### X. X. ИСПОЛЬЗОВАНИЕ ТЕРМИНА «ФОНД»

##### Статья 34

(Использование термина «фонд»)

Термин «фонд» (на словенском языке «fundacija (fundacija)» в более узком значении, чем «установа») может быть использован в названии юридического лица, созданного преимущественно для осуществления общественно полезной или благотворительной деятельности, и которое не использует наемный труд для получения прибыли.

Юридические лица, упомянутые в предыдущем параграфе, фиксируются в Регистре юридических лиц в соответствии с Законом, согласно которому они были образованы.

#### XI. XI. ШТРАФНЫЕ САНКЦИИ

##### Статья 35

(Штрафные санкции)

Минимальный штраф в сумме 200 000 SIT налагается на фонд в случае если:

1) 1) фонд занимается деятельностью, противоречащей пятому параграфу Статьи 2;

2) 2) фонд действует в нарушение Акта о создании фонда и Регламентирующих положений фонда (Статья 6, первый и третий параграфы Статьи 18);

3) 3) фонд использует свое название с нарушением Статьи 15;

4) 4) фонд меняет свое название, месторасположение или цель в нарушение Статьи 17;

5) 5) фонд не представляет Регламентирующие положения в течение срока, установленного в Статье 18;

6) 6) фонд уменьшает стоимость первоначального имущества в нарушение Статьи 28;

7) 7) фонд использует недвижимое имущество в нарушение Статьи 29;

8) 8) фонд не представляет отчеты согласно Статье 30;

9) 9) фонд не ведет бухгалтерский учет в соответствии с первым параграфом Статьи 30.

За любое из нарушений, перечисленных выше, на ответственное лицо фонда налагается минимальный штраф в сумме 50 000 SIT.

##### Статья 36

Минимальный штраф в сумме 50 000 SIT налагается на юридическое лицо или независимого контрагента в случае если:

- оно работает как фонд, без получения одобрения Акта о создании фонда (четвертый параграф Статьи 12);

- оно использует термин фонд (на словенском языке «установа») в своем названии в нарушение Статьи 15 или термин фонд (на словенском языке «fundacija») в нарушение Статьи 34.

За любое из нарушений, перечисленных выше, на ответственное лицо юридического лица

налагается минимальный штраф в сумме 10 000 SIT.

## I. XII. ПЕРЕХОДНЫЕ И ЗАКЛЮЧИТЕЛЬНЫЕ ПОЛОЖЕНИЯ

### Статья 37

(Внесение поправок в деятельность фондов)

Существующие фонды (на словенском языке «фондације», «фундације», «фонды», «склады», «установа»), которые были образованы до вступления в силу настоящего Закона, должны внести поправки в свою деятельность в соответствии с настоящим Законом в течение одного года с даты вступления настоящего закона в силу.

Другие юридические лица, организации или независимые контрагенты, использующие в своем названии термин «фонд» («фондације», «фундације», «фонды», «склады», «установа»), должны внести поправки в свои документы и деятельность в соответствии с настоящим Законом или исключить термин «фонд» из своего названия в течение одного года с даты вступления настоящего закона в силу.

Положения предыдущего параграфа не применяются к фондам, образованным в соответствии с другими законами или не являющимся юридическими лицами.

По истечении срока, указанного в первом и втором параграфах настоящей Статьи, компетентный орган в силу занимаемой должности, по завершении действий, связанных с банкротством, исключает юридические лица, не выполнившие требования по внесению поправок в свои документы в соответствии с настоящим законом, из регистра, в котором они были зарегистрированы.

### Статья 38

(Выполнение правил)

Положения о ведении и содержании записей, определенных в третьем параграфе Статьи 14 настоящего Закона, издаются министром, ответственным за администрирование, в течение 60 дней с даты вступления настоящего Закона в силу.

### Статья 39

(Вступление настоящего Закона в силу)

Настоящий Закон вступает в силу на пятнадцатый день после публикации об этом информации в официальной печати Республики Словения. (Действует с 4 ноября 1995 года).

## 12.3. Law on NPO

## 12.4. Law on NGO

## 12.5. Law on Other Legal Forms

### 12.5.1. Law on Public Institutions (excerpt)

#### Article 3

Public institutions shall be founded for performing public services.

Public institutions may be founded for performing activities not defined as public services if the performance of such activities is assured in the manner and under the conditions that apply to public services.

Public institutions shall be founded by the republic, municipality, city or other legal entity authorised by law. Self-governing ethnic communities shall have the right to co-found or found public institutuions which perform activities important for the realisation of the rights of the national minority.

Public institutuions may also be co-founded by other legal entities or natural persons.

## 12.6. Other Laws

### 12.6.1. Value Added Tax Act

#### I. GENERAL PROVISIONS

#### Article 1

(contents of the Act)

(1) This Act governs the system and introduces the obligation of payment of value added tax (hereinafter: VAT) in the territory of the Republic of Slovenia in accordance with the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment (OJ L No. 145, 13 June 1977, p. 1, with all amendments).

(2) For the purposes of this Act:

- "the territory of Slovenia"

shall mean the territory under the sovereignty of the Republic of Slovenia including air space and maritime territory, which, pursuant to national

and international law, is under the sovereignty or jurisdiction of the Republic of Slovenia;

- "territory of a Member State" and "Community" shall mean the territory of Member States and the territory of the Community defined as such in the legislation of the European Communities;

- "third country" shall mean any territory other than the territory of Slovenia and the territory of other Member States or of the Community;

- "third territory" shall mean the part of the state territory of a Member State which does not form a constituent part of the "territory of a Member State" in terms of the second indent of this paragraph, to wit:

- in the Federal Republic of Germany: the Island of Heligoland, the territory of Büsingen;

- in the Kingdom of Spain: Ceuta, Melilla, the Canary Islands;

- in the Italian Republic: Livigno, Campione d'Italia, Italian waters of Lake Lugano;

- in the French Republic: the overseas departments;

- in the Hellenic Republic: Ἄγιο Όρος (Mount Atos)

(3) For the purposes of this Act:

- transactions originating

in or intended for the Principality of Monaco shall be treated as transactions originating in or intended for the French Republic; and

- transactions originating in or intended for the Isle of Man shall be treated as transactions originating in or intended for the United Kingdom of Great Britain and Northern Ireland.

#### Article 2

(VAT revenue)

Revenues from VAT belong to the budget of the Republic of Slovenia.

#### Article 3

(subject of taxation)

VAT shall be charged and paid on: 1. supplies of goods and performed

services (hereinafter: supply of goods or services) effected for consideration within the territory of the Republic of Slovenia (hereinafter: Slovenia) by a taxable person in the course of performing his activity;

2. the importation of goods into the Community.

#### Article 3a

(intra-Community acquisition of goods subject to value added tax)

VAT shall be also charged and paid on the following: 1. goods acquired for consideration within the territory

of Slovenia by a taxable person in the course of performing his activity or by a non-taxable legal person, if the vendor is a taxable person in another Member State who in accordance with the legislation of that Member State is not eligible for the VAT exemption as a small taxable person and who is not covered by the arrangement laid down in the second sentence of the first indent of the first paragraph of Article 15 of this Act or in the first paragraph of Article 15a of this Act;

2. new means of transport acquired for consideration within the territory of Slovenia by a taxable person or a non-taxable legal person from a vendor from another Member State who qualifies for the derogation from the second paragraph of Article 11a of this Act or any other non-taxable person;

3. products subject to excise duties acquired for consideration within the territory of Slovenia from a vendor from another Member State by a taxable person or a non-taxable legal person who qualifies for the derogation from the second paragraph of Article 11a of this Act and for which excise duties shall become chargeable in Slovenia in accordance with the Excise Duty Act.

## II. TAXABLE TRANSACTION

1. Supply of goods

#### Article 4

(supply of goods)

(1) Supply of goods shall mean the transfer of the ownership right of tangible property, unless otherwise provided by this Act.

(2) The following shall also be considered as supply of goods:

1. supply of goods, effected for consideration, on the basis of a decision by a state body, a local community body, or on the basis of the Act;

2. a sale of goods by a contract on the basis of which commission shall be paid on the purchase or sale of goods;

3. the handing over of goods on the basis of a contract for the hire of goods for a certain period or on the basis of a sales contract on deferred payment which provides that in the normal course of events ownership shall be transferred no later than by the time of payment of the final instalment;

4. the transfer of material rights and shares in respect of immovable property which gives the holder the ownership right or the right to possession over the immovable property or part of the immovable property;

5. the disposal of the business assets of a taxable person by another person, including liquidators, bankruptcy administrators and custodians;

6. the supply of electricity, gas and energy for heating, refrigeration or air conditioning;

7. the application of the goods forming part of the business assets of the taxable person;

8. the application of the goods for the purposes of pursuing an activity, change of the intended use and retaining of the goods on termination of pursuit of the activity;

9. the exchange of goods.

(3) The

following shall be deemed as supply of goods under point 1 of the second paragraph of this Article:

1. the acquisition of the ownership right in respect of goods by or on behalf of the State or a local authority on the basis of the law;

2. the deprivation of the ownership right in respect of goods by any person on the basis of the law.

Article 5

(application of goods forming part of the business assets of a taxable person)

(1) The application of goods referred to in point 7 of the second paragraph of Article 4 of this Act shall be deemed to mean the application by a taxable person of goods forming part of his business assets for his private use or that of his staff, the disposal of these goods free of charge or the disposal of these goods for reduced payment or any application of goods for a purpose other than those of pursuing his activity, if input VAT was deducted from these goods or part of these goods in whole or in part. The application of goods from this paragraph shall be treated as supply of goods effected for consideration.

(2) Notwithstanding the provisions of the first paragraph of this Article, the following shall not be considered as supply of goods effected for consideration:

1. the disposal free of charge of business samples in reasonable quantities to customers or potential customers, provided they are not placed on sale by these customers or potential customers, or if they are in a form which does not enable to sell them;

2. the disposal of low-value gifts in the course of performing the activity of a taxable person, provided this is done only occasionally and not to the same persons. Low-value gifts are considered to be gifts whose individual value does not exceed SIT 2,000.

Article 6

(application of goods for the purposes of pursuing an activity, change of intended use and retaining of goods on termination of pursuit of an activity)

(1) The application of goods from point 8 of the second paragraph of Article 4 of this Act shall be considered to mean:

1. the application of goods

which a taxable person produces, constructs, purchases, proceeds or imports in the course of the pursuit of an activity for the purposes of pursuing his activity, if had the goods been acquired from another taxable person, he would not have the right to deduct the full input VAT on these goods;

2. the application of goods for the purposes of transactions of a taxable person on which VAT is not charged if, when the goods were acquired or used in accordance with the preceding point, he deducted the full input VAT or the proportion of

the input VAT determined in accordance with the deductible proportion;

3. the retention of goods by the taxable person or by his legal successors (other than in cases referred to in Article 7 of this Act) when he ceases to pursue the activity or after the expiry of the identification for VAT purposes if, when goods were acquired or used in accordance with point 1 of this Article, he deducted the full input VAT or the proportion of the input VAT determined in accordance with the deductible proportion.

(2) The application of goods from the first paragraph of this Article shall be treated as supply of goods made for consideration.

#### Article 7

(transfer of a company)

(1) At transfer of a company or part thereof to another taxable person, whether for consideration or not, shall be considered that no supply of goods has taken place.

(2) In the event referred to in the first paragraph of this Article, for the purposes of VAT, the recipient shall be deemed to be the legal successor of the transferor of the company or part thereof.

(3) Notwithstanding the first paragraph of this Article a recipient who uses acquired assets for purposes other than those for which he has the right to deduct input VAT, must pay VAT in accordance with the provisions of this Act which apply to charging for VAT on the use of goods and services for private purposes.

#### Article 7a

(the transfer of goods to another Member State)

(1) The transfer of goods by a taxable person from his undertaking to another Member State shall be treated as supply of goods made for consideration.

(2) The transfer of goods to another Member State shall be deemed to have been made if a taxable person or another person on his behalf, dispatches or transports goods for the purposes of his activity from Slovenia to another Member State, except for the purposes of any of the following transactions:

- The supply of the goods in question

by this taxable person within the territory of the Member State of destination under the conditions laid down in the second sentence of the first indent of the first paragraph of Article 15 of this Act and in the first paragraph of Article 15a of this Act;

- The supply of the goods in question by this taxable person under the conditions laid down in the third indent of the first paragraph of Article 15 of this Act;

- The supply of the goods in question by this taxable person within Slovenia under the conditions laid down in Articles 31 or 31a of this Act;

- The supply of services for the taxable person and involving work on the goods in question physically carried out in the Member State of destination, provided that the goods, after being worked upon, are re-dispatched to the same taxable person in the Member State from which they had initially been dispatched or transported;

- Temporary use of the goods in question within the territory of the Member State of destination for the purposes of the supply of services in this Member State by a taxable person established in Slovenia;

- Temporary use of the goods in question within the territory of another Member State for a period not exceeding 24 months where the temporary importation of the same goods from a third country would be eligible for the arrangements for temporary importation with full exemption from import duties;

- The supplies of gas through the natural gas distribution system or of electricity under the conditions from indents 4 and 5 of the first paragraph of Article 15 of this Act.

(3) If one of the conditions from the second paragraph of this Article is no longer met, the goods shall be considered as having been transferred to another Member State. In this case, the transfer shall be considered to have been carried out at the moment that the conditions are no longer met.

#### 2. Supply of services

#### Article 8

(supply of services)



(1) Supply of services shall mean the performance, the omission or permission of any action in the course of performing an activity other than the supply of goods within the meaning of Articles 4, 5 and 6 of this Act.

(2) The following, inter alia, shall be considered as supply of services:

1. the transfer, assignment, exercise and waiver of copyrights, patents, licenses, trademarks and other property rights (hereinafter: property rights);

2. the supply of services on the basis of a decision by a state body, a local community body, or on the basis of the Act;

3. the use of the services of a taxable person for non-business purposes;

4. the exchange of services.

#### Article 9

(use of services for non-business purposes)

(1) The following shall be considered supply of services under point 3 of the second paragraph of Article 8 of this Act:

1. the use of goods forming part

of the business assets of a taxable person for the performance of services for private purposes or for private purposes of his staff, or use of goods for purposes other than those of his business activity;

2. the supply of services performed by a taxable person without or for reduced consideration for private purposes or for private purposes of his staff, or for purposes other than those of his business activity.

(2) The use of goods from point 1 and the supply of services from point 2 of the first paragraph of this Article shall be treated as the supply of services made for consideration.

#### Article 10

(supply of services in one's own name and for the account of another person)

Supply of services where a taxable person acts in his own name but for the account of another person, shall be considered as that he himself receives and performs such services.

#### 3. Importation of goods

##### Article 11

(definition)

Importation of goods shall mean: 1. each entry into the Community

of goods which, in accordance with customs regulations, do not have the status of Community goods or goods imported from a third country, and which are not released into free circulation within the Community in accordance with customs regulations;

2. each entry of goods other than those from the previous point into the Community from a third territory.

#### 4. Intra-Community

acquisition of goods

##### Article 11a

(intra-Community acquisition of goods)

(1) Intra-Community acquisition of goods shall mean the acquisition of the right of ownership of moveable tangible property dispatched or transported to the person acquiring the goods in Slovenia by or on behalf of the vendor or the person acquiring the goods.

(2) Notwithstanding point 1 of Article 3a of this Act, VAT shall not be charged and paid on the following:

1. intra-Community acquisition of goods by a taxable person or non-taxable legal person, provided that the supply of such goods, if made between persons within Slovenia, would be exempt from VAT in accordance with points 4 to 10 of Article 31 of this Act;

2. goods other than those from the previous point acquired within the Community by a taxable person from the second paragraph of Article 45 of this Act, for the purposes of agricultural and forestry activities, who is taxed under the flat rate scheme in accordance with Article 46 of this Act, by a taxable person who carries out only supplies of goods or services in respect of which there is no right to deduct input VAT, or by a non-taxable legal person, but only:

- if the total amount of acquisitions during the current calendar year does not exceed the equivalent in toalars of EUR 10,000, and

- provided that the total amount of intra-Community acquisitions of goods during the previous calendar year did not exceed the amount from the previous indent.

(3) The amount from point 2 of the second paragraph of this Article shall mean the total amount, exclusive of VAT, due or paid for the goods acquired in the Member State from which the goods were dispatched or transported. The amount shall not include the value of intra-Community acquisitions of new means of transport and of goods subject to excise duties.

(4) Notwithstanding the provisions of point 2 of the second paragraph of this Article, a taxable person or a non-taxable legal person may opt for charging VAT in accordance with point 1 of Article 3a of this Act. The taxable person must notify his option in advance to the competent tax office, and must apply it for at least two calendar years, from the first day of the month following the month of notification.

(5) For the purposes of this Act, means of transport shall be:

- motorized land vehicles the engine capacity of which exceeds 48 cubic centimetres or the engine power of which exceeds 7.2 kilowatts, intended for the transport of persons or goods;

- vessels exceeding 7.5 metres in length, other than vessels indicated in point 5 of

Article 31 of this Act;

- aircraft the take-off weight of which exceeds 1550 kilograms, other than aircraft from point 6 of Article 31 of this Act.

The means of transport indicated in the fifth paragraph of this Article shall be considered to be new where one of the following conditions is met:

- vessels and aircrafts were supplied less than three months from the date of first entry into service and motorized land vehicles less than six

months from the date of first entry into service, and

- motorized land vehicles have not travelled more than 6000 kilometres; vessels have not sailed more than 100 hours and aircrafts have not flown more than 40 hours.

(6) Products subject to excise duty from point 3 of Article 3a of this Act shall be products as defined in the law governing excise duties.

Article 11b

(transactions deemed to be intra-Community acquisitions of goods)

The following shall also be deemed to be an intra-Community acquisition of goods effected for consideration: - the use by

a taxable person, for the purposes of performing his activities, of goods dispatched or transported by or on behalf of the taxable person from another Member State, on the territory of which the goods were produced, extracted, processed, purchased, acquired or imported by the taxable person within the framework of performing activities into that other Member State;

- goods acquired by the armed forces of a Member State of the North Atlantic Treaty Organization for their needs or the needs of the civilian staff accompanying them which they have not acquired under the general rules governing taxation on the domestic market of one of the Member States, when at the importation of these goods they could not benefit from the exemption in accordance with sub-point e) of point 3 of Article 28 of this Act.

III. VAT PAYERS

Article 12

(persons liable to pay VAT)

(1) Persons liable to pay VAT shall be:

1. a taxable person carrying out the taxable supply of goods or

services, except for the

cases in accordance with points 2, 3, 4 and 7 of this paragraph; 2. a taxable person to whom

services covered by the third paragraph of Article 17 of this Act are supplied;

3. persons identified for the purposes of VAT in Slovenia to whom services from Articles 18a, 18b, 18c and 18d of this Act are supplied, where such services are provided by a taxable person not established in Slovenia;

4. the recipient of goods when the following conditions are met:

- goods are supplied under the conditions from Article 28c of this Act;

- goods were supplied to another taxable person or non-taxable legal person identified for VAT purposes in Slovenia, and

- the invoice issued by the taxable person not established in Slovenia contains prescribed data.

5. any person who shows VAT on an invoice;

6. any person effecting an intra-Community acquisition of goods, if such acquisition is taxable in Slovenia;

7. persons identified for VAT purposes in Slovenia to whom goods under the conditions of fourth and fifth indent of the first paragraph of Article 15 of this Act are supplied, if

this supply is performed by the taxable person not established in Slovenia.

(2) If the person liable to pay VAT in accordance with the first paragraph of this Article is a taxable person not established in Slovenia, he may irrespective of the provisions of the first paragraph of this Article appoint a tax representative as the person liable to pay VAT. If a taxable person not established in Slovenia does not appoint a tax representative, the recipient of goods or services shall pay VAT.

(3) On importation, the importer, that is the customs debtor determined in accordance with customs regulations, or the recipient of the goods shall be liable to pay VAT.

#### IV. TAXABLE PERSONS

Article 13

(definitions)

(1) A taxable person shall be any person who independently carries out any economic activity in any place irrespective of the purpose or result of that activity.

(2) The economic activity referred to in the first paragraph of this Article shall comprise each production, manufacturing, trading and service activity, including mining, agricultural activity and activity of the professions. The exploitation of tangible and intangible property for the purpose of obtaining income therefrom on a continuing basis shall also be considered an economic activity.

(3) State bodies and organisations and local community bodies shall not be considered taxable persons in accordance with the first paragraph of this Article when they perform activities or transactions within the scope of their competences, and public agencies and other entities of public law when they perform administrative tasks on the basis of the public authorisation even if they perform these tasks for consideration (fees, contributions and other charges). If these bodies or entities perform any of the activities referred to in the second paragraph of this Article or supply in which their treatment as non-taxable persons would lead to a distortion of competition, they shall be deemed to be taxable persons in these cases.

(4) Organisers of services referred to in point 3a of the second paragraph of Article 17 of this Act shall also be deemed to be taxable persons.

#### Article 13a

(a taxable person who occasionally supplies a new means of transport)

Any person who occasionally supplies a new means of transport under the conditions laid down in point 2 of Article 31a of this Act shall also be regarded as a taxable person.

#### V. PLACE OF TAXATION

##### Article 14

(general)

(1) VAT shall be chargeable and payable at the place where the supply of goods or services has been performed, or at the place where the supply is considered to have been performed under this Act.

(2) Slovenia shall be considered as one place for performing supply, unless otherwise provided by this Act.

Article 15

(place of supply of goods)

(1) The place of supply of goods shall be deemed to be:

- the place where the goods are located at the time

when dispatch or transport of goods to the recipient begins, irrespective of whether such dispatch or transport is performed by or on behalf of the supplier or recipient. When the goods are installed or assembled by or on behalf of the supplier, with or without a trial run, the place of supply shall be deemed to be the place where the goods are installed or assembled;

- the place where goods are located when the supply takes place if goods are not dispatched or transported;

- the place where the transport of passengers begins if goods are supplied on board of vessel, aircraft or train during the part of a transport of passengers effected in the Community;

In the case of a return trip, the return leg shall be considered to be a separate transport.

- in the case of the supply of gas through the natural gas distribution system, or of electricity to the taxable person – a dealer: the place where a taxable person – a dealer has established his business or has a fixed establishment for which the goods are supplied, or, in the absence of such a place, the place where he has his permanent address or usually resides.

The term “taxable person – a dealer” for the purposes of this indent shall mean a taxable person, whose principal activity in respect of purchases of gas and electricity is reselling such products and whose own consumption of these products is negligible:

- in the case of the supply of gas through the natural gas distribution system, or of electricity, where such a supply is not covered by the previous indent: the place where the customer has effective use and consumption of the gas or electricity.

Where all or part of the gas or electricity are not in fact consumed by this customer, the non-consumed gas or electricity shall be deemed to

have been used and consumed at the place where he has established his business or has a fixed establishment for which the gas or electricity are supplied. In the absence of such a place of business or fixed establishment, it is deemed the gas or electricity have been used and consumed at the place where he has his permanent address or usually resides.

(2) The terms from the last indent of the first paragraph of this Article shall mean:

- “part of a transport of passengers effected in the Community” shall mean the part of the transport effected without a stop in a third territory, between the place where the transport of passengers begins and the place where the transport of passengers ends, while “the place where the transport of passengers ends” shall mean the last point of disembarkation foreseen within the Community before a leg outside the Community of passengers who embarked in the Community,

- “the place where the transport of passengers begins” shall mean the first point of passenger embarkation foreseen within the Community after a leg outside the Community.

(3) Where the place of departure of a consignment or transport of goods is in a third country, the place of supply by the importer as defined in the third paragraph of Article 12 of this Act and the place of any subsequent supply shall, irrespective of the first indent of the first paragraph of this Article, be deemed to be in the Member State of import of the goods.

Article 15a

(place of the supply of goods at the supply of goods from another Member State)

(1) Notwithstanding the first indent of the first paragraph and the third paragraph of Article 15 of this Act, the place of supply of goods dispatched or transported by or on behalf of the supplier from another Member State which is not the Member State of destination, shall be deemed to be the place where the dispatch or transport ends, provided that both of the following conditions are met:

- the goods shall be supplied to

a taxable person or non-taxable legal person, if the conditions for derogation provided for in the

second paragraph of Article 11a of this Act are met, or to any other non-taxable person, and

- the subject of the supply shall not be new means of transport and goods, supplied by or on behalf of the supplier, after assembly or installation, with or without a trial run.

(2) When the goods thus supplied are dispatched or transported from a third country and imported by the supplier into a Member State other than the Member State of the purchaser, the goods shall be deemed to have been dispatched or transported from the Member State of import.

(3) The first and the second paragraph of this Article shall not apply to supplies of goods, except for products subject to excise duties, when the total value (excluding VAT) of such goods in the current calendar year does not exceed the equivalent in tolar of EUR 35,000, provided that it also did not exceed this value in the previous calendar year.

(4) The taxable person meeting the conditions from the third paragraph of this Article may determine the place of such supply in accordance with the first and the second paragraph of this Article. The taxable person must notify his option in advance to the competent tax office, and must apply it for at least two calendar years from the first day in the month following the month of notification.

#### Article 16

(place of import of goods)

(1) The place of import of goods shall be the territory of the Member State in which the goods enter the Community.

(2) Notwithstanding the first paragraph of this Article, where goods referred to in point 1 of Article 11 of this Act are placed, on entry into the Community, under one of the arrangements referred to in the first paragraph of Article 32 of this Act, under arrangements for temporary importation with total exemption from import duties or under external transit arrangements, the place of import of such goods shall be the Member State within the territory of which these arrangements cease to apply.

(3) Notwithstanding the first paragraph of this Article when goods referred to in point 2 of Article 11 of this Act are placed, on entry into the Community, under one of the arrangements from the third or fourth paragraph of Article 32a of this Act, the place of import shall be the Member State

within the territory of which these arrangements cease to apply.

#### Article 17

(place of supply of services)

(1) The place where a service is supplied shall be deemed to be the place where the taxable person who carries out services has established his business or has a fixed establishment from which the service is supplied or in the absence of such a place, the place where he has his permanent address or usually resides.

(2) Notwithstanding the first paragraph of this Article, the place where the supply of services is performed, shall be considered to be:

1. the place where immovable property is situated for supplies of services directly linked with immovable property, including services such as: services of estate agents, valuations of immovable property, and preparatory construction works such as the services of architects and on-site supervision;

2. the place where a transport service is supplied having regard to the distance covered;

3. the place where services are actually performed, for:

(a) services from the fields of culture, art, science, education, sport, entertainment, including the activity of the organisers of such services; (b)

ancillary transport services such as loading, unloading, transshipment and other services relating to these or other transport-related services;

(c) valuations of movable property;

(d) services performed on movable property.

(3) Notwithstanding the first paragraph of this Article, in respect of the following services:

1. transfer, exploitation and omission of property rights;

2. advertising services;

3. services of consultants, engineers, lawyers and notaries, auditors and accountants, interpreters, translators and similar services, computer services and the supply of information;

4. services related to the cessation or omission of the performance of activities;

5. banking, financial and insurance services including reinsurance services, with the exception of the hire of safes;

6. provision of staff;

7. telecommunication; telecommunication shall be considered to be any transfer, broadcast or reception of signs, signals, text, images, sounds or information by wire, radio, optical or other electromagnetic systems, including the transfer of the right to use the means for such transfer, broadcast or reception. Telecommunications shall also include connection to a global information network.

8. hiring of movable property, except for the hiring of all forms of means of transport;

9. agency services in connection with services under this paragraph performed by an agent in the name and for the account of a customer;

10. transmission of radio and television programmes;

11. which are electronically supplied;

the place of supply of services shall be deemed to be the place where the customer has established his business or has a fixed establishment, for which the service is supplied, or, in the absence of such a place, the place where he has his permanent address or usual resides, if the services are supplied for a customer established outside the Community or a taxable person established in another Member State.

12. access to and transport or distribution through natural gas or electricity distribution systems and performance of others, directly linked services.

(4) The place of supply of services from point 11 of the third paragraph of this Article performed by a taxable person who has established his business or has a fixed establishment, from which the service is supplied, outside the Community, or, in the absence of such a place, the place where he has a permanent address or usually resides

outside the Community, when performed for a non-taxable person who is established or has a permanent address or usually resides in a Member State, shall be deemed to be the place where the non-taxable person is established or has his permanent address or usually resides.

#### Article 18

(special rules)

(1) For services from the third paragraph of Article 17 of this Act (other than services from point 11 of the third paragraph of Article 17 of this Act), when they are supplied to non-taxable persons, and for the leasing of all forms of means of transport, it shall be deemed that:

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the place of supply of services, which under Article 17 of this Act would be within the territory of Slovenia, is outside the Community, if the service is actually used and enjoyed outside the Community;

- the place of supply of services, which under Article 17 of this Act would be outside the Community, is within the territory of Slovenia, if such service is actually used and enjoyed in Slovenia.

(2) The provision of the second indent of the first paragraph of this Article shall also apply to telecommunications services and the transmission of radio and television programmes from the third paragraph of Article 17 of this Act provided by a taxable person who has established his business or has a fixed establishment, from which the service is supplied, outside the Community, or in the absence of such a place has a permanent address or usually resides outside the Community, when performed for non-taxable persons who are established or have a permanent address or usually reside in Slovenia.

#### Article 18a

(place of the supply of services in the intra-Community transport of goods)

(1) Notwithstanding point 2 of the second paragraph of Article 17 of this Act, services of intra-Community transport of goods shall be deemed to have been carried out at the place of departure.

(2) The terms in this Article shall have the following meaning:

- "the intra-Community transport of goods" shall mean transport where the place of departure and the place of destination are within the territories of two different Member States.

The transport of goods where the place of departure and the place of destination are within the territory of Slovenia shall also be deemed to be intra-Community transport of goods if such transport is directly linked to the transport of goods

where the place of departure and the place of destination are within territories of two different Member States;

- "the place of departure" shall mean the place where the transport of goods actually starts;

- "the place of destination" shall mean the place where the transport of goods actually ends.

(3) Notwithstanding the first paragraph of this Article, if the transport of goods is provided for a customer identified for VAT in a Member State other than the Member State of departure, the transport service shall be deemed to have been performed within the territory of the state which issued the customer the VAT identification number under which the service was performed for him.

#### Article 18b

(place of the supply of services ancillary to the intra-Community transport of goods)

Notwithstanding point 3b of the second paragraph of Article 17 of this Act, if services ancillary to the intra-Community transport of goods are performed for a customer identified for VAT in a Member State other than the Member State where the services are actually performed, it shall be deemed that the services are performed on the territory of the state which issued the customer the VAT identification number under which the service was performed for him.

#### Article 18c

(place of the supply of services performed by intermediaries)

(1) Notwithstanding the first paragraph of Article 17 of this Act, the place of supply of services

performed by intermediaries acting in the name and for the account of other persons shall be deemed to be:

- the place of departure, when

the intermediary's services form part of intra-Community transport of goods;

- the place where ancillary services are actually performed, when the intermediary's services form part of the ancillary services in intra-Community transport of goods;

- the place where transactions are carried out, when the intermediary's services form part of other transactions, except for transactions from the previous indents or from the third paragraph of Article 17 of this Act.

(2) Notwithstanding the first paragraph of this Article, if the intermediary's service is performed to customers identified for VAT, and if the identification number was issued by a Member State other than that in which, in accordance with the first paragraph of this Article, the place of supply of service would be deemed to be, the place of supply of service shall be deemed to be within the territory of the state which issued the customer the VAT identification number under which the service was supplied to him.

Article 18d (place of the supply of services in the case of valuations or of services on movable tangible property)

Notwithstanding points 3c and 3d of the second paragraph of Article 17 of this Act, the place of supply of services in the case of valuations or of services on moveable tangible property provided to customers identified for VAT in a Member State other than the Member State in which the services are actually supplied shall be deemed to be in the territory of the Member State which issued the customer the VAT identification number under which the service was carried out for him, if the goods are dispatched or transported from of the Member State where the services were physically carried out.

Article 18e (place of the intra-Community acquisition of goods)

(1) The place of the intra-Community acquisition of goods shall be deemed to be the place where the goods are located at the time when the dispatch or transport to the person acquiring them ends.

(2) Notwithstanding the first paragraph of this Article, the place of the intra-Community acquisition of goods shall be deemed to be within the territory of the Member State which issued the VAT identification number under which the person acquiring the goods acquires such goods, unless he provides proof that the acquisition has been taxed in another Member State in accordance with the first paragraph of this Article.

(3) It shall be deemed that the intra-Community acquisition of goods has been taxed in accordance with the first paragraph of this Article if:

- the acquirer establishes that he has effected intra-Community

acquisition of goods for the needs of a subsequent supply to the Member State from the first paragraph of this Article, and for which the recipient has been designated as the person liable to pay tax in accordance with the fifth indent of Article 28c of this Act,

- the acquirer has satisfied the obligations for the submission of the quarterly statement in accordance with Article 39b of this Act.

## VI. CHARGEABLE EVENT AND CHARGEABILITY OF VAT

### Article 19

(general)

(1) A chargeable event shall occur and VAT shall become chargeable when the goods are supplied or services are performed.

(2) If the invoice is issued before the goods are supplied or services are performed, VAT shall become chargeable when the invoice is issued.

(3) If the invoice is not issued but goods have been supplied or service performed, VAT shall become chargeable no later than the last day of the tax period in which the chargeable event has occurred.

(4) The supplies of goods, except for the supplies from point 3 of the second paragraph of Article 4 of this Act, and supplies of services, which give rise to successive statements of account or payments shall be deemed to have been supplied at the time when the period to which such statements of account or payments pertain expire; however, this period shall not exceed one year.

(5) If a payment is to be made before the goods are supplied or before services are performed,

VAT shall become chargeable on the date of the receipt of the payment on the amount received.

(6) In the case of supplies of goods or services under Articles 5, 6 and 9 of this Act, VAT shall become chargeable in the tax period in which the chargeable event has occurred.

### Article 19a

(chargeability of VAT in intra-Community acquisitions and supplies of goods)

(1) The chargeable event shall occur when the intra-Community acquisition of goods is effected. The goods shall be deemed to have been acquired within the Community when similar goods would be deemed to have been supplied in accordance with Article 19 of this Act in the case of the supply within the territory of Slovenia.

(2) For intra-Community acquisition of goods, VAT shall become chargeable on the fifteenth day of the month following the month in which the chargeable event occurs.

(3) Notwithstanding the second paragraph of this Article, VAT shall become chargeable when the invoice is issued if such invoice is issued to a person acquiring the goods prior to the expiry of the time limit indicated in the second paragraph of this Article.

(4) Notwithstanding Articles 19 and 20 of this Act, VAT shall become chargeable in the case of supplies of goods performed under the conditions from Article 31a of this Act on the fifteenth day of the month following the month in which the chargeable event has occurred.

(5) Notwithstanding the fourth paragraph of this Article, VAT shall become chargeable when the invoice is issued if the invoice is issued prior to the expiry of the time limit from the fourth paragraph of this Article.

### Article 20

(import of goods)

(1) The chargeable event shall occur and the tax shall become chargeable when the goods are imported. If on entry into the Community goods are placed under one of the arrangements from the second or third paragraph of Article 16 of this Act, the chargeable event shall occur and the tax shall become chargeable when goods cease to be covered by those arrangements.



(2) Notwithstanding the first paragraph of this Article, if imported goods are subject to customs duties, agricultural levies or charges having equivalent effect, established under a common policy, the chargeable event shall occur and the tax shall become chargeable, when the chargeable event for those duties occurs and those duties become chargeable.

(3) In the case of goods not subject to payment of any of the duties from the second paragraph of this Article, the chargeable event shall occur and the tax shall become chargeable when, in accordance with customs regulations, customs duty would become chargeable if it were prescribed.

## VII. TAXABLE AMOUNT

### Article 21

(taxable amount and correction of the taxable amount)

(1) The amount for VAT (hereinafter: taxable amount) shall be everything that constitutes the consideration (in cash, in goods or in services) which has been or is to be received by a taxable person from the purchaser, customer or a third party for performed supply of goods or services, including subsidies directly linked to the price of such supply, other than VAT, unless otherwise provided by this Act.

(2) The taxable amount shall include, if not already included:

1. excise duties and other taxes, charges, import and other duties, other than VAT;

2. the indirect expenses, such as commissions, packaging charges, transport and insurance costs charged by the supplier to the purchaser or customer of the services;

3. (deleted).

(3) If the consideration for performed supply of goods or services is not effected in cash or not entirely effected in cash, the taxable amount shall be equal to the market value of the goods or services at the time and place of the performed supply.

(4) In the case of the exchange of goods or services, the taxable amount shall be the value of the received goods or services.

(5) For the supply of goods or services performed by a taxable person who has not established his business in Slovenia, the taxable amount shall be

considered to be everything that constitutes the consideration which the recipient of goods or services has or will have to pay to the supplier.

(6) For the supply of goods under Articles 5 and 6 of this Act, the taxable amount shall be the purchase price of respective or similar goods, which does not include VAT, or the cost price of the goods at the time and place of the performed supply; for the supply of services under Article 9 of this Act, the costs of the taxable person for the performed services shall be the taxable amount.

(7) If for non-business reasons the consideration is less than the market value, or if there is no consideration, the taxable amount shall be the market value of the goods or services at the time and place of the performed supply.

(8) If the consideration for the performed supply of goods or services exceeds the amount to which the taxable person would be entitled, the taxable amount shall be the consideration received, excluding the VAT on this supply.

(9) The following shall not be included in the taxable amount:

1. price reductions and discounts approved on the invoice at the time the supply is performed, price reductions by way of discount for early payment (payment before the due date);

2. amounts which a taxable person receives from his customer as repayment for expenditures which he paid in his customer's name and for his customer's account and which are entered in his own accounts as provisional items. Taxable persons must provide proofs of the actual amount of these expenditures and must not deduct any VAT eventually charged on these transactions.

(10) If the taxable amount subsequently changes due to repayment, cancellation of the order, discounts, non-payment or price reductions after the supply has taken place, the taxable person who supplied the goods or services may correct (reduce) the amount of VAT. A taxable person may correct or reduce the amount of VAT if the taxable person for whom the supply of goods or services has been performed corrects (reduces) the deduction of input VAT and if he informs the supplier about this in writing.

(11) Notwithstanding the tenth paragraph of this Article, a taxable person may, in the case of inability to repay, adjust (reduce) the amount of VAT if pursuant to a final and binding court ruling on a concluded bankruptcy proceeding or on a successfully concluded compulsory settlement he was not repaid or was not repaid in full. A taxable

person may proceed in the same way if he receives a final and binding court ruling on the termination of the execution procedure or another document which shows that in the concluded execution procedure he was not repaid or was not repaid in full, as may a taxable person who was not repaid or was not repaid in full because the debtor was removed from the court register or from other appropriate registers or prescribed records. If the taxable person subsequently receives payment or partial payment for the supply of goods or services in connection with which he has made an adjustment to the taxable amount in accordance with this paragraph, he must charge VAT on the amount received.

(12) If the amount of VAT, charged on the importation of goods, which the taxable person has taken into account as deduction of input VAT, changes, the deduction of input VAT may be corrected by the difference arising on the basis of the customs documents or a decision of the customs authority.

(13) The taxable amount shall not include the costs of returnable packing, the records of which are kept by the supplier of goods in returnable packing.

#### Article 21a

(taxable amount in the intra-Community acquisition of goods)

(1) The provisions of Article 21 of this Act shall apply *mutatis mutandis* also to intra-Community acquisition of goods.

(2) In accordance with point 1 of the second paragraph of Article 21 of this Act, the taxable amount shall include excise duty due or paid by the person who effects intra-Community acquisition of a product subject to excise duty. If after the intra-Community acquisition of goods, the purchaser has obtained the refund of excise duty paid in the Member State

from which the goods were dispatched or transported, the taxable amount shall be reduced accordingly.

(3) In the case of intra-Community acquisition of goods from Article 11b of this Act and for the supply of goods from point 4 of Article 31a of this Act, the taxable amount shall be established in accordance with the sixth paragraph of Article 21 of this Act and with the second and ninth paragraph of Article 21 of this Act.

(4) If the acquisition is subject to tax in accordance with the first paragraph of Article 18e of this Act in the Member State where the dispatch or transport ends after having been

subject to tax in accordance with the second paragraph of Article 18e of this Act, the taxable amount shall be reduced accordingly in the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition.

#### Article 22

(taxable amount for the import of goods)

(1) The taxable amount for the import of goods from points 1 and 2 of Article 11 of this Act shall be the customs value established in accordance with Community customs regulations in force.

(2) The taxable amount from the first paragraph of this Article shall include if not already included:

1. taxes, excise duties, levies and other charges due outside the importing Member State and those due by reason of importation, excluding the VAT;

2. incidental expenses, such as commissions, packaging, transport and insurance costs incurred up to the first place of destination within the territory of the importing Member State.

“First place of destination” shall mean the place mentioned on the consignment note or other document by means of which the goods are imported into the importing Member State. If no such place is mentioned, the first place of destination shall be deemed to be the place of first transfer of cargo in the importing Member State.

In accordance with this point, the taxable amount for the import of goods shall also include incidental expenses incurred in transport to another place of destination within the territory of the Community, if such place is known at the moment when the chargeable event occurs.

(3) For the import of goods, price reductions and discounts in accordance with point 1 of the ninth paragraph of Article 21 of this Act shall be excluded from the taxable amount, if not already excluded.

(4) When goods have been temporarily exported from the Community and are re-imported after having undergone outside the Community repair, processing or adaptation, the taxable amount from the first paragraph of this Article shall be the value of the repair, processing or adaptation, as determined in accordance with customs regulations.

Article 23

(converting the value of foreign currency into domestic currency)

(1) If the value, which is the basis for determining the taxable amount for the import of goods, is denominated in a foreign currency, the conversion of this amount into domestic currency shall be made by applying the exchange rate determined in accordance with customs regulations for the calculation of the customs value of goods.

(2) If the value, which is the basis for determining the taxable amount, except for the import of goods, is denominated in a foreign currency, the conversion of this amount into domestic currency shall be made by applying the middle exchange rate of the Bank of Slovenia on the day the tax liability arises.

VIII. VAT RATES

Article 24

(general rate of VAT)

VAT shall be chargeable and payable at a rate of 20% on any supply of goods, services and import of goods, other than the supply of goods, services and import of goods on which this Act provides that VAT is not chargeable and payable, and for the supply of goods, services and import of goods on which a reduced VAT rate is prescribed.

Article 24a

(VAT rate for intra-Community acquisition of goods)

(1) The VAT rate applicable to the intra-Community acquisition of goods shall be that in force when the tax becomes chargeable.

(2) For intra-Community acquisition of goods the VAT rate used shall be the same as that applied to the supply of like goods effected by another taxable person within the territory of Slovenia.

Article 25

(reduced rate of VAT)

VAT at a rate of 8,5% shall be chargeable and payable on the:

1. foodstuffs (including beverages, except for alcoholic

beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in the preparation of foodstuffs; products normally intended to be used to supplement, or substitute, foodstuffs; preparation of meals;

2. water supplies;

3. medicines used for the treatment and prevention of diseases in human and veterinary medicine, including products used for contraception and sanitary protection;

4. medical equipment, aids and other appliances intended to alleviate or treat injury or disability and intended exclusively for personal use, including the repair of such goods;

5. transport of passengers and their personal luggage;

6. books (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript, maps and hydrographic or similar charts), newspapers and periodicals (including such material on loan by libraries if it is not VAT exempt in accordance with Article 26 of this Act) other than material wholly or substantially devoted to advertising matter;

7. admission fees for exhibitions, theatres, museums, visits to natural sites of interest, cinematographic and musical performances, circuses, fairs, amusement parks, zoos and similar cultural performances and sporting events;

8. royalties due to writers and composers and the services supplied by performing artists;

9. the importation of works of art, collectors' items and antiques referred to in the fourth, fifth and sixth paragraph of Article 48 of this Act;

10. works of art referred to in the fourth paragraph of Article 48 of this Act if they are sold:

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by their author or his statutory or legal successors,

- on an occasional basis by a taxable person other than a dealer and provided that he imported these works of art himself or they were sold to him by their author or his statutory or legal successors, or provided he was entitled to a full deduction of input VAT on the purchase;

11. apartments, residential and other buildings intended for permanent residence and the parts of these buildings if they are part of a social policy, including the construction, renovation and repair thereof;

12. animals for fattening, seeds, nursery plants, fertilisers, plant protection products and services intended exclusively for use in agriculture, forestry and fishery;

13. the provision of accommodation capacities in hotels and similar accommodation establishments, including accommodation capacities in homes and other accommodation establishments and the letting of space for tents, caravans and similar movable facilities;

14. the use of sports facilities;

15. the supply of burial and cremation services together with the supply of goods directly related to burial or cremation provided by a funeral service provider;

16. public hygiene services.

## IX. VAT EXEMPTIONS

### Article 26

(VAT exemptions for certain activities in the public interest)

(1) The following shall be exempted from VAT:

1. inpatient and outpatient health care and directly related activities provided as a public

service by public health institutes or other persons on the basis of a concession; 2. health care provided by health workers as part of a freelance health care activity;

3. the supply of blood and blood products, mother's milk and human organs for transplantation;

4. the services of dental technicians and dental prostheses made by a dental technician or a dentist;

5. the services carried out for their members by independent groups of persons whose activities are exempt from or are not subject to VAT, and which are directly intended for the exercise of their activity, where these groups merely claim from their members the reimbursement of their

share of the joint expenses, provided that such exemption is not likely to produce distortion of competition;

6. social security services, including the services supplied by old people's homes and the supply of goods directly linked to them, provided as a public service by public social security institutes or other persons on the basis of a concession or provided by other non-profit-making organisations deemed to be charitable, disabled organisations or self-help organisations in accordance with regulations;

7. services and goods directly linked to the protection of children and young persons provided as a public service by public institutes or other persons on the basis of a concession or other organisations deemed to be charitable organisations in accordance with regulations;

8. preschool education and school and university education and training, including the supply of goods and services directly related to upbringing and education and training which in accordance with regulations are provided by public institutes or other organisations under the conditions prescribed for the supply of these services provided that such exemption is not likely to produce distortion of competition;

9. tuition given privately by persons fulfilling the prescribed conditions for working as a teacher in a public school and covering school or university education;

10. the supply of staff by religious or philosophical institutions for the purposes referred to in points 1, 6, 7 and 8 of this Article and with a view to meeting spiritual needs;

11. services and the supply of goods directly linked thereto for the benefit of their members in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;

12. services directly linked to sport or physical education supplied by non-profit-making organisations to persons taking part in sport or physical education;

13. cultural services and goods directly linked thereto supplied by public institutes or by other cultural institutions recognised by the State;

14. the supply of services and goods by organisations whose activities are exempt from VAT in accordance with points 1, 6, 7, 8, 11, 12 and 13 of this paragraph in connection with fund-raising events organised by these organisations on an occasional basis and exclusively for their own benefit provided that such exemption is not likely to cause distortion of competition;

15. the transportation of sick or injured persons in vehicles or watercrafts specially adapted for these purposes;

16. contribution for RTV Slovenija programmes.

(2) The supply of services or goods under points 1, 6, 7, 8, 11, 12 and 13 of the first paragraph of this Article by taxable persons not referred to in the first paragraph of this Article shall be exempt from VAT if:

- they shall not aim to make a

profit, but any profits nevertheless arising shall not be distributed, but shall be assigned to the continuance or improvement of the services supplied;

- they shall be managed and administered mostly by volunteers who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned;

- they shall charge prices approved by the competent authorities or which do not exceed such approved prices or, in respect of those services not subject to approval of prices, prices lower than those charged for similar services by taxable persons who charge VAT;

- VAT exemption of the services concerned shall not be likely to cause distortion of

competition such as to place at a disadvantage taxable persons liable to VAT.

(3) The supply of services or goods shall not be granted exemption from VAT in accordance with points 1, 6, 7, 8, 11, 12 and 13 of the first paragraph of this Article if:

- it is not essential to the transactions exempted from VAT or if the exempted activities can be carried out without this supply;

- its basic purpose is to obtain additional income for the organisation by carrying out transactions which are in direct competition with those of taxable persons liable to VAT.

(4) The persons referred to in the second paragraph of this Article may exercise exemption from VAT in accordance with this Article on the basis of prior declaration with the tax authority.

#### Article 27

(other VAT exemptions)

(1) The following shall be also exempted from VAT:

1. insurance and reinsurance transactions, including related services performed by insurance brokers and agents;

2. the letting or leasing of immovable property excluding:

- the provision of accommodation in hotels or similar accommodation capacities, including the provision of accommodation in holiday homes, holiday camps or on sites intended for camping;

- the letting of parking spaces, garages and car parks;

- the letting of permanently installed equipment and machinery;

- the hire of safes.

3. the supply of goods used wholly for the purposes of activities or transactions exempted under Article 26 of this Act and this Article if the taxable person did not have the right to deduct input VAT for these goods, or of goods on the acquisition or production of which the taxable person did not have the right to deduct input VAT in accordance with the sixth paragraph of Article 40 of this Act;

4. financial services as follows:

(a) the granting and the negotiation of credit or loans in monetary form and the management of credit or loans in monetary form by the person who is granting the credit or the person who is granting the loan;

(b) the issuing of credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;

(c) transactions, including negotiation, concerning deposit and current or transaction accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection and factoring;

(d) transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of bank notes and coins whose saleable value is determined on the basis of their value as collectors' items or on the basis of the value of the metal from which they are made;

(e) transactions (excluding management, safekeeping, investment advice and services in connection with takeovers), including negotiation, in shares, interests in companies or associations, debentures and other securities, excluding documents establishing title to goods and the rights and interests referred to in point 4 of the second paragraph of Article 4 of this Act;

(f) the management of investment funds;

5. fiscal stamps and other similar stamps;

6. games of chance;

7. the supply of buildings or parts thereof, and of the land on which they stand, other than if the supply is performed before the buildings or parts thereof are first occupied or used or if the supply is performed before two years have elapsed from the commencement of first use or first occupation;

8. the supply of land other than building land;

9. the supply of gold to the Bank of Slovenia.

(2) Notwithstanding the provisions of points 2, 7 and 8 of the first paragraph of this Article a taxable person may agree with the tenant, lessee, leasing holder or buyer of immovable property who is a taxable person with the right to deduct the full input VAT to charge VAT at the prescribed rate on the supply that should be exempted from VAT in accordance with points 2, 7 or 8 of the first paragraph of this Article.

(3) A taxable person shall charge VAT in accordance with the second paragraph of this Article if a joint declaration to the competent tax authority had been given by him and the tenant or buyer of the immovable property before the supply was performed.

#### Article 28

(VAT exemptions for import of goods)

The following shall be exempted from VAT: 1. the release of goods for free circulation,

if the supply of such goods effected on the territory of Slovenia by a taxable person were in all circumstances exempt from VAT;

2. re-imported goods imported in an unchanged condition by the person who exported the goods, provided that such goods are exempt from customs duties in accordance with customs regulations;

3. imported goods exempt from customs duties and intended for the:

a) official use of diplomatic and consular offices and special missions accredited to Slovenia. For consular offices headed by honorary consular officials an exemption in accordance with this subpoint shall only apply to goods sent by the dispatching state, other than means of transport, provided the ministry responsible for foreign affairs issues approval for these goods;

b) official use of international organisations, if these are laid down by international treaties which apply to Slovenia;

c) personal use of the foreign staff of diplomatic and consular special missions accredited to Slovenia, including their family members;

d) personal use of the foreign staff of international organisations, including their family members, if this is laid down by international treaties which apply to Slovenia;

e) armed forces of other Member States of the North Atlantic Treaty Organization for the use of such forces or the civilian staff accompanying them or for the supply of their messes or canteens where such forces take part in the common defence effort.

Exemptions under subpoints c) and d) of this point shall not be exercised by nationals of Slovenia or foreign nationals with permanent

address in Slovenia. Exemption under this point shall be implemented on the basis of certificates issued by the ministry responsible for foreign affairs. Goods exempt from VAT in accordance with this point shall not be alienated. They may be alienated only on condition that VAT is paid or after termination of a three-year period from the day of the import of goods. If, in accordance with an international treaty, exemption could be implemented only under condition of reciprocity, the ministry responsible for foreign affairs shall confirm this.

The detailed conditions and the method for exercising a VAT exemption and setting of the quantitative restrictions for particular types of goods for which entitled beneficiaries under the first subparagraph of this point may claim exemption from VAT shall be prescribed by the minister responsible for finance.

4. import of catches of fishing vessels and fishing boats used for the purpose of carrying out

a fishing activity into a port, provided that the catch is either unprocessed or subject to only those procedures that are necessary to preserve its quality and that, prior to the importation, no supply was performed in accordance with this Act;

5. services related to the import of goods, provided that the value of such services is included in the taxable amount in accordance with point 2 of the second paragraph of Article 22 of this Act;

6. gold and other precious metals, bank notes and coins imported by the Bank of Slovenia

7. import of gas through natural gas distribution system or import of electricity.

Article 28a

(special provision)

If the goods are imported from a third country or third territory to the territory of a Member State which is not the Member State of destination, such import shall be exempted from VAT if the supply effected by the importer as defined in the third paragraph of Article 12 of this Act is exempt from VAT in accordance with Article 31a of this Act.

Article 28b

(exemption from VAT of intra-Community acquisitions of goods)

Exemption from VAT shall be used for the intra-Community acquisition of goods:

a) whose supply, if it were effected by a taxable person on the territory of the country, would in all circumstances be exempt from VAT;

b) whose importation would in all circumstances be exempt from VAT in accordance with Articles 28 and 29 of this Act;

c) in which the person acquiring the goods would, in accordance with the third and fourth paragraph of Article 40 of this Act, in all circumstances have the right to a full reimbursement of VAT, due in accordance with Article 3a and the fourth paragraph of Article 11a of this Act.

Article 28c

(other exemptions of intra-Community acquisitions of goods)

Intra-Community acquisitions of goods shall be exempted from VAT when the following conditions are met: – the goods are acquired by a taxable person who is not establi

shed within the territory of Slovenia but who is identified for VAT in another Member State,

– the goods are acquired for the purpose of a subsequent supply of goods made by this taxable person within the territory of Slovenia,

– the goods so acquired by this taxable person are directly dispatched or transported from a Member State other than the state in which he is identified for VAT and destined for the person who is the recipient of the subsequent supply,

– the recipient of subsequent supplies of goods is a taxable person or a non-taxable legal person identified for VAT within the territory of Slovenia, and

– the person liable to pay tax for the supplies effected by the taxable person from the first indent of this Article is the recipient of goods from point 4 of the first paragraph of Article 12 of this Act.

Article 29

(exemptions from VAT for the release of imported goods into free circulation)

For the release of imported goods into free circulation, the following shall be exempted from VAT in accordance with the conditions and time limits set out in the regulation referred to in Article 66 of this Act: 1. consignments of

insignificant value sent directly from abroad. This exemption shall not apply to tobacco and tobacco products, alcohol and alcoholic beverages, perfumes and toilet water. The total value of goods in an individual consignment deemed to be insignificant shall not exceed an amount determined by the minister responsible for finance;

2. used personal property belonging to a natural person who has lived abroad for an uninterrupted period of at least 12 months and who moves to Slovenia. This exemption shall not apply to alcoholic beverages, tobacco and tobacco products, motor vehicles and equipment for the performance of an economic activity;

3. items belonging to a person who has lived abroad for an uninterrupted period of at least 12 months and who moves to Slovenia for the purposes of marriage. This exemption shall not apply to alcoholic beverages, tobacco and tobacco products, motor vehicles and equipment for the performance of an economic activity;

4. items acquired on the basis of inheritance by a natural person who lives permanently in Slovenia. This exemption shall not apply to alcoholic beverages, tobacco and tobacco products, means of transport, equipment, stocks of raw materials, semi-products and finished products, livestock and agricultural produce exceeding normal family needs;

5. study aids brought for their own requirements by pupils and students coming to Slovenia for the purpose of study;

6. goods in the personal luggage of a traveller which are imported for non-commercial purposes and which are exempted from payment of customs duties in accordance with customs regulations;

7. non-commercial goods in consignments which are sent by a natural person residing abroad free of charge to a natural person on the customs territory up to the value, and for tobacco and tobacco products, alcohol and alcoholic beverages, perfumes and toilet water up to quantities, prescribed by the minister responsible for finance;

8. honorary decorations and prizes if their nature or individual value indicates that they are not being imported for commercial purposes; occasional gifts received within the framework of

international relations, provided they do not reflect a commercial purpose; on the condition of reciprocity, items intended for foreign heads of state or their representatives for their requirements during an official visit to Slovenia. This exemption shall not apply to alcoholic beverages, tobacco and tobacco products;

9. therapeutic substances of human origin and reagents for determining blood groups and tissue types that are used for non-commercial medical or scientific purposes; pharmaceutical products for health care or veterinary use at international sporting events; laboratory animals, animal, biological and chemical substances sent free of charge which are intended for scientific research, and samples of reference substances intended for quality control of medical products approved by the World Health Organisation;

10. goods acquired free of charge by state bodies, charitable and philanthropic organisations intended for free distribution to persons in need of help, or goods sent free of charge and without any commercial intent for the purpose of being used exclusively for meeting their work needs or for carrying out their tasks. This exemption shall not apply to alcoholic beverages, tobacco and tobacco products, coffee and tea, and motor vehicles (except for rescue vehicles). This exemption shall apply only to organisations that keep appropriate accounts and enable the competent bodies to supervise their operations and which, where necessary, offer insurance of VAT payment;

11. goods imported by state bodies and organisations, charitable and philanthropic organisations intended for free distribution to victims of natural and other disasters and wars, or goods which remain the property of these organisations but are made available to the aforementioned victims. This exemption shall not apply to material and equipment for the renovation of areas affected by natural and other disasters. This exemption shall apply only to organisations that keep appropriate accounts and enable the competent bodies to supervise their operations and which, where necessary, offer insurance of VAT payment;

12. items that are specially made for the education, training or employment of the blind and deaf or other physically or mentally handicapped persons if they were acquired free of charge and imported by institutions or organisations whose activity is education or assistance to these persons and provided no commercial intent is expressed by the donors;

13. equipment which is used by the owner for the performance of his economic activity where he is moving that activity to Slovenia. This exemption



shall not apply to means of transport, fuel, stocks of goods, products and semi-products, and livestock owned by traders;

14. plant and livestock products obtained by farmers who are Slovenian nationals on their property within the border region of a neighbouring country and young animals and other products obtained from livestock which they have on this property for the purposes of farm labour, pasture or wintering; seeds, fertiliser and similar products for cultivation of the soil used by farmers who are foreign nationals on their property in Slovenia;

15. samples of goods of insignificant value intended for obtaining orders for goods of the same type and which, with regard to their appearance and quantity, are not usable for any other purposes;

16. printed matter and advertising material sent by a person who established his business outside Slovenia;

17. goods intended for use at a trade fair, exhibition or similar event. This exemption shall not apply to alcoholic beverages, tobacco and tobacco products and fuels;

18. goods which in order to determine their composition, quality or other technical characteristics are intended for examination, analysis and testing and which are completely used or destroyed. This exemption shall not apply to goods used in examination, analysis or testing in order to promote sales;

19. items and accompanying documents which in connection with the acquisition or protection of trademarks, patents and models are sent to organisations for protection of intellectual property rights;

20. tourist informational documentation intended for distribution free of charge and whose main purpose is to present foreign tourist products and services;

21. documents sent to state bodies; the publications of foreign state bodies and international bodies and organisations; forms for exercising the powers of state bodies; items of evidence in court procedures; printed circulars sent as part of the normal exchange of information between public services or banking institutions; official printed matter received by the Bank of Slovenia; documents, archives and forms for use at international meetings, conferences or congresses; plans, technical drawings, models and similar documents for purposes of participation in an international competition organised in Slovenia; printed forms used in

accordance with international conventions as official documents in international trade in vehicles and goods; photographs and slides sent to press agencies or newspaper companies; collectors' items and works of art not intended for sale which are imported free of charge by museums, galleries and other institutions and which are intended for viewing free of charge; wall maps, films (other than cinematographic films) and other audio-visual products of an educational nature produced by the United Nations or its specialised agencies;

22. material necessary for loading and securing goods during transport; litter and fodder for animals during transport, loaded onto a means of transport, which is used for the transportation of animals from a foreign country into Slovenia or through Slovenia;

23. fuels and lubricants in the factory preinstalled tanks of motor vehicles;

24. material for erecting, maintaining or decorating monuments, graves or the burial grounds of war victims from other countries; coffins containing the mortal remains and urns containing the ashes of deceased person and the funeral items that normally accompany coffins and urns.

Article 30

(deleted)

Article 31

(exemptions of exports from the Community and like transactions and in international transport)

The following shall be exempted from VAT: 1. supply of goods dispatched or transported from Slovenia to a

place of destination outside the Community by or on behalf of the vendor;

2. supply of goods dispatched or transported from Slovenia to a place of destination outside the Community by or on behalf of a purchaser not established within the territory of Slovenia, except for goods transported by the purchaser himself and intended for the equipping, fuelling or other forms of provisioning of private boats, private aircraft or any other means of transport for private use;

In the case of goods to be carried in the personal luggage by travellers, tax exemption in

accordance with this point shall apply in the manner of the VAT refund if the conditions determined in accordance with Article 55 of this Act are met;

3. the service consisting of work on goods (moveable tangible property) acquired or imported by the person providing the service or by the customer for the purposes of undergoing such work within the territory of the Community on these goods, but only if the customer of the service is not established within the territory of Slovenia and provided that the goods are dispatched or transported out of the Community by or on behalf of the person providing the service or customer of the services;

4. the supply of goods for the fuelling and other provisioning of:

a) vessels used for navigation on the high seas and carrying passengers for reward or are intended for the purpose of commercial, industrial or fishing activities;

b) vessels used for rescue or assistance at sea or for inshore fishing, except for the provisioning of vessels for inshore fishing;

c) vessels of war, as defined in subheading 89.01 A of the Common Customs Tariff, leaving the country and are destined for foreign ports or anchorages.

5. the supply, modification, repair, maintenance, chartering and hiring of the vessels from sub-points a) and b) of the previous point, and the supply, hiring, repair and maintenance

of equipment, including fishing equipment, incorporated or used therein; 6. the supply, modification, repair, maintenance, chartering and hiring of aircrafts used by air carriers for air transport on international air routes for reward, and the supply, hiring, repair and maintenance of equipment incorporated or used therein;

7. the supply of goods for the fuelling and other provisioning of aircrafts from the previous point;

8. the supply of services, except for services from point 5 of this Article, for the direct needs of vessels referred to in aforementioned point or of their cargoes;

9. the supply of services, except for services from point 6 of this Article, for the direct needs of aircrafts referred in that aforementioned point or of their cargoes;

10. supplies of goods and services intended for:

- official needs of diplomatic and consular

representative offices and special missions accredited to Slovenia, except for consular representative offices led by honorary consular officials;

- official needs of international organisations and other subjects of international public law, if so stipulated by international treaties which apply to the Republic of Slovenia;

- personal needs of foreign staff of diplomatic and consular representative offices and special missions accredited to Slovenia, including the family members thereof;

- personal needs of foreign staff of international organisations, including the family members thereof, if so stipulated by international treaties which apply to Slovenia;

- needs of the armed forces of other states signatories to the North Atlantic Treaty, or of the civilian staff accompanying them, or for supplying their messes or canteens, when such forces take part in the common defence effort;

- another Member State and intended for the armed forces of any Member State which is a signatory to the North Atlantic Treaty, except for the Member State of destination, for the needs of those forces or of the civilian staff accompanying them, or for supplying their messes or canteens, when such forces take part in the common defence effort.

Exemptions from VAT from the third and fourth indent of this point shall not be applied to citizens of Slovenia or foreign citizens with a permanent address in Slovenia.

11. supplies of gold to central banks;

12. supplies of goods to authorised organisations, which export them from the Community as part of their humanitarian, charitable or teaching activities performed outside the Community. An authorization shall be issued to an organisation meeting the prescribed conditions, for each supply of goods separately, or for a defined period. Exemption under this point shall be implemented by means of a refund of paid VAT to authorised organisations, which they could not deduct as input VAT in accordance with Article 40 of this Act;

13. supplies of services, including transport services and ancillary services, except for the supply of services exempt in accordance with Articles 26 and 27 of this Act, where these are

directly related to the export of goods or imports of goods covered by the second and third paragraph of Article 16 of this Act;

14. services supplied by representatives and other intermediaries acting in the name and for account of another person, where these services form part of transactions from this Article or of transactions carried out outside the Community. This exemption shall not apply to travel agents who supply in the name and for account of the traveller services supplied in other Member States.

#### Article 31a

(exempt intra-Community supplies of goods)

The following shall be exempted from VAT: 1. supplies of goods as defined in Articles

4, 5 and 6 of this Act dispatched or transported, by or on behalf of the vendor or the person acquiring the goods, to another Member State, effected for another taxable person or non-taxable legal person acting as such in a

Member State other than that in which the dispatch or transport begins.

This exemption shall not apply to supplies of goods carried out by taxable persons exempt from VAT in accordance with Article 45 of this Act, or to supplies of goods effected for taxable persons or non-taxable legal persons whose intra-Community acquisitions are not subject to VAT;

2. supplies of new means of transport, dispatched or transported to the purchaser by or on behalf of the vendor or the purchaser to another Member State, to taxable persons or non-taxable legal persons whose intra-Community acquisitions are not subject to VAT, or to any other non-taxable person;

3. supplies of products subject to excise duties dispatched or transported by or on behalf of the vendor or purchaser to another Member State, effected for taxable persons or non-taxable legal persons who meet the conditions for the derogation from the second paragraph of Article 11a of this Act, when for the dispatch or transport of products an accompanying document is issued, excise duty is paid in the Member State of dispatch and its payment is guaranteed in the Member State of destination in accordance with the law governing excise duties.

This exemption shall not apply to products subject to excise duties supplied by taxable persons exempt from charging VAT in accordance with the first paragraph of Article 45 of this Act.

4. transfers of goods within the meaning of Article 7a of this Act which would benefit from the exemptions in accordance with points 1 to 3 of this Article if they were made on behalf of another taxable person.

#### Article 31b

(exemptions from VAT of intra-Community transport services)

Intra-Community transport services involved in the dispatch or transport of goods to or from islands making up the autonomous regions of the Azores and Madeira, as well as the dispatch or transport of goods between those islands, shall be exempt from VAT.

#### Article 32

(other special exemptions)

(1) Imports of goods shall be exempt from VAT if they are intended to be:

a) produced to customs and, when allowed under custom legislation, placed in temporary storage;

b) placed into a free zone;

c) placed under customs warehousing arrangements or inward processing arrangements under suspension regime.

(2) Exemption is also applicable to the supplies of services relating to the supplies of goods under first paragraph and to the supplies of goods and services carried out in free zones, free warehouses or customs warehouses.

(3) Transactions under this Article are exempt from VAT provided that goods are not released for free circulation or are not aimed at final consumption and that the amount of VAT due on cessation of the arrangements on situation referred to in this Article corresponds to the amount of VAT which would have been due had each of these transactions been taxed within Slovenia.

(4) Goods intended for sale in duty free shops at an airport open to international air traffic or a port open to international traffic on condition that

travellers carry such goods as personal luggage in permitted quantities to another country by aircraft or ship are also exempt from VAT.

(5) A traveller referred to in the preceding paragraph is deemed to be a traveller who has a ticket on which the destination airport or port of another country is stated.

#### Article 32a

(application of this Act for goods imported from or exported to the third territories)

(1) Goods from point 2 of Article 11 of this Act which are imported into Slovenia from a third territory forming part of the customs territory of the Community, but which in accordance with Article 1 of this Act is not subject to the general rules for taxation of intra-Community supplies and acquisitions of goods, shall be treated in Slovenia in accordance with the second to fourth paragraph of this Article.

(2) The formalities relating to the entry of goods from the first paragraph of this Article into the Community shall be defined by European customs regulations governing the import of goods into the customs territory of the Community.

(3) If the place of destination of the dispatch or transport of goods from the first paragraph of this Article is situated in a Member State other than the Member State in which the goods enter the Community, the goods shall circulate in the Community in accordance with the provisions of European customs regulations governing internal transit procedures, but only if a transit declaration is submitted in accordance with these regulations when goods enter the Community.

(4) If a procedure is initiated for the goods from the first paragraph of this Article at the time of entry into the Community, as a result of which the taxable person, if goods were imported within the meaning of point 1 of Article 11 of this Act, could apply an exemption from the first paragraph of Article 32 of this Act to goods, the exemption from the first paragraph of Article 32 of this Act shall also apply to goods from the first paragraph of this Article.

(5) Goods, except for goods from point 1 of Article 11 of this Act, which are exported from Slovenia to a third territory forming part of the customs territory of the Community, but which in accordance with Article 1 of this Act is not subject to the general rules for taxation of intra-Community supplies and acquisitions of goods, shall be treated in Slovenia in accordance with the sixth and seventh paragraph of this Article.

(6) The formalities relating to the export of goods from the fifth paragraph of this Article to the third territory shall be defined by European customs regulations governing the export of goods outside the customs territory of the Community.

(7) If the goods were temporarily exported to a third territory in order to be re-imported into Slovenia, goods from the fifth paragraph of this Article shall be subject to the provisions governing taxation or exemption from VAT for re-imported goods which were initially temporarily exported outside the customs territory of the Community.

#### X. ISSUING INVOICES

##### Article 33

(obligation to issue invoices)

(1) A taxable person shall ensure that an invoice is issued for each supply of goods or services he carries out.

(2) If an invoice is issued to a taxable person or a non-taxable legal person, it must contain the data prescribed in Article 34 of this Act, or if it is issued to other persons, it must contain the data prescribed in Article 35 of this Act, unless otherwise stipulated by this Act.

(3) An invoice must also be issued for supplies of goods from the first paragraph of Article 15a of this Act and for goods supplied under the conditions from Article 31a of this Act.

(4) A taxable person must ensure an invoice is issued in respect of any payments on account made to him by another taxable person or non-taxable legal person before the supply of goods or services is effected or completed.

(5) If a taxable person carries out several separate supplies of goods or services he may issue a summary invoice under the conditions prescribed by the minister responsible for finance.

(6) An invoice must be issued by the taxable person carrying out the supply, although it may also be issued by the purchaser of the goods or customer of the services or by a third person in the name and on account of the taxable person, provided that the conditions prescribed by the minister responsible for finance are met.

(7) Any document or message that amends or refers specifically and unambiguously to the initial invoice shall also be considered an invoice.

#### Article 34

(data on an invoice issued to taxable persons or non-taxable legal persons)

(1) A taxable person who issues an invoice to a taxable person or non-taxable legal person shall indicate the following data on the invoice:

1. the date of issue;
2. a sequential number enabling the identification of the invoice;
3. the VAT identification number under which the taxable person supplies the goods or services;
4. the VAT identification number of the customer or the purchaser, if the customer or the purchaser is liable to pay VAT on goods or services supplied, or if the goods are supplied to him in accordance with Article 31a of this Act;
5. the full name and address of the taxable person and his customer;
6. the quantity and nature of goods supplied, or the extent and nature of the services performed;
7. the date on which the supply of goods or of services was made or completed, or the date of receipt of the payment on account, insofar as that date can be determined and differs from the date of the issue of the invoice;
8. the taxable amount on which VAT is charged for each individual rate or for which the individual exemption applies, the unit price exclusive of VAT for the goods or services, and any price reductions and discounts not included in the unit price;
9. the VAT rate applied;
10. the amount of VAT, unless otherwise stipulated by this Act or by a regulation issued pursuant thereto.

(2) If a taxable person supplies goods or services for which a VAT exemption is prescribed, the invoice must indicate the provision of this Act that stipulates such exemption.

(3) If a taxable person supplies goods or services for which the customer is prescribed as the person liable to pay VAT, the invoice must indicate the provision of this Act pursuant to which the customer is liable to pay VAT.

(4) A taxable person who charges VAT on the margin achieved must state on the invoice the provision of this Act pursuant to which VAT on the price difference is charged.

(5) If the person liable to pay VAT is a tax representative in terms of the second paragraph of Article 12 of this Act, the invoice issuer must indicate on the invoice his VAT identification number and his full name and address.

#### Article 35

(data required on an invoice issued to other persons)

(1) A taxable person, who issues an invoice to other persons, except for persons from the first paragraph of Article 34 of this Act shall indicate the following data on the invoice:

1. the date of issue;
2. a sequential number enabling the identification of the invoice;
3. the VAT identification number under which the taxable person supplies the goods or services;
4. the full name and address of the taxable person;
5. the sales value of the goods or services including VAT; and
6. the amount of VAT included.

(2) If a taxable person supplies goods and services at different tax rates, he must show the sales value including VAT separately for each tax rate and also show the value of VAT separately.

(3) If a taxable person supplies goods or services for which VAT exemption is prescribed, the invoice must indicate the provisions of this Act which stipulate the exemption.

(4) Notwithstanding the first paragraph of this Article, a recipient of goods or services who is a non-taxable person may request that the taxable person issue an invoice to him in

accordance with Article 34 of this Act, if the recipient requires such invoice in order to claim benefits in accordance with this Act (e.g., point 10 of Article 31 and Article 55 of this Act).

#### Article 35a

(special provisions)

(1) The amount of VAT on invoices must be expressed in tolar.

(2) Invoices may be issued in paper form or electronically, subject to an acceptance by the purchaser or by the customer. The minister responsible for finance shall prescribe the conditions for sending and issuing of invoices in electronic form.

(3) The minister responsible for finance shall prescribe the data contained on an invoice issued by a taxable person from Article 13a of this Act.

(4) The minister responsible for finance may stipulate the exceptions from the obligation to issue invoices if the data on the sale of goods or services can be ensured in another manner and the control of the implementation of this Act is not thereby jeopardized.

#### XI. PERIOD OF TAXATION, CHARGING AND PAYMENT OF VAT

##### Article 36

(tax period)

(1) A taxable person shall charge the tax liability in the tax period.

(2) The tax period shall be the calendar month, unless otherwise stipulated by this Act.

(3) The tax period for a taxable person whose value of supply of goods or services within the previous calendar year was up to and including SIT 10,000,000 shall be the calendar semester, and the tax period for a taxable person whose value of supply of goods or services within the previous calendar year exceeded SIT 10,000,000 and was up to and including SIT 20,000,000 shall be the quarter. For a taxable person, who commences with performing a taxable activity, the tax period for the first 12 months shall be fixed at calendar month. Notwithstanding the provisions of the first sentence of this paragraph for a taxable person, for whom a prescribed tax period is the calendar semester and who effects intra-Community acquisitions and supplies of goods, the tax period shall be the calendar quarter.

(4) For a taxable person against whom a liquidation or bankruptcy proceeding is initiated, the tax period shall conclude with the day of the start of the liquidation or bankruptcy proceeding. At the conclusion of the liquidation or bankruptcy proceeding the tax period shall conclude with the

date of the decision on the conclusion of liquidation or bankruptcy proceeding.

(5) For a taxable person who is not established in Slovenia and for a recipient of goods or services who is not identified for VAT purposes and who is liable to pay VAT pursuant to point 2 of the first paragraph or pursuant to the second sentence of the second paragraph of Article 12 of this Act, the tax period for VAT payment shall be the calendar month.

(6) A taxable person referred to in the fourth paragraph of Article 53 of this Act who meets the conditions for charging VAT in a quarterly or semester tax period may decide to charge VAT in a one-month tax period. In such case, he shall inform the competent tax authority in writing within 15 days before the transition to the monthly VAT charging. The VAT charging period under this paragraph shall not be shorter than 12 months.

(7) The value of supply of goods or services pursuant to this Article shall be the value of supplies, presented in VAT returns for the previous calendar year.

##### Article 37

(charging VAT)

(1) A taxable person shall charge VAT on the basis of the amounts shown on invoices issued for the supply of goods or services performed in the tax period.

(2) The amounts stated on issued invoices as referred to in the first paragraph of this Article shall also include payments on account and the value of the supply of goods or services performed under Articles 5, 6 and 9 of this Act.

##### Article 38

(submission of VAT return)

(1) A taxable persons shall state the tax liability calculated for the tax period in a monthly, quarterly or semestrial VAT return; persons from points 3, 4 and 6 of the first paragraph of Article 12 of this Act shall also state the tax liability in the monthly or quarterly return.

(2) A taxable person shall submit the return from the first paragraph of this Article to the competent tax authority by the last working day of the month following the expiry of the tax period.

(3) A taxable person shall submit a VAT return irrespective of whether he shall pay VAT in the period for which the return is submitted.

(4) In the event of a termination of the identification for VAT purposes, a taxable person must submit a return up to the last working day of the month following the month in which the identification for VAT purposes expired.

(5) A taxable person against whom a liquidation or bankruptcy proceeding has been instituted shall submit a return within 20 days from the day on which the liquidation or bankruptcy proceeding commenced. At the conclusion of the liquidation or bankruptcy proceeding, the taxable person shall submit a return up to the last working day of the month following the month in which the decision on the conclusion of the liquidation or bankruptcy proceeding was issued.

(6) The VAT return must contain all the information necessary to charge the tax liability.

(7) The minister responsible for finance shall prescribe the form and content of VAT returns.

(8) A taxable person may also submit a VAT return electronically by electronic means under the conditions prescribed by the minister responsible for finance.

#### Article 39

(payment of a tax liability)

(1) The tax liability for the tax period shall fall due for payment on the last working day of the month following the expiry of the tax period.

(2) A person from points 2, 3, 4 and 6 of the first paragraph and from the second paragraph of Article 12 of this Act shall also pay VAT within the time limit referred to in the first paragraph of this Article.

(3) For imports of goods, VAT shall be chargeable and payable as if it were an import duty.

#### Article 39a

(reporting period for intra-Community supplies of goods)

(1) A taxable person, identified for VAT purposes, must report to the tax authority on all supplies of goods provided for persons identified for VAT

purposes in another Member State within the reporting period.

(2) The reporting period shall be the calendar quarter.

#### Article 39b

(submission of a quarterly statement)

(1) A taxable person, identified for VAT purposes, shall state intra-Community supplies of goods in the quarterly statement for the reporting period.

(2) A taxable person, identified for VAT purposes, shall submit the quarterly statement from the previous paragraph to the tax authority by the tenth day of the second month following the reporting period.

(3) The quarterly statement must contain all the required data for reporting on intra-Community supplies of goods to persons identified for VAT purposes in another Member State and adjustments of data for the previous reporting periods. Data on the total value of supplies, divided by recipients of goods, shall be recorded in the quarterly statement.

(4) The taxable person may also submit the quarterly statement from the first paragraph of this Article within the time limit from the second paragraph of this Article electronically by electronic means under the conditions prescribed by the minister responsible for finance.

(5) The minister responsible for finance shall prescribe the content and form of the quarterly statement.

## XII. DEDUCTION OF INPUT VAT

#### Article 40 (right to deduct input VAT)

(1) The right to deduct input VAT shall arise at the time when the VAT becomes chargeable. A taxable person may not deduct input VAT before the tax period in which he received invoices for goods or services supplied to him or in which he received customs declarations for imported goods.

(2) Unless otherwise stipulated by this Act, a taxable person may deduct from his tax liability input VAT due or paid in respect of purchases of goods or services, provided he used or will use such goods or services for the purposes of his

taxable transactions (hereinafter: input VAT), to wit:

1. input VAT due

or paid within the territory of Slovenia in respect of goods or services supplied or to be supplied to him by another taxable person;

2. input VAT due or paid within the territory of Slovenia in respect of importation of goods;

3. input VAT due in accordance with point 1 of Article 6 and Article 11b of this Act;

4. input VAT due in accordance with the first paragraph of Article 3a and the fourth paragraph of Article 11a of this Act.

(3) Every taxable person shall also have the right to deduct input VAT from the second paragraph of this Article, if such goods and services are used for the purposes of:

1. transactions relating to the activity from the second paragraph of Article 13 of this Act carried out outside Slovenia, provided that he would be entitled to deduct input VAT if they were carried out in Slovenia;

2. transactions exempt from VAT in accordance with point 5 of Article 28, Article 31, the first, second and fourth paragraph of Article 32, Article 32a or in accordance with Article 31a and 31b of this Act;

3. any of the transactions exempt in accordance with point 1 and points 4a to 4e of Article 27 of this Act, if the customer is established outside the Community or if such transactions are directly linked to goods intended for export to a country outside the Community.

(4) VAT from the third paragraph of this Article shall be refunded to taxable persons not established within the territory of Slovenia or to taxable persons not established within the territory of the Community and who thereby cannot claim a deduction of input VAT in accordance with Article 54 of this Act.

(5) As regards goods and services used or to be used by a taxable person both for transactions covered by the second and third paragraph of this Article, for which VAT may be deducted, and for transactions, for which VAT shall not be deducted, only such a proportion of the VAT may be deducted as is attributable to the first transactions. Such proportion shall be determined in accordance with Article 41 of this Act for all transactions carried out by the taxable person.

(6) A taxable person shall not deduct input VAT on:

1. yachts and boats intended for sport and recreation, private aircraft, personal cars and motorcycles, fuels and lubricants and spare parts and services closely linked thereto, other than vessels or vehicles used for leasing and renting and for resale, and vehicles used in driving schools for the provision of the driver's training programme in accordance with the regulations in force and combined vehicles for carrying out an activity of a public line and special line transport. If a vehicle is not used exclusively for carrying out an activity of a public and special line transport, a taxable person can claim a VAT deduction only in the part, related to carrying out of this activity.

2. costs for representation (wherein costs for representation shall include only costs for entertainment and amusement during business or social contacts), food costs (including drinks) and accommodation costs.

(7) To exercise his right to deduct input VAT, a taxable person must:

1. in respect of deductions pursuant to point 1 of the second paragraph of this Article, hold an invoice;

2. in respect of deductions pursuant to point 2 of the second paragraph of this Article, hold an import document on which he is stated as the recipient or importer and which states the amount or enables calculation of the amount of tax due;

3. in respect of deductions pursuant to point 3 of the second paragraph of this Article, comply with the formalities prescribed by the minister responsible for finance;

4. if, in cases from Article 12 of this Act, he is liable to pay VAT as a customer or purchaser, comply with the formalities prescribed by the minister responsible for finance;

5. in respect of deductions pursuant to point 4 of the second paragraph of this Article, set out in the VAT return the information on the amount of VAT due on his intra-Community acquisition of goods, and hold an invoice.

(8) Taxable persons from the third paragraph of Article 46 of this Act may deduct as input VAT the amount of flat-rate compensation in the tax period in which they paid flat-rate compensation.

(9) Taxable persons shall effect the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right to deduct has arisen in accordance with the



seventh paragraph of this Article. If a taxable person does not deduct input VAT in this tax period, he may deduct this amount of input VAT at any time after this tax period, but no later than in the last tax period of the calendar year following the year in which he was entitled to deduct input VAT.

(10) If a taxable person receives an invoice showing VAT from a person who shall not show it under this Act, he shall not deduct the VAT shown as input VAT, irrespective of whether the unauthorised person pays that VAT.

(11) If a taxable person receives an invoice showing an amount of VAT which exceeds the amount of VAT that should be charged according to this Act, the taxable person shall not deduct this excess amount as input VAT, even though the VAT has been paid.

#### Article 40a

(supply of new means of transport)

(1) A taxable person from Article 13a of this Act shall deduct VAT included in the purchase price or paid on importation or in the intra-Community acquisition of a means of transport

up to an amount not exceeding VAT which he would have to pay if the supply had not been exempt.

(2) The right to deduct shall arise and may be exercised at the moment of supply.

(3) The minister responsible for finance shall prescribe detailed rules for the implementation of this Article.

#### Article 41

(calculation of deductible proportion of input VAT)

(1) A taxable person who performs a taxed and an exempt activity shall determine the amount of the input VAT relating to the taxed activity and to the exempt activity in respect of which he has the right to deduct input VAT in accordance with the seventh paragraph of Article 40 of this Act using the deductible proportion, unless he provides in his bookkeeping or non-bookkeeping records data of the input VAT and the amount of input VAT for which he is entitled to deduct input VAT.

(2) The deductible proportion of VAT shall be determined for the total supply of goods or services, having:

1. as a numerator:

the total amount, exclusive of VAT, of annual turnover attributable to transactions on which the taxable person has the right to deduct input VAT;

2. as a denominator: the amount included in the numerator and the amount of total annual turnover on which the taxable person does not have the right to deduct VAT, including subsidies and grants, except for subsidies under the first paragraph of Article 21 of this Act.

(3) The calculation of the deductible proportion shall not include:

1. the amount, which relates to capital goods, which were alienated by a taxable person within the course of performing his activities;

2. the amount of supply of financial services, if they are performed occasionally;

3. the amount of supply of immovables, if the supply is performed

occasionally.

(4) The deductible proportion of VAT shall be determined on an annual basis as a percentage, and shall be rounded up to a whole number.

(5) The deductible proportion for the current year shall be determined provisionally on the basis of the data on preceding year's transactions (hereinafter: provisional deductible proportion). In the absence of data on transactions in the preceding year, or where they were insignificant in amount, the provisional deductible proportion shall be determined by the tax authority on the basis of the taxable person's own forecasts. The deductible proportion shall be finally fixed when the actual volume of transactions in the year for which the deductible proportion is being determined (hereinafter: actual deductible proportion) is known. If it is established that the deduction of input VAT on the basis of the provisional deductible proportion was higher or lower than it should have been with respect to the actual data on volume of transactions in the current year, the input VAT deduction shall be adjusted accordingly in the tax period in which the actual deductible proportion is established.

(6) Notwithstanding the second paragraph of this Article, a taxable person may determine the deductible proportion for each individual area of

his activity separately, provided he maintains separate accounts for each individual area of his activity and provided he notifies the tax authorities on the method of defining the deductible proportion. If the tax authority receives the notification at least 15 days before the start of the new tax period, the taxable person may start to calculate the deductible proportion pursuant to this paragraph with the first tax period following the tax period in which he informed the tax authority about his decision, otherwise with the beginning of the next tax period. The taxable person shall calculate a deductible proportion, chosen pursuant to this paragraph for at least 12 months. If a taxable person wishes to change the method of calculating the deductible proportion again, he must notify this change to the tax authority.

(7) The tax authority may, following the notification made in accordance with the sixth paragraph of this Article prohibit the taxable person from using the chosen method for determining a deductible proportion if a taxable person has chosen a method which does not enable the implementation of the legally defined supervision of the charging and payment of the VAT.

#### Article 42

(correction of deduction of input VAT)

(1) A deduction of input VAT which a taxable person has made in accordance with this Act must be properly corrected:

1. if it is subsequently determined that the deduction of input VAT has been calculated at a higher or lower amount than the amount to which the taxable person has been entitled;

2. if after the tax return is made, it turns out that factors used to calculate the deductible amount of input VAT have changed, e. g., cancellation of purchases and price reductions.

(2) If, within the period of five years from the calendar year of the beginning of use of the equipment, changes occur in the conditions, which were during that year decisive for the deduction of input VAT, a correction of the input VAT shall be made for the period following the change. For immovable property, the period of twenty years instead of five years shall be applicable.

(3) The tax period in which the deduction of input VAT was (or was not) made shall be considered as the beginning of use of the equipment or immovable property under the second paragraph of this Article.

(4) Equipment under the second paragraph of this Article shall mean equipment, which under accounting regulations is classified as the tangible fixed assets of the taxable person.

(5) A correction to the deduction of input VAT shall not be made if the difference does not exceed SIT 1,500.

#### Article 43

(deduction of input VAT on commencement of performance of a taxable activity)

(1) On the day his identification for VAT purposes becomes valid, a taxable person shall acquire the right to a proportional deduction of input VAT for goods which he has in stock on the day before the identification becomes valid. The proportional deduction of input VAT shall be determined by the tax authority on the basis of the accounting information of the taxable person and data on comparable stocks of goods for performing the same type of activity by other taxable persons.

(2) A taxable person under the first paragraph of this Article may deduct input VAT in proportion to the supply performed, but shall not have the right to a VAT refund on this basis.

#### Article 44

(deleted)

### XIII. SPECIAL TAXATION PROCEDURES

#### 1. Special scheme for small taxable persons

#### Article 45

(exemption from charging VAT)

(1) A taxable person who in the last 12 months does not exceed, or is not likely to exceed, a taxable turnover of 5,000,000 tolar shall not charge VAT, shall not indicate VAT on the issued invoices, shall not have the right to deduct input VAT in accordance with Article 40 of this Act and for the purposes of this Act need not keep accounts in accordance with Article 56 of this Act.

(2) A taxable person who is the representative of a household and performs an agricultural or forestry activity on which income tax is paid, based on the cadastral income of agricultural and forest land, shall not charge VAT if the total cadastral income of all members of the household for the previous calendar year does not exceed 1,500,000 tolar. Such a taxable person shall not charge VAT, shall not indicate VAT on the issued invoices, shall not have the right to deduct input

VAT in accordance with Article 40 of this Act and for the purposes of this Act need not keep accounts in accordance with Article 56 of this Act. A household shall be taken to mean a community that lives, earns and spends together.

(3) A taxable person may, notwithstanding the provisions of the first and second paragraph of this Article, opt for charging VAT in accordance with this Act. A taxable person must notify the option in advance to the competent tax authority and must apply it for at least 60 months.

(4) Where associated persons perform supplies of goods of the same type or services of the same nature for the purposes of this Article, the total value of the performed supplies of the associated persons in a 12-month period shall be deemed to be the amount which is achieved by each of the associated persons on their own. Associated persons shall be taken to mean persons defined as such in the regulations on the taxation of the income of legal and natural persons.

(5) The provisions of the first paragraph of this Article shall not apply to taxable persons not established in Slovenia.

#### Article 45a

(new means of transport)

The provisions of Article 45 of this Act shall not apply to supplies of new means of transport as defined in the sixth paragraph of Article 11a of this Act carried out under the conditions from Article 31a of this Act.

#### Article 46

(flat rate rebate)

(1) A taxable person referred to in the second paragraph of Article 45 of this Act shall have the right to a flat rate rebate of input VAT (hereinafter: flat rate rebate) on the supply of agricultural and forest products and agricultural and forest services that are the result of an activity on which income tax is paid, based on the cadastral income of agricultural and

forest land, under the conditions and according to the method determined in this Article. (2) Only those taxable persons referred to in the second paragraph of Article 45 of this Act who perform the supply of goods and services under the first paragraph of this Article to taxable persons that must charge and pay VAT in accordance with this Act shall have the right to a flat rate rebate.

(3) A taxable person who buys goods or services referred to in the first paragraph of this Article shall add to the payment for this supply the amount of the flat rate rebate in the amount of 4 per cent of the purchase value.

(4) Taxable persons referred to in the third paragraph of this Article shall have the right to deduct the flat rate rebate as input VAT under the conditions laid down in this Act.

(5) Taxable persons referred to in the second paragraph of Article 45 of this Act shall have the right to a flat rate rebate provided they have obtained a prior permission from the tax authority. A holder of this permission must, for the duration of the permission, compile a return of the flat rate rebate and submit it to the tax authority by 31 January of the current year for the preceding calendar year.

(6) Detailed provisions concerning the conditions and the method of implementing this Article shall be issued by the minister responsible for finance.

## 2. Special scheme for travel agents

### Article 47

(services provided by travel agencies and tour operators)

(1) A travel agent and a tour operator (hereinafter: travel agent) acting in their own name but who entrust the provision of certain services connected with the execution of a journey to other taxable persons shall charge and pay VAT in accordance with this Article. The provisions of this Article shall not apply to a travel agent who acts as an intermediary (in the name and for the account of the traveller) and who in charging VAT takes into account point 2 of the ninth paragraph of Article 21 of this Act.

(2) All the services performed by a travel agent in connection with a journey shall be treated as one service provided by the travel agent to the traveller. It shall be considered that this service is supplied at the place where the travel agent has established his business, or where the travel agent has a branch office if the service is supplied from a branch office.

(3) A travel agent shall charge VAT on the amount representing the difference between the total amount to be paid by the traveller, exclusive of VAT, and the actual cost to the travel agent of services provided by other taxable persons where the traveller is the direct user of these services.

(4) If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside the Community, the travel agent's service shall be considered as an exempt intermediary service in accordance with point 14 of Article 31 of this Act. Where these transactions are performed both inside and outside the Community, only that part of the travel agent's service relating to transactions outside the Community shall be exempt from VAT.

(5) A travel agent shall not have in any Member State the right to a deduction of input VAT nor to a refund of VAT charged to the travel agent by other taxable persons on services which they have provided directly to the traveller.

3.

Special arrangements for second-hand goods, works of art, collectors' items and antiques

Article 48

(second-hand goods, works of art, collectors' items and antiques)

(1) A taxable person who, in the course of his activity, purchases or acquires or imports second-hand goods and/or works of art, collectors' items or antiques for the purpose of resale (hereinafter: dealer), irrespective of whether that taxable person acts for himself or on behalf of another person under a contract, pursuant to which commission is payable on the purchase or sale, shall charge VAT in accordance with this Article and Article 49 of this Act.

(2) Second-hand goods shall mean movable property that is suitable for further use as it is or after repair, other than works of art, collectors' items, antiques and precious metals and precious stones.

(3) Precious metals shall mean platinum, gold, palladium and silver, and alloys of one precious metal with another precious metal. Precious stones shall mean diamonds, rubies, sapphires and emeralds, either worked or unworked, provided they are not mounted or strung.

(4) Works of art shall mean:

1. pictures, drawings and pastels, collages and similar decorative plaques classified under tariff code 9701 of the combined nomenclature of the customs tariff (hereinafter: tariff code) executed entirely by hand by the artist, other than plans and drawings for architectural, engineering, industrial, topographical or similar purposes; hand-drawn or hand-decorated articles; theatrical

scenery, studio back cloths or the like of painted canvas;

2. original engravings, prints and lithographs under tariff code 9702 00 00, being impressions produced in limited numbers directly in black and white or in colour of one or of several plates executed by hand by the artist irrespective of the process or material

employed by him but not including any mechanical or photomechanical process;

3. original sculptures and statuary, in any material, under tariff code 9703 00 00, provided that they are executed entirely by the artist, and sculpture casts the production of which is limited to eight copies and supervised by the artist or his successor;

4. tapestries under tariff code 5805 00 00 and wall textiles under tariff code 6304 00 00 made by hand from original designs provided by artists, provided that there are not more than eight copies of each;

5. individual pieces of ceramics executed exclusively by the artist and signed by him;

6. enamels on copper, executed exclusively by hand, limited to eight numbered copies bearing the signature of the artist or the studio, excluding articles of jewellery, goldsmiths' and silversmiths' wares;

7. photographs taken by the artist or printed by him or under his supervision, signed and numbered and limited to 30 copies, all sizes included.

(5) Collectors' items shall mean:

1. postage or revenue stamps, first-day covers, pre-stamped stationery and the like under tariff code 9704 00 00, franked, or, if unfranked, not being of legal tender and not being intended for use as legal tender;

2. collections and collectors' pieces under tariff code 9705 00 00 of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest.

(6) Antiques shall mean objects under tariff code 9706 00 00 which are more than 100 years old, other than works of art or collectors' items.

(7) A dealer shall charge VAT on the margin in accordance with this Article and Article 49 of this Act only if goods referred to in the first paragraph of this Article were obtained in the tax territory of Slovenia from:

1. a person who is a non-taxable person, or
2. another taxable person who for these goods in accordance with this Act did not have the right to deduct input VAT, or
3. a taxable person under the first and second paragraph of Article 45 of this Act if business assets are concerned, or
4. another dealer in so far as the supply of goods was being charged with VAT on the margin.

#### Article 49

(taxable amount for second-hand goods, works of art, collectors' items and antiques)

(1) The taxable amount for the supply of goods under the first paragraph of Article 48 of this Act shall be the profit margin achieved by the dealer reduced by the amount of VAT relating to the profit margin. The profit margin shall be equal to the difference between the selling price charged by the dealer for the goods and the purchase price.

(2) The selling price shall mean everything that constitutes the consideration which has been, or is to be, obtained by the taxable dealer from the purchaser or a third party, including subsidies directly linked to that transaction, taxes and all other charges, incidental expenses such as commission, packaging, transport and insurance costs charged by the dealer to the purchaser, including VAT but excluding the amounts referred to in the ninth paragraph of Article 21 of this Act.

(3) The purchase price shall mean everything that constitutes the consideration defined in the second paragraph of this Article which has been, or is to be, obtained from a taxable dealer by a person referred to in the seventh paragraph of Article 48 of this Act.

(4) If the purchase price is greater than the selling price for the goods concerned the taxable amount shall be deemed to be zero.

#### Article 50

(other examples of supply of works of art, collectors' items and antiques)

(1) Notwithstanding the seventh paragraph of Article 48 of this Act, a taxable dealer may also charge VAT on the profit margin on the supply of:

1. works of art, collectors' items or antiques imported by him; 2.

works of art obtained by him directly from the creators or their legal successors;

3. works of art acquired by him from another taxable person who is not a dealer, provided that the supply carried out by that other taxable person was taxed at a reduced rate in accordance with the second indent of point 10 of Article 25 of this Act.

(2) A person referred to in the first paragraph of this Article may submit to the competent tax authority a request to charge VAT in accordance with this Article at any time. He shall begin to charge VAT in accordance with this Article on the first day of the month following the presentation of the request. The period for charging VAT in accordance with this Act shall not be shorter than two calendar years.

(3) A taxable person shall charge VAT on the supply of goods under this Article on the taxable amount determined in accordance with Article 49 of this Act. For supplies of works of art, collectors' items or antiques which were imported by the taxable person the purchase price to be taken into account in calculating the profit margin shall be equal to the taxable amount on importation determined in accordance with Article 22 of this Act, increased by the VAT charged (or paid) on importation.

(4) Where the dealer applies both the general procedure for VAT and a special scheme he must provide in his bookkeeping a separate statement of supplies under each of these procedures (schemes).

#### Article 50a

(exemption from VAT)

Provided the conditions laid down in Article 31 of this Act are met the supply of second-hand goods, works of art, collectors' items and antiques subject to VAT on the profit margin shall be exempt from VAT.

#### Article 50b

(deduction of input VAT)

(1) A dealer who charges VAT on the profit margin in accordance with Articles 49 and 50 of this Act shall not have the right to deduct input VAT on these goods.

(2) A dealer who charges VAT under general procedure may deduct input VAT in the tax period

in which the liability to charge tax on the supply for which the dealer decided to apply the general procedure for VAT taxation has arisen.

#### Article 50c

(indication of VAT on invoices)

A dealer who charges VAT on the profit margin shall not indicate VAT on the invoices which he issues.

#### Article 51

(supply of goods at public auction)

(1) A taxable person who in pursuing his business activities, either works in his own name or in the name of another person in accordance with a contract under which a commission is paid for purchases or sales and who offers second-hand goods, works of art, collectors' items and antiques for sale at public auction (hereinafter: auctioneer) with the intention of selling to the highest bidder, may charge VAT in accordance with this Article and with Article 52 of this Act.

(2) If an auctioneer simultaneously charges VAT under general procedure and under special scheme, he shall provide in his accounts separate statements of supply, and shall charge VAT for each procedure (scheme) separately.

(3) An auctioneer shall charge VAT in accordance with the first paragraph of this Article if he works in the name of a principal who is:

1. a person who is a non-taxable person; 2. another taxable person who in accordance with this Act does not have the right to deduct input VAT for these goods;

3. a taxable person under the first and second paragraph of Article 45 of this Act, if his business assets are concerned;

4. a dealer under Article 48 of this Act.

(4) Second-hand goods are considered to be goods under the second paragraph of Article 48 of this Act.

(5) Works of art are considered to be goods under the fourth paragraph of Article 48 of this Act.

(6) Collectors' items are considered to be goods under the fifth paragraph of Article 48 of this Act.

(7) Antiques are considered to be goods under the sixth paragraph of Article 48 of this Act.

#### Article 52

(taxable amount on the supply of goods at public auction)

(1) The taxable amount for supply of goods under Article 51 of this Act shall be the difference between the price reached at the public auction and the amount paid by the auctioneer to the principal for the supply of goods performed and the amount of VAT the auctioneer is liable to pay for his commission.

(2) The amount an auctioneer is obliged to pay to the principal is equal to the difference between the price reached for the goods at the public auction and the amount of the commission received or to be received by the auctioneer from his principal under a contract whereby a commission is paid on sales.

(3) The price reached at auction means the total amount, including taxes and all other duties, and indirect purchase costs, such as commissions, packaging costs, transport and insurance costs paid by the purchaser to the auctioneer for the goods.

(4) An auctioneer shall issue an invoice to the purchaser and the principal for each supply of goods at a public auction.

(5) The invoice issued to the purchaser must state the price of the goods reached at the auction, taxes and other duties, and indirect purchasing costs, such as commissions, packaging costs, transport and insurance costs which the auctioneer charges to the purchaser of the goods. VAT shall not be stated separately on the invoice.

(6) The document issued by the auctioneer to the principal must state separately the amount, i.e. the price, reached at auction, reduced by the amount of the commission received or to be received from the principal.

(7) If the auctioneer has issued an invoice to a principal who is a taxable person, it shall be considered that the principal has issued it.

(8) The principal shall be considered to perform the supply when the auctioneer sells the goods at a public auction.

#### Article 52a

(intra-Community acquisition and supply of second-hand goods, works of art, collectors' items and antiques)

(1) Notwithstanding point 1 of Article 3a and the fourth paragraph of Article 11a of this Act, VAT shall not be charged and paid on intra-Community acquisition of second-hand goods, works of art, collectors' items or antiques, if the seller acts as a dealer and the goods acquired were taxed in the Member State of departure under a special scheme for taxing the margin achieved or, if the seller acts as the organiser of the sale by public auction and the acquired goods were taxed in the Member State of departure under a special scheme for taxation of goods at public auction.

(2) The provisions of Article 15a and points 1, 3 and 4 of Article 31a of this Act shall not apply to supplies of goods taxed in accordance with a special scheme for second-hand goods, works of art, collectors' items and antiques.

(3) A special scheme for second-hand goods, works of art, collectors' items and antiques shall not apply to supplies of new means of transport, as defined in the sixth paragraph of Article 11a of this Act, carried out under the conditions from Article 31a of this Act.

#### 4. Special scheme for investment gold

##### Article 52b

(definitions)

(1) For the purposes of this scheme, "investment gold" shall mean:

(a) gold in the form of a bar or a wafer of weights accepted by the bullion markets of a purity equal to or greater than 995 thousandths, whether or not represented by securities, except for small bars or wafers of a weight less than 1 g;

(b) gold coins which: - are of a purity equal to or greater than 900 thousandths,

- were minted after 1800,

- are or have been legal tender in the country of origin, and

- are normally sold at a price which does not exceed the open market value of the gold contained in the coins by more than 80%.

(2) For the purposes of this scheme, such coins shall not be considered to be sold for numismatic interest.

##### Article 52c

(exemptions for investment gold transactions)

The following shall be exempt from VAT: - supplies and intra-Community acquisitions

of gold, and importation of investment gold, including investment gold represented by certificates for allocated or unallocated gold or traded on gold accounts and including, in particular, gold loans and swaps, involving a right of ownership or claims in respect of investment gold, as well as transactions concerning investment gold involving futures and forward contracts leading to a transfer of right of ownership or claim in respect of investment gold;

- services of agents who act in the name and for the account of another when they intervene in supplies of investment gold for their principal.

##### Article 52d

(option to tax)

(1) Notwithstanding the provisions of Article 52c of this Act, taxable persons producing investment gold or processing any gold into investment gold shall have the right to opt to tax investment gold if they supply it to another taxable person.

(2) Taxable persons who in their trade normally supply gold to another taxable person for industrial purposes shall also have the right to opt to tax investment gold from point a) of Article 52b of this Act.

(3) If the supplier from the first or second paragraph of this Article decides to tax, the agent for the services from the second indent of Article 52c of this Act shall also have the right to opt to tax.

(4) The minister responsible for finance shall prescribe detailed rules for the implementation of this Article.

##### Article 52e

(right to deduction)

(1) Taxable persons may deduct VAT due or paid by them:

1. for investment gold supplied by a person who opted to tax in

accordance with Article 52d of this Act;

2. for the supply, intra-Community acquisition, or importation of gold, except for investment gold which is subsequently transformed by him or on behalf of him into investment gold;

3. for the services supplied to him consisting of change of form, weight or purity of gold including investment gold, if the subsequent supply of this gold is exempt under these scheme.

(2) A taxable person who produces investment gold or transforms gold into investment gold may deduct VAT due or paid by him for the supply or intra-Community acquisition or importation of goods or services linked to the production or transformation of such gold as if the subsequent supply of the gold exempt under this scheme were taxed.

#### Article 52f

(special obligations for taxable persons trading in investment gold)

(1) Taxable persons shall keep records of investment gold transactions and keep documentation for at least 10 years after the end of the year to which such documents refer.

(2) The records from the first paragraph of this Article shall be prescribed by the minister responsible for finance.

5. Special scheme for non-established taxable persons who supply electronic services to non-taxable persons

#### Article 52g

(definitions)

For the purposes of this scheme, the following definitions shall apply:

- "The non-established taxable person" shall mean a taxable person who has neither established his business nor has a fixed establishment within the territory of the Community and who is not otherwise required to be identified for VAT purposes within the territory of the Community;

- "Electronic services" or "electronically supplied services" shall mean services from point 11 of the third paragraph of Article 17 of this Act;

- "Member State of identification" shall mean the Member State, which the non-established taxable person chooses to declare when his activity as a taxable person within the territory of the Community commences in accordance with the provisions of this scheme;

- "Member State of consumption" shall mean the Member State in which the supply of the electronic services in accordance with point 11 of the third paragraph of Article 17 of this Act is deemed to take place;

- "Special VAT return" shall mean the statement containing data necessary to establish the amount of tax belonging to each Member State from the preceding indent.

#### Article 52h

(application of the special scheme)

(1) The special scheme for electronically supplied services shall be used for all electronic services, which a non-established taxable person from Article 52.i of this Act supplies to non-taxable persons who are established or have their permanent address or usually reside within the territory of any Member State.

(2) The non-established taxable person from Article 52.i of this Act shall use this scheme for all electronic services he supplies within the Community.

#### Article 52i

(declaration to the tax authority)

(1) The non-established taxable person who for a Member State of identification chooses Slovenia shall declare to the tax authority when his activity as a taxable person commences, ceases or changes to such an extent that this scheme can no longer be used. A declaration shall be made electronically by electronic means in the manner as prescribed by the minister responsible for finance.

(2) The non-established taxable person shall in the declaration from the preceding paragraph, which he submits to the tax authority when he commences supplying electronic services, state the following data for identification: name, postal address, electronic address, including websites, national tax number, if he has any, and a statement that he is not identified for VAT purposes within the Community. The non-established taxable person shall notify to the tax



authority any changes in the submitted data for declaration.

(3) The tax authority shall allocate to the non-established taxable person an individual number, which serves for identification purposes. The tax authority shall notify the non-established taxable person electronically by electronic means of the individual number allocated to him.

#### Article 52j

(exclusion from the special register)

(1) The tax authority shall maintain a special register of non-established taxable persons, to whom an individual number in accordance with the third paragraph of Article 52i of this Act has been allocated.

(2) The tax authority shall exclude the non-established taxable person from the special register if:

- he notifies it that he no longer supplies electronic services, or
- the tax authority otherwise assumes that he no longer performs his taxable activities, or
- he no longer fulfils the requirements necessary to be allowed to use the special scheme, or
- he persistently violates the rules concerning the special scheme.

#### Article 52k

(submission of the special VAT return)

(1) The non-established taxable person shall submit to the tax authority the special VAT return for electronic services for each calendar quarter, whether or not electronic services have been supplied by him. The special VAT return shall be submitted within 20 days following the end of the reporting period to which the return refers. The special VAT return shall be submitted electronically by electronic means in a manner prescribed by the minister responsible for finance.

(2) The non-established taxable person shall in the special VAT return from the first paragraph of this Article state his individual number, and, for each Member State of consumption where tax has become due, the total value of supplies of electronic services for the reporting period, less VAT, and the total amount of the corresponding

tax. The non-established taxable person shall in the special VAT return state also applicable tax rates and the total amount of tax due.

(3) The non-established taxable person shall in the special VAT return state amounts in euros.

(4) The form of the special VAT return shall be prescribed by the minister responsible for finance.

#### Article 52l

(payment of VAT)

The non-established taxable person shall pay VAT when submitting the special VAT return. VAT shall be paid to a bank account denominated in euro designated by the tax authority.

#### Article 52m

(VAT refund to non-established taxable persons)

(1) The non-established taxable person who supplies electronic services in accordance with the provisions of this special scheme has no right to deduct input VAT; however, he may exercise his right to a refund of paid VAT.

(2) The non-established taxable person shall submit a claim for the refund electronically by electronic means.

(3) The minister responsible for finance shall lay down detailed conditions for applying the VAT refund in accordance with this Article and prescribed content of the claim.

#### Article 52n

(keeping records)

The non-established taxable person shall keep records of the transactions covered by this scheme in such scope and detail as to enable the tax authority of the Member State of consumption to determine that the VAT return is correct. On request, these records should be made available electronically to the tax authority in Slovenia and to the tax authority in the Member state of consumption. The taxable person shall maintain these records for 10 years from the end of the year when the transaction was carried out.

#### XIV. VAT REFUND

Article 53

(input VAT refund)

(1) If the amount of the tax liability in a tax period is lower than the amount of the input VAT that the taxable person may deduct in the same period, the difference is carried forward into payments to the following tax periods.

(2) Notwithstanding the first paragraph of this Article, the difference in VAT may be refunded to the taxable person on his request in 60 days after the VAT return is submitted, if for:

1. a taxable person, who submits VAT returns monthly, the amount for refund in this tax period exceeds SIT 200,000;

2. a taxable person, who submits VAT returns quarterly, the amount for refund in this tax period exceeds SIT 100,000;

3. a taxable person, who submits VAT returns semestrially, the amount for refund in this tax period exceeds SIT 30,000.

(3) To the taxable person who does not meet the conditions set out in the second paragraph of this Article, the difference may be refunded, on the basis of his claim, in 60 days after submitting the VAT return that relates to the last tax period in the calendar year.

(4) The first to the third paragraph of this Article shall not apply to the taxable person who records a surplus of input VAT in successive VAT returns due to the prevalence of export of goods or intra-Community supplies of goods. The taxable person – exporter may claim a refund of difference in VAT upon submitting the VAT return. The difference in VAT shall be refunded to the taxable person no later than 30 days after the VAT return has been submitted.

(5) The taxable person who does not receive the difference in tax within the period stated under second to fourth paragraph of this Article shall be entitled to interests at a rate prescribed by the law regulating the default interest rate, starting with the first day after the expiry of a 60- or 30-day period respectively after the VAT return has been submitted.

(6) If the deadline has passed for a taxable person to pay other taxes, he receives a refund of the difference reduced by the amount of the tax debt.

(7) The minister responsible for finance shall lay down detailed conditions and a method of refunding the input VAT under this Article.

Article 54

(VAT refund to taxable persons who are not established in Slovenia)

(1) A taxable person not established in Slovenia shall, subject to the conditions laid down in this Act, have the right to a refund of VAT charged for services or for movable tangible property delivered to him by other taxable persons within the territory of Slovenia, or charged on the importation of goods into Slovenia.

(2) A taxable person not established in Slovenia shall have the right to a VAT refund provided that:

a) within a

prescribed period he has not supplied goods or services deemed to have been carried out in Slovenia, except:

- transport and transport-related services subject to exemption in accordance with point 5 of Article 28, Article 31 or the first paragraph of Article 32 of this Act;

- services on which, in accordance with point 2 of Article 12 of this Act, VAT must be paid exclusively by the person for whom the services were carried out;

b) the goods or services referred to in the first paragraph of this Article are used for the purposes of: - transactions from point 1 of the third paragraph of Article 4

0 of this Act;

- transactions exempt from VAT in accordance with point 5 of Article 28, Article 31 or the first paragraph of Article 32 of this Act;

- the supply of services on which, in accordance with point 2 of Article 12 of this Act, VAT must be paid exclusively by the person for whom the services were carried out;

c) the other conditions laid down in Article 40 of this Act relating to the right to deduct input VAT are met.

(3) This Article shall not apply to the supplies of goods and services which are exempted under point 2 of Article 31 of this Act.

(4) A taxable person not established in Slovenia shall be eligible for a VAT refund provided that:

1. he submits a claim for a VAT refund to the competent tax authority

on the prescribed form;

2. he submits original invoices or import documents together with the claim;

3. he submits a confirmation from the competent authority of the country in which he is established proving he is liable to VAT in that country;

4. in the period for which he is claiming a VAT refund he has not performed the supply of goods or services considered to be supply performed in Slovenia, other than the supply of services under subpoint a) of the second paragraph of this Article;

5. he undertakes to repay any VAT amount unjustifiably obtained (refunded).

(5) VAT refund to taxable persons established outside the Community shall be granted only on condition of reciprocity.

(6) The minister responsible for finance shall prescribe detailed conditions for claiming a VAT refund; in particular, the deadline for presenting a refund claim, the period to which a claim may refer, the tax authority competent to deal with and decide the claim, the minimum amount for which a claim may be made, and the deadline within which the tax authority must decide a claim and refund VAT if the prescribed conditions for a refund are met.

#### Article 55

(VAT refund in respect of passenger transport)

(1) A purchaser who is a natural person without a permanent or temporary address on the territory of the Community shall have the right to a VAT refund on goods, purchased in Slovenia and which he takes outside the Community prior to the end

of the third month following the month of a purchase.

(2) The right to a VAT refund under this Article shall not apply to mineral oils, alcohol and alcoholic beverages, and tobacco products.

(3) Detailed regulations on the conditions and the method for VAT refunding, the minimum purchase value on which the person under the first paragraph of this Article has the right to a VAT refund, the contents of a refund claim, the obligations of the seller in respect of a VAT refund, and the calculating of his tax liability shall be prescribed by the minister responsible for finance.

#### XV. BOOKKEEPING OF A TAXABLE PERSON AND STORAGE OF DOCUMENTATION

##### Article 56

(bookkeeping of a taxable person)

(1) A taxable person shall record in his bookkeeping all information required for the accurate and timely charging and payment of VAT, and in particular, information:

1. on the total value of supply of goods or services performed; the value of the supply of goods or services taxable at different VAT rates; the value of the supply of goods or services performed, for which a VAT exemption is prescribed;

2. on VAT charged on invoices issued for supply of goods or services performed;

3. on the total value of goods or services received; the value of goods or services received with VAT charged at the prescribed rates; the value of goods or services received exclusive of VAT;

4. on VAT charged on invoices for goods and services received (input VAT);

5. on liabilities to pay VAT and on VAT paid;

6. on claims for input VAT refund and on its payment or transfer to the following tax period.

(2) A taxable person shall provide the information under points 1 to 5 of the first paragraph of this Article for the period prescribed for payment of VAT.

(3) A taxable person who records stocks of goods at selling price including taxes shall provide, in

addition to the information under the first paragraph of this Article, also information on included VAT.

(4) In order to provide the information on issued and received invoices, a taxable person shall keep a book of issued invoices and a book of received invoices.

(5) A taxable person who imports goods shall keep a separate record of input VAT paid on the import of goods.

(6) The content of the book of received invoices and the book of issued invoices referred to in the fourth paragraph of this Article shall be prescribed by the minister responsible for finance.

Article 56a (ensuring data on intra-Community supplies and acquisitions of

goods)

(1) Every taxable person carrying out intra-Community supplies or acquisitions of goods shall provide sufficiently detailed data in his bookkeeping for the control of the correctness and timeliness of VAT charging.

(2) Every taxable person shall keep a special record on goods dispatched or transported by or on behalf of himself outside the territory of Slovenia to another Member State for the purposes of transactions from the fourth, fifth and sixth indent of Article 7a of this Act.

(3) Every taxable person shall ensure in his bookkeeping sufficiently detailed data on goods which he acquires from another Member State from a taxable person identified for VAT in that other Member State, or from another person on his account, in respect of which a service was supplied in accordance with points 3c) or 3d) of the second paragraph of Article 17 of this Act.

Article 57

(storage of documentation)

(1) A taxable person shall store all received and issued documents, in particular received and issued invoices, documents on corrections to invoices, export and import documents, financial documents, documents on the basis of which he has granted VAT exemptions, VAT returns and all other bookkeeping documents in any way concerning the supply of goods and services or the import of goods and which are important for charging and payment of VAT for a period of at

least ten years after the expiry of the year to which these documents refer.

(2) Notwithstanding the first paragraph of this Article, a taxable person shall store documentation concerning the taxation of immovable property under this Act for at least twenty years after the expiry of the year to which the documents refer.

(3) Notwithstanding the first and second paragraph of this Article, in the period referred to in the first or second paragraph of this Article taxable persons referred to in the first and second paragraph of Article 45 of this Act must keep all documents issued to them in connection with goods or services supplied to them and with the importation of goods.

(4) A taxable person may also store the documentation referred to in this Article in electronic form provided that within the period referred to in the first or second paragraph of this Article the tax authority is given access to the data stored in this way without unjustified additional costs being caused and provided the following conditions are met:

- the data contained in an electronic document or record is accessible and appropriate for subsequent use,

- the data is stored in the form in which it was formulated, sent or received,

- it is possible to establish from a stored electronic message where it originates from, to whom it was sent, and the time and place it was sent and received, and

- to a satisfactory degree, the technology and procedures used prevent the data from being altered or deleted, or there is a sufficiently reliable guarantee as to the inalterability of data or messages.

## XVI. IDENTIFICATION FOR VAT PURPOSES

Article 58

(an obligation to declare and identification for VAT purposes)

(1) A taxable person shall declare to the tax authority the commencement of performing of an activity. The taxable person shall also declare to the tax authority every change related to the performing of activity and cessation of performance of activity. The tax authority may

allow to the taxable person or may demand from him to submit a declaration electronically by electronic means. The conditions for presenting the declaration in electronic form shall be prescribed by the minister responsible for finance.

(2) Notwithstanding the first paragraph of this Article, a taxable person or a non-taxable legal person, effecting an intra-Community acquisition of goods, which is not subject to taxation in accordance with the second paragraph of Article 11a of this Act, shall declare to the tax authority, that he is effecting intra-Community acquisitions of goods, if conditions for non-taxation in accordance with the second paragraph of Article 11a of this Act are no longer met.

(3) The minister responsible for finance shall prescribe the content and the form of the declaration.

#### Article 59

(VAT identification number)

(1) The tax authority shall identify by an individual VAT identification number:

- all taxable persons who, within the territory of Slovenia, effect supplies of goods or services giving them the right to VAT deduction, except for taxable persons from Article 13a of this Act and taxable persons who effect supplies of goods and services for which VAT is payable solely by the customer or the recipient of goods and services;

- all taxable persons or non-taxable legal persons who acquire goods subject to taxation in the Community and all taxable persons or non-taxable legal persons who decide their intra-Community acquisitions are subject to taxation in accordance with the fourth paragraph of Article 11a of this Act;

- all taxable persons who, within the territory of Slovenia, effect intra-Community acquisitions of goods for the purposes of their transactions relating to performing of activities from the second paragraph of Article 13 of this Act, which are performed outside the territory of Slovenia.

(2) A VAT identification number shall be a tax number with a prefix SI.

#### XVII. SUPERVISION OF THE CHARGING AND PAYMENT OF VAT

##### Article 60

(supervision of the charging and payment of VAT)

(1) The tax authority shall supervise the charging and payment of VAT in accordance with the law governing tax procedure and with the law governing tax administration. The charging and payment of VAT on transport services in international transport may also be supervised in accordance with the regulation referred to in the second paragraph of Article 66 of this Act by the customs authority.

(2) By rule, the tax authority and the taxable person shall have exchange of information in electronic form.

(3) If a taxable person fails to submit a VAT return or submits it in an incomplete form or if the tax authority determines that the tax liability is incorrectly charged, and also in respect of default interest, legal remedies and all questions of procedure and the jurisdiction of the tax authority not determined by this Act, the law governing tax procedure and the law governing the tax office shall apply.

(4) For imports of goods, the customs authority shall supervise the charging and payment of VAT in accordance with customs regulations as if VAT were an import duty.

#### XVIII. PENALTY PROVISIONS

##### Article 61

(tax offences)

(1) A legal person or an independent entrepreneur shall be fined for an offence with a penalty ranging from SIT 300,000 to SIT 10,000,000, if he:

1. fails to notify or fails to notify promptly the option for charging VAT (fourth paragraph of Article 11a and third paragraph of Article 45);

2. fails to notify or fails to notify promptly the option for the place of supply (fourth paragraph of Article 15a);

3. fails to submit a VAT return or fails to submit it within the prescribed time limit or fails

to state the prescribed data in the VAT return (Article 38); 4. fails to report or fails to report about intra-Community supplies of goods within the prescribed time limit or fails to submit or fails to submit within the prescribed time limit the quarterly statement with stated intra-Community supplies of goods (Article 39a and 39b);

5. fails to state prescribed data in the quarterly statement (third paragraph of Article 39b);

6. fails to declare to the tax authority when his activity commences, changes or ceases (first paragraph of Article 52i);

7. fails to submit prescribed data for the identification in the declaration to the tax authority (second paragraph of Article 52i);

8. fails to submit a special VAT return or fails to submit it within the prescribed time limit

or fails to state the prescribed data in the return (Article 52k); 9. fails to declare to the tax authority when his activity commences, changes or ceases (first paragraph of Article 58);

10. fails to declare to the tax authority the intra-Community acquisition of goods (second paragraph of Article 58);

11. fails to submit to the tax authority the claim for the issuance of a VAT identification number (fourth paragraph of Article 58).

(2) The person in charge representing a legal person or the person in charge representing

an independent entrepreneur who commits an offence from the first paragraph of this

Article shall be fined with a penalty ranging from SIT 50,000 to SIT 1,000,000.

(3) A person from the fifth paragraph of Article 46 of this Act shall be fined for an offence with a penalty ranging from SIT 50,000 to SIT 300,000 if he fails to prepare a flat-rate statement and fails to submit it to the tax authority within the prescribed time limit.

Article 62

(serious tax offences)

(1) A legal person or an independent entrepreneur shall be fined for an offence with a penalty

ranging from SIT 500,000 to SIT 30,000,000, if he:

1. fails to charge VAT when the liability arises in accordance with Article 19 or Article 19a of this Act;

2. fails to charge VAT on the taxable amount in accordance with Article 21 or Article 21a of this Act;

3. fails to issue an invoice (Article 33);

4. fails to show the prescribed data on an invoice (Articles 34 and 35)

5. fails to charge or incorrectly charge VAT (Articles 36 and 37);

6. fails to pay VAT or fails to pay VAT within the prescribed time limit (Article 39);

7. incorrectly calculates the amount of input VAT (Articles 40, 40a, 41, 42 and 43);

8. charges VAT, shows VAT on invoices and deducts input VAT in contradiction to Article 45 of this Act;

9. fails to charge VAT in accordance with Article 47 of this Act;

10. fails to charge VAT in accordance with Articles from 48 to 50c and 52a of this Act, as a dealer of second-hand goods, works of art, collectors' items and antiques;

11. fails to charge VAT in accordance with Articles 51, 52 and 52a of this Act, as an auctioneer;

12. shows VAT on invoices (Articles 50c, fifth paragraph of Article 52);

13. fails to state the price reached at the auction, taxes and other duties and indirect purchase costs on an invoice (fifth paragraph of Article 52);

14. fails to separately state on a document the price reached at the auction, reduced by the amount of the commission (sixth paragraph of Article 52);

15. fails to keep records of investment gold transactions or fails to provide storage of the documentation in prescribed time limit (Article 52.f);

16. fails to submit a return and does not pay VAT on electronically supplied services in the

prescribed time limit and in the prescribed manner (Article 52.l);

17. fails to keep records of transactions covered by the special scheme for non-established taxable persons who supply electronic services or these records are incomplete or inaccurate (Article 52n);

18. fails to ensure maintenance of records on electronically supplied services in the prescribed time limit (Article 52n);

19. fails to ensure data from Articles 56 or 56a of this Act in his bookkeeping or fails to ensure it for the prescribed period;

20. fails to keep a book of received invoices and issued invoices and other records (fourth and fifth paragraph of Article 56 and Article 56a);

21. fails to maintain business books and other documentation in the prescribed time limit (Article 57).

(2) The person in charge representing a legal person or the person in charge representing an independent entrepreneur who commits an offence from the first paragraph of this Article shall be fined with a penalty ranging from SIT 50,000 to SIT 1,000,000.

Article 63

(deleted)

Article 64

(limitation of offence procedure)

A procedure in respect of a tax offence shall not be allowed after the expiry of three years from the day on which the offence was committed and shall not be possible under any circumstances after the expiry of six years from the day the offence was committed.

#### XIX. SPECIAL PROVISIONS

Article 65

(Government authorisation)

(1) The Government of the Republic of Slovenia may amend the tolar amounts under point 2 of the second paragraph of Article 5, point 6 of Article 29, the fifth paragraph of Article 42, and the first and second paragraph of Article 45 of this

Act if the Bank of Slovenia's exchange rate for tolar against euro changes significantly, or if regulations on the determination of cadastral income change.

(2) The Government of the Republic of Slovenia may amend the flat-rate rebate from the third paragraph of Article 46 of this Act, if there is a significant change in business and economic conditions or if the VAT rates change.

(3) The Budget Implementation Act may reduce or increase the VAT rates under this Act by up to 15%.

Article 66

(detailed regulations)

(1) A combined nomenclature of the tariff codes shall be used for the classification of products, whereas the standard classification of activities shall be used for the classification of activities.

(2) The minister responsible for finance shall prescribe detailed regulations on the implementation of this Act, including precise criteria and manner of granting exemptions.

Value Added Tax Act (VAT) (Official Gazette RS, No. 89/98), determines the following transitional and final provisions:

#### XX. TRANSITIONAL AND FINAL PROVISIONS

Article 67

(penalties for tax offences in the period until 31 December 1999)

(1) Notwithstanding the provisions of Article 61 of this Act, an individual who, during the period until 31 December 1999, commits an offence with regard to independent performance of business activities, shall be fined for the offence with a penalty ranging from SIT 100,000 to SIT 4,000,000; and a legal person shall be fined with a penalty ranging from SIT 500,000 to SIT 6,000,000, if he:

1. fails to submit an invoice to the purchaser of goods or recipient of a service (second paragraph of Article 35);

2. fails to submit a VAT return or fails to submit it in the prescribed time limit (Article 38);

3. fails to submit an application for taxation under a special scheme in the prescribed time limit (seventh paragraph of Article 48);

4. fails to report to the tax authority when his activity commences, changes or ceases (first paragraph of Article 58);

5. fails to submit an application for registration within the prescribed time limit (third and fourth paragraph of Article 58 and second paragraph of Article 76);

6. fails to draw up a list as at 30 June 1999 of all issued, unpaid invoices or fails to submit them to the tax authority within the prescribed time limit (Article 73);

7. fails to make an inventory as at 30 June 1999 of all goods in stock, fails to determine new selling prices and fails to submit to the tax authority the inventory lists and retail prices in the prescribed time limit (first and second paragraph of Article 74);

8. fails to make an inventory of stocks as at 30 June 1999 of non-alcoholic beverages and beer, mineral waters, fruit juices and fruit drinks and alcoholic beverages and wine distillates by selling prices, with the sales tax stated separately and fails to submit the inventory lists to the tax authorities within the prescribed time limit (first paragraph of Article 75);

9. fails to make an inventory of stocks as at 30 June 1999 of tobacco products, fails to submit the inventory lists to the tax authority within the prescribed time limit, and fails to sell stocks of tobacco products at the existing prices (third paragraph of Article 75).

(2) The person in charge representing a legal person shall be fined with a penalty ranging from SIT 100,000 to SIT 500,000 for offences under the first paragraph.

#### Article 68

(penalties for tax offences in the period until 31 December 1999)

(1) Notwithstanding the provision of Article 62 of this Act, an individual who, during the period until 31 December 1999, commits an offence with regard to an independent performance of business activities, shall be fined for the offence with a penalty ranging from SIT 300,000 to SIT 6,000,000; and a legal person shall be fined with the penalty ranging from SIT 500,000 to SIT 8,000,000, if he:

1. fails to charge VAT when the liability arises in accordance with Article 19 of this Act;

2. fails to charge VAT on the taxable amount in accordance with Article 21 of this Act;

3. fails to issue an invoice or fails to retain a copy of the invoice (first paragraph of Article 33);

4. fails to state the prescribed data on the invoice (Articles 34 and 35);

5. fails to charge or incorrectly charges VAT (Articles 36 and 37);

6. incorrectly calculates the amount of the input VAT (Articles 40, 41, 42, 43 and 44);

7. calculates the VAT, shows VAT on invoices, and deducts the input VAT in contradiction to Article 45;

8. fails to charge VAT in accordance with Article 47 of this Act;

9. fails to charge VAT in accordance with Articles 48, 49 and 50 of this Act, as a dealer of second-hand goods, works of art, collectors' items and antiques;

10. fails to charge VAT in accordance with Articles 51 and 52 of this Act, as an auctioneer;

11. states VAT on invoices (tenth paragraph of Article 48, fifth paragraph of Article 52);

12. fails to state on an invoice the price reached at auction, taxes and other duties and indirect purchasing costs (fifth paragraph of Article 52);

13. fails to separately state on the document the price reached at auction, reduced by the amount of the commission (sixth paragraph of Article 52);

14. fails to provide in his bookkeeping the data referred to in Article 56 of this Act or fails to provide them in the prescribed period;

15. fails to keep a book of received and issued invoices and other records (fourth and fifth paragraph of Article 56 );

16. fails to store business books and other documents within the prescribed period (Article 57);

17. fails to calculate and pay VAT in accordance with the third paragraph of Article 59 of this Act;

18. fails to calculate the value of goods supplied and services performed to the purchasers as at 30 June 1999 (first paragraph of Article 71);



19. fails to pay the sales tax in the manner and within the prescribed time limits (second paragraph of Article 72);

20. fails to pay the amount of sales tax included in unpaid claims as at 30 June 1999 by 31 December 1999 (third paragraph of Article 72);

(2) Person in charge representing a legal person shall be fined with a penalty ranging from SIT 100,000 to SIT 500,000 for an offence under the previous paragraph.

#### Article 69

(VAT refund in the period until 30 June 2000)

(1) Notwithstanding the provision of the first paragraph of Article 53 of this Act, in the period until 30 June 2000, the tax difference shall be refunded to the taxable person no sooner than within 30 days but no later than within 90 days after the VAT return has been submitted.

(2) A taxable person who does not receive the tax difference within the period stated under the previous paragraph shall be entitled to receive interest at a rate prescribed by the law which regulates the default interest rate, starting the first day after the 90-day period has expired.

#### Article 70

(duty free shops and reduced VAT rate in the transitional period) (1)

Notwithstanding the provision of the fourth paragraph of Article 32 of this Act, until such time as Slovenia achieves full membership in the European Union, goods which are sold in permitted quantities to travellers in duty-free shops at international road border crossings are exempt from VAT, unless otherwise provided by an international treaty.

(2) Notwithstanding the provisions of Article 25 of this Act, until 1 January 2003 VAT on wine shall be charged and paid at a rate of 8.5%.

(3) Notwithstanding the provisions of point 6 of Article 25 of this Act, until Slovenia becomes a member of the European Union, VAT shall also be charged and paid at a rate of 8.5% on other carriers of text, image and sound.

(4) Notwithstanding the provision of point 11 of Article 25 of this Act, until 31 December 2007 VAT shall be charged and paid at a rate of 8.5% on apartments, residential and other buildings

intended for permanent residence and the parts of these buildings that are not part of a social policy, including the construction and repair thereof.

#### Article 71

(calculation of the supply of goods or services performed on 30 June 1999)

(1)

Suppliers of goods and services shall calculate on 30 June 1999 the value of goods supplied and services performed, and charge them to the purchasers. This obligation also applies to the services of subcontractors of the main contractor of the services.

(2) If the calculation in cases referred to in the previous paragraph is made after 1 July 1999, in which the total value of products supplied or services performed is recorded, the taxable amount for charging VAT shall only be the value calculated for the period after 1 July 1999.

(3) The taxable amount under the previous paragraph shall also be reduced for prepayments made up to 30 June 1999 concerning the supply of investment equipment, the construction of immovables and services to be carried out after 1 July 1999, if the tax on the supply of products and services upon prepayments has been charged and paid according to the Sales Tax Act (Official Gazette RS No 4/92, 9/92, 12/93 – Constitutional Court Decision, 71/93, 16/96, 57/97, 3/98 and 35/98).

(4) The invoices which were issued and with regard to which no supplies of goods and no services were provided until 30 June 1999 shall be invalidated.

(5) Those suppliers who are supplying goods and services gradually and issuing subsequent invoices for the supplies and instalments until 30 June 1999 shall calculate the tax on the supply of products or services according to the Sales Tax Act.

#### Article 72

(final return of the tax on the supply of products and services, and time limits for payment of tax on the supply of products and services)

(1) Taxable persons under the Sales Tax Act shall draw up a final return of the tax on the supply of products and services for the period from 1 January 1999 to 30 June 1999, and submit it to the tax authority no later than 20 August 1999.

(2) Tax on the supply of products or tax on the supply of services for which the obligation to charge it has arisen until 30 June 1999 shall be paid within the time limits and in the manner determined for the payment of tax after final return.

(3) The amount of sales tax included in unpaid claims as at 30 June 1999 which was not paid on the basis of the final return of sales tax for the period from January to June 1999 shall be paid together with the payment of claims within five days after the receipt of payment, but no later than 30 June 2000.

#### Article 73

(list of unpaid issued invoices) Taxable

persons under the Sales Tax Act shall draw up a list of unpaid issued invoices and prepayments as at 30 June 1999, which includes calculated tax on the supply of products for supplied products or tax on the supply of services for supplied services, and shall submit it to the tax authority together with the final return of sales tax for the period from January to June 1999.

#### Article 74

(list of goods in retail trade) (1)

Taxable persons under the Sales Tax Act who perform retail supply activities shall draw up a list as at 30 June 1999 of goods in stock recorded at selling prices, inclusive of tax on the supply of products and services, and shall reverse the calculated sales tax in stocks.

(2) The taxable persons referred to in the previous paragraph shall determine the selling price for goods under the previous paragraph exclusive of sales tax, and on the selling price thus calculated they shall charge VAT under the provisions of this Act. If this leads to an increase in the retail prices, the taxable persons shall submit inventory lists of stocks and retail prices to the competent tax authority by 10 July 1999.

(3) The taxable persons referred to in the previous paragraph who are not considered to be taxable persons shall present the VAT return by 31 July 1999 and pay the charged VAT by 31 August 1999.

(4) Changes in the retail prices shall be monitored by the market inspection in accordance with the law.

#### Article 75

(list of certain goods in retail trade and catering) (1)

Notwithstanding the provisions contained in the previous Article, taxable persons under the Sales Tax Act who are taxable persons for the purposes of VAT and perform trading and catering activities shall make an inventory of stocks, at purchase prices, as at 30 June 1999, of non-alcoholic beverages and beer under tariff number 1, mineral waters under tariff number 2, fruit juices and fruit drinks under tariff number 3, and alcoholic beverages and wine distillates under tariff number 7 of the tariff of the sales tax on products, which is an integral component of the Sales Tax Act. In the inventory of stock of the above-stated beverages, they shall indicate the sales tax included in purchase prices. If the amount of the sales tax included in purchase prices cannot be established, the included sales tax shall be determined from rates calculated on the basis of rates under the Sales Tax Act. These taxable persons shall submit the inventory lists of stocks with indicated sales tax to the tax authority by 10 July 1999.

(2) Sales tax shown in the inventories under the previous paragraph is treated as input VAT under this Act. Taxable persons have the right to deduct this tax in proportion to their turnover, but they do not have the right to a refund.

(3) Taxable persons under the first paragraph of this Article shall make an inventory of stocks as at 30 June 1999 of tobacco products under tariff number 6 of the tariff of the sales tax on products, and shall submit the inventory of stocks to the tax authority by 10 July 1999. They shall sell stocks of tobacco products established as at 30 June 1999 at the previous price applying on 30 June 1999 until the stocks are exhausted. Market inspection shall monitor the sale of stocks at the previous price in accordance with the law.

#### Article 76

(application for registration for VAT) (1)

Persons under Article 13 of this Act shall become taxable persons under the provisions of this Act if, in 1998, they achieved turnover exceeding SIT 5,000,000 or cadastral income on agricultural and forestry land exceeding SIT 1,500,000.

(2) Persons under the previous paragraph shall no later than by 31 March 1999 submit an application for registration to the tax authority, with the exception of farmers included as taxable persons by tax authority on official duty.

(3) The tax authority shall issue to persons under the previous paragraph a certificate of registration no later than by 31 May 1999, and to other persons by 30 June 1999.

Article 77

(suspension of application of Article 41)

Notwithstanding the provisions of Article 41 of this Act, until 31 December 1999 the deductible proportion of input VAT shall be determined on the basis of actual data on the supply of goods and services performed on which VAT is chargeable and payable.

Article 78

(application of Article 43)

Article 43 of this Act shall apply for goods in stock purchased before 1 July 1999.

Article 79

(cessation of validity of regulations) On the day this Act enters into force, the following shall cease to apply:

1. Sales Tax Act (Official Gazette of the Republic of Slovenia, Nos. 4/92, 9/92 - correction, 12/93 - Constitutional Court Decision, 71/93, 16/96, 57/97, 3/98 and 35/98);

2. Act on Special Sales Tax on Export Services (Official Gazette of the Republic of Slovenia, No. 45/95);

3. Rules on the application of the Sales Tax Act (Official Gazette of the Republic of Slovenia, Nos. 6/92, 8/92, 29/92, 39/93, 37/95- - Constitutional Court Decision and 5/97 - Constitutional Court Decision);

4. Order on orthopaedic devices and rehabilitation aids (Official Gazette of the Republic of Slovenia, No. 6/92);

5. Order on medicines exempt from sales tax (Official Gazette of the Republic of

Slovenia, No. 6/92);

6. Order on products included in tourist and informational publications (Official Gazette of the Republic of Slovenia, No. 6/92);

7. Order on products included in agricultural machinery, devices and other equipment, agricultural equipment for preliminary soil cultivation, and spare parts for this equipment and these devices (Official Gazette of the Republic of Slovenia, Nos. 6/92, 27/92, 49/93 and 21/95);

8. Order on tax records and the method of calculation of sales tax for taxable persons who do not maintain their accounts in accordance with the system of double-entry bookkeeping (Official Gazette of the Republic of Slovenia, No. 6/92);

9. Ordinance on changes to the tax rate for the supply of electrical energy (Official Gazette of the Republic of Slovenia, No. 11/92);

10. Decision on the issuing of uniform claim forms (Official Gazette of the Republic of Slovenia, No. 20/92);

11. Instruction on the procedure for calculation and payment of sales tax on claim forms (Bank of Slovenia, Dept. of Cash Transactions, Instruction 05-1734/92-MJ-03);

12. Order on the labels for the marking of tobacco products (Official Gazette of the Republic of Slovenia, No. 42/92);

13. Instruction on the method of issuing opinions that certain colours for facades, walls, windows and doors should not contain harmful substances (Official Gazette of the Republic of Slovenia, No. 39/92);

14. Decree on the determination of the amount of tax from tariff no. 6 of the Tax Tariff on the Supply of Products (Official Gazette of the Republic of Slovenia, No. 54/98);

15. Decision on the adjustment of the amount of tax from the first paragraph of Article 67 of the Sales Tax Act (Official Gazette of the Republic of Slovenia, No. 37/95);

16. third paragraph of Article 11 and second paragraph of Article 14 of the Rules on certificates for quality toys (Official Gazette of the Republic of Slovenia, No. 29/96);

17. Decree on changes to the tax rate on the supply of certain petroleum derivatives (Official Gazette of the Republic of Slovenia, No. 51/98).

The above mentioned shall remain in force until 30 June 1999.

Article 80

(beginning of validity)

This Act shall enter into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia, and shall be applied from 1 July 1999, with the exception of the provisions contained in Articles 71, 72, 73, 74., 75. and 76, which shall apply from the day this Act enters into force.

The Act Amending the Value Added Tax Act (VAT-A) (Official Gazette RS, No. 30/01) also lays down the following transitional and final provisions:

#### Article 7

(1) The taxable persons, that were, before this Act has entered into force, obliged to state the VAT liability in semestrial VAT returns, shall submit VAT returns in accordance with Article 1 of this Act for tax periods from 1 July 2001.

(2) The taxable persons, that were, before this Act has entered into force, obliged to state the VAT liability in quarterly VAT returns, and are according to Article 1 of this Act obliged to submit VAT returns for quarterly or monthly tax periods, shall submit the VAT returns in accordance with Article 1 of this Act for tax periods from 1 July 2001.

(3) The taxable persons, that were, before this Act has entered into force, obliged to state the VAT liability in quarterly VAT returns, and are according to Article 1 of this Act obliged to submit VAT returns for semestrial tax periods, shall submit the VAT returns in accordance with Article 1 of this Act for tax periods from 1 July 2001.

(4) The taxable persons, that were, before this Act has entered into force, obliged to state the VAT liability in monthly VAT returns, and are according to Article 1 of this Act obliged to submit VAT returns for quarterly tax periods, shall submit the VAT returns in accordance with Article 1 of this Act for tax periods from 1 July 2001.

(5) The taxable persons, that were, before this Act has entered into force, obliged to state the VAT liability in monthly VAT returns, and are according to Article 1 of this Act obliged to submit VAT returns for semestrial tax periods, shall submit the VAT returns in accordance with Article 1 of this Act for tax periods from 1 July 2001 and shall submit collective VAT return for tax periods from May to June 2001.

(6) Taxable persons mentioned in this Article, submit VAT returns for taxable periods before 1. May 2001 in accordance with the rules in force before this Act has entered into force.

#### Article 8

This Act shall enter into force on the day following its publication in the Official Gazette of the Republic of Slovenia.

The Act Amending the Value Added Tax Act (VAT-B) (Official Gazette RS, No. 67/02) also lays down the following transitional and final provisions:

#### TRANSITIONAL AND FINAL PROVISIONS

##### Article 47

A taxable person whose tax period determined in accordance with the third paragraph of Article 36 of this Act does not expire on the day prior to the day on which this Act begins to apply shall submit a VAT return after the end of the tax period in accordance with the second paragraph of Article 38 of this Act, and shall, together with the return, submit separate data on the tax liability relating to the part of the tax period up until this Act begins to apply and the part of the tax period after this Act begins to apply.

##### Article 48

(1) On the day this Act enters into force, Article 41 of the Act Regulating the Implementation of the Budget of the Republic of Slovenia for 2002 and 2003 (Official Gazette RS, No. 103/01) shall cease to apply.

(2) If a taxable person performed part of the supply of goods or services prior to 1 January 2002 and part after this date, he shall charge VAT on the total supply of goods or services at the rates in force as at 1 January 2002, unless as at 31 December 2001 he has made a return of the goods already delivered and services already performed, and charged VAT at the rates in force as at 31 December 2001.

(3) Invoices issued prior to 1 January 2002 relating to the supply of goods and services to be performed on 1 January or later shall be cancelled.

##### Article 49

This Act shall enter into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia and shall apply from the first day of the second month following the month in which the Act enters into force, with the exception of the provisions of Articles 14 and 15 of this Act in the part referring to the margins, which begin to apply as from the date of entering into force of this Act.

The Act Amending the Value Added Tax Act (VAT-C) (Official Gazette RS, No. 101/03) also lays

down the following transitional and final provisions:

Article 66

(transitional regime for imported goods)

(1) This Article governs the taxation of goods imported into Slovenia from the Community or from new Member States prior to the date of accession (hereinafter: accession) but which up to and including 30 April 2004 were not released into free circulation.

(2) For the purposes of the implementation of this Article, the following terms shall have the following meanings:

- "Community" shall

mean the territory of the Member States of the European Community prior to 1 May 2004, as defined in the legislation of the European Community or in Article 1 of this Act;

- "new Member States" shall mean the territory of states which acceded to the European Community under the treaty signed on 16 April 2003;

- "enlarged Community" shall mean the territory of the Member States of the European Community after the accession of the new Member States.

(3) If goods were imported into the territory of Slovenia prior to the date of accession and a temporary importation procedure with full exemption from payment of duties or one of the procedures from the first paragraph of Article 32 of this Act was initiated for such goods and was not completed by the date of accession, such goods shall, until the aforementioned procedure is completed, be treated in accordance with the VAT regulations in force at the time when the procedure for such goods was initiated.

(4) If a customs transit procedure was initiated for goods prior to the date of accession and was not completed by the date of accession, such goods shall, until the aforementioned procedure is completed, be treated in accordance with the VAT regulations in force at the time when the customs transit procedure was initiated.

(5) If it is determined in the procedure that the goods are in free circulation in Slovenia or within the Community, the following shall also be treated as importation of goods within the meaning of point 1 of Article 11 of this Act:

- the removal, including the illegal removal,

of goods from the temporary importation procedure initiated prior to the date of accession in accordance with the conditions from the second paragraph of this Article;

- the removal, including the illegal removal, of goods from one of the procedures from the first paragraph of Article 32 of this Act which was initiated prior to the date of accession in accordance with the conditions from the third paragraph of this Article;

- the discharge of the procedure from the fourth paragraph of this Article, which was initiated prior to the date of accession in one of the new Member States for the purpose of supply of goods for consideration effected in such Member State prior to the date of accession by a taxable person in the course of his activity;

- every irregularity or violation committed during the transit procedure from the fourth paragraph of this Article, provided that the conditions from the previous indent are met.

(6) If a recipient of goods, which were supplied to him prior to the date of accession in one of the new Member States or within the Community, uses these goods after the date of accession in Slovenia, this use shall be deemed to be importation of goods within the meaning of point 1 of Article 11 of this Act, provided the following conditions are met:

- the supply of such goods was exempt from VAT or would be exempt from VAT in accordance with the provisions equivalent to the provisions from points 1 or 2 of Article 31 of this Act;

- the goods were not imported into Slovenia prior to the date of accession.

(7) In cases from the fifth paragraph of this Article, the place of importation shall be the Member State on the territory of which the procedure initiated prior to the date of accession is discharged.

(8) Notwithstanding Article 20 of this Act, importation of goods in terms of the fourth and fifth paragraph of this Article shall be terminated without the occurrence of a chargeable event if:

- the imported goods are re-exported from the enlarged Community

y, or

- the imported goods from the first indent of the fifth paragraph of this Article are returned to the Member State from which they were exported, provided that the goods are returned to the person who had initially exported them. This provision shall not apply to means of transport;

- means of transport temporarily imported in accordance with the first indent of the fifth paragraph of this Article are acquired or imported prior to the date of accession and taxed in accordance with the general taxation regulations in a new Member State or a Member State of the Community or were not subject to a VAT exemption or a VAT refund due to export.

The condition from the previous indent is deemed to have been met if the means of transport was used for the first time prior to 1 May 1996 or if the amount of VAT that would be due by reason of the importation is below SIT 2,500.

#### Article 67

(implementation of point 2 of the second paragraph of Article 11a)

The value of acquisitions from point 2 of the second paragraph of Article 11a of this Act in 2004 shall be the value of all acquisitions of an individual taxable person, established on the basis of data from customs declarations for release of goods into free circulation in 2003 or from 1 January up to and including 30 April 2004. The value of acquisitions for a period after 1 May 2004 shall be established on the basis of bookkeeping data of a taxable person.

#### Article 68

(implementation of the fourth paragraph of Article 58)

(1) The tax authority shall prior to 1 May 2004 issue, on official duty, a VAT identification number to every taxable person, to whom prior to 1 May 2004 was issued the decision on entering his VAT registration into the tax register.

(2) It shall be deemed that the taxable person from the first paragraph of this Article is identified for VAT purposes as from 1 May 2004.

#### Article 69

(implementation of the third paragraph of Article 15a)

The value of supplies from the third paragraph on Article 15a of this Act in 2004 shall be determined with regard to the total value of supplies of an individual taxable person, established on the basis of data from his customs declarations for export or re-export of goods into Slovenia in 2003 or from 1 January up to and including 30 April 2004. The value of supplies for the period after 1 May 2004 shall be established on the basis of bookkeeping data of a taxable person with regard to supplies of goods into Slovenia.

#### Article 70

(implementation of the third paragraph of Article 36)

A taxable person for whom, in accordance with the third paragraph of Article 36 of this Act, the prescribed tax period shall be a calendar semester or calendar quarter and who will after 1 May 2004 effect intra-Community acquisition or supplies of goods shall enclose to his VAT return separate data with regard to tax liability referring to the part of the tax period up to and including 30 April 2004 and the part of the tax period after 1 May 2004.

#### Article 71

(reporting period)

The first reporting period from Article 39a of this Act shall be, for a taxable person who after 1 May 2004 supplies goods to taxable persons identified for VAT purposes in other Member States, the period from 1 May 2004 to 30 June 2004.

#### Article 72

(offences until 1 January 2005)

(1) Until 1 January 2005, a natural person who commits an offence in relation to an independent performing of activity shall be fined with a penalty ranging from SIT 300,000 to SIT 5,000,000, for offences laid down in Article 61 of this Act.

(2) Until 1 January 2005 a legal person shall, for offences laid down in Article 61 of this Act, be fined with a penalty ranging from SIT 300,000 to SIT 6,000,000, while a person in charge, representing the legal person, who commits an offence laid down in Article 61 of this Act, shall be fined with a penalty ranging from SIT 100,000 to SIT 500,000.

(3) Until 1 January 2005 a person from the fifth paragraph of Article 46 of this Act shall be fined with a penalty ranging from SIT 50,000 to SIT 450,000 for an offence laid down in the third paragraph of Article 61 of this Act.

(4) Until 1 January 2005 a natural person who commits an offence in relation to an independent performing of activity shall be fined with a penalty ranging from SIT 300,000 to SIT 12,000,000 for offences laid down in Article 62 of this Act.

(5) Until 1 January 2005 a legal person shall, for offences laid down in Article 62 of this Act, be fined with a penalty ranging from SIT 1,000,000 to SIT 18,000,000, while a person in charge, representing the legal person, who commits an offence laid down in Article 62 of this Act, shall be fined with a penalty ranging from SIT 200,000 to SIT 1,000,000.

(6) The provision of Article 65 of this Act shall begin to apply on 1 January 2005.

#### Article 73

(application of regulations)

Until the day this Act begins to apply the Value Added Tax Act (Official Gazette RS, No. 89/98, 17/2000 - Constitutional Court Decision, 30/01,103/01 - ZIPRSO203, 67702 and 30/03 - Constitutional Court Decision) and regulations issued pursuant thereto shall apply.

#### Article 74

(beginning of validity and application)

This Act shall enter into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia and shall apply from 1 May 2004, except for the provision of Article 68 of this Act, which shall apply from the date on which this Act enters into force.

The Act Amending the Value Added Tax Act (VAT-D) (Official Gazette RS, No. 45/04) lays down the following transitional and final provisions:

#### TRANSITIONAL AND FINAL PROVISIONS

##### Article 12

(1) The provisions of Articles 2 to 6 of this Act shall begin to apply on 1 January 2005, while provisions of Article 7 of this Act shall begin to apply on the day following the publishing of an announcement of an arrangement on concluded consultation procedure provided for in Article 29 of the Sixth Council Directive on the harmonization of the laws of the Member States

relating to turnover taxes — Common system of value added tax: uniform basis of assessment (77/388/EEC) with amendments.

(2) The minister responsible for finance shall publish the announcement from the preceding paragraph in the Official Gazette of the Republic of Slovenia.

##### Article 13

This Act shall enter into force on the day following its publication in the Official Gazette of the Republic of Slovenia.

The Act Amending the Value Added Tax Act (VAT-E) (Official Gazette RS, No. 114/04), lays down the following final provision:

##### Article 5

This Act shall enter into force on the day following its publication in the Official Gazette of the Republic of Slovenia and shall apply from the first day of the month following the day of its enforcement.

##### 12.6.2. Income Tax Law

ZAKON O DAVKU OD DOHODKOV PRAVNIH OSEB (ZDDPO-1)

##### I. SPLOŠNI DOLOČBI

###### 1. člen (vsebina zakona)

S tem zakonom se ureja sistem in uvaja obveznost plačevanja davka od dohodkov pravnih oseb.

###### 2. člen (pripadnost davka)

Davek od dohodkov pravnih oseb (v nadaljnjem besedilu: davek) po tem zakonu je prihodek državnega proračuna.

##### II. ZAVEZANEC ZA DAVEK IN DAVČNA OBVEZNOST

###### 3. člen (zavezanec za davek)

(1) Zavezanec oziroma zavezanka za davek je pravna oseba domačega in tujega prava (v nadaljnjem besedilu: zavezanec).

(2) Ne glede na prvi odstavek tega člena, je zavezanec tudi združenje oseb po tujem pravu, ki je brez pravne osebnosti in ni zavezanec po zakonu, ki ureja dohodnino.

(3) Republika Slovenija, samoupravne lokalne skupnosti in Banka Slovenije niso zavezanci, če s tem zakonom ni določeno drugače.

#### 4. člen (obseg davčne obveznosti)

(1) Rezident oziroma rezidentka Slovenije (v nadaljnjem besedilu: rezident) je zavezan za davek od vseh dohodkov, ki imajo svoj vir v Republiki Sloveniji (v nadaljnjem besedilu: Slovenija), in od vseh dohodkov, ki imajo svoj vir izven Slovenije.

(2) Nerezident oziroma nerezidentka Slovenije (v nadaljnjem besedilu: nerezident) je zavezan za davek od vseh dohodkov, ki imajo svoj vir v Sloveniji v skladu z 8. členom tega zakona, in sicer:

1. dohodkov, ki jih dosega z opravljanjem aktivnosti v poslovni enoti ali preko poslovne enote v Sloveniji; in

2. drugih dohodkov.

#### 5. člen (rezident in nerezident)

(1) Zavezanec je rezident Slovenije, če izpolnjuje vsaj enega izmed naslednjih pogojev:

1. ima sedež v Sloveniji,

2. ima kraj dejanskega upravljanja v Sloveniji.

(2) Zavezanec je nerezident Slovenije, če ne izpolnjuje vsaj enega od pogojev iz prvega odstavka tega člena.

#### 6. člen (poslovna enota nerezidenta)

(1) Poslovna enota nerezidenta po tem zakonu je kraj poslovanja, to je kraj, v katerem ali preko katerega nerezident v celoti ali delno opravlja aktivnosti v Sloveniji.

(2) Za poslovno enoto nerezidenta se šteje zlasti:

1. pisarna, podružnica, tovarna, delavnica, rudnik, kamnolom ali drug kraj, kjer se pridobivajo ali izkoriščajo naravni viri;

2. gradbišče, projekt gradnje, montaže ali postavitve ali nadzor ali svetovanje v zvezi z njimi, če aktivnosti trajajo dlje kot šest mesecev.

(3) Za poslovno enoto nerezidenta se šteje tudi opravljanje storitev, vključno s svetovalnimi ali poslovodskimi storitvami, če za isti ali povezan projekt opravljanje storitev traja dlje kot 90 dni v kateremkoli obdobju zaporednih 12 mesecev.

(4) Kot poslovna enota nerezidenta se obravnava tudi posrednik, ki deluje v imenu nerezidenta, v zvezi s katerimikoli aktivnostmi za nerezidenta, če:

1. ima in običajno uporablja pooblastilo za sklepanje pogodb v imenu nerezidenta, razen če so aktivnosti posrednika omejene na tiste iz 7. člena tega zakona, zaradi česar se ta kraj poslovanja ne bi štel za poslovno enoto nerezidenta; ali

2. nima pooblastila iz 1. točke tega odstavka, vendar običajno vzdržuje zaloge proizvodov ali trgovskega blaga, iz katerih redno dostavlja to blago v imenu nerezidenta.

(5) Kot poslovna enota nerezidenta se obravnava tudi posrednik, ki v svojem imenu deluje za nerezidenta, v okviru svoje redne dejavnosti kot borzni posrednik, posrednik s splošnim pooblastilom ali katerikoli drug neodvisni posrednik, kadar deluje v celoti ali pretežno v imenu nerezidenta in se pogoji in okoliščine v poslovnih in finančnih razmerjih med tem nerezidentom in tem posrednikom razlikujejo od tistih, ki bi bili v razmerjih med nepovezanimi osebami.

(6) Gradbišče, projekt gradnje, montaže ali postavitve ali nadzor ali svetovanje v zvezi z njimi, ki trajajo dlje kot šest mesecev, se šteje za poslovno enoto nerezidenta od dneva začetka aktivnosti, vključno s pripravljalnimi deli.

#### 7. člen (kraj poslovanja, ki ni poslovna enota)

Kraj poslovanja se ne šteje za poslovno enoto nerezidenta, če nerezident:

1. uporablja prostore le za skladiščenje, razstavljanje ali dostavo dobrin ali blaga, ki mu pripadajo;

2. vzdržuje zaloge dobrin ali blaga, ki mu pripadajo, le zaradi skladiščenja, razstavljanja ali dostave;

3. vzdržuje zaloge dobrin ali blaga, ki mu pripadajo, le zaradi predelave s strani druge osebe;

4. vzdržuje kraj poslovanja le zaradi nakupa dobrin ali blaga ali zbiranja informacij zase;

5. vzdržuje kraj poslovanja le zaradi opravljanja kakršnekoli druge aktivnosti pripravljalne ali pomožne narave zase;

6. vzdržuje kraj poslovanja le za kakršnokoli kombinacijo aktivnosti, določenih v 1. do 5. točki tega člena, pod pogojem, da je splošna aktivnost



kraja poslovanja, ki je posledica te kombinacije, pripravljalne ali pomožne narave.

#### 8. člen (vir dohodkov)

(1) Dohodki po tem zakonu, ki imajo vir v Sloveniji, so:

1. dohodki od nepremičnin in pravic na nepremičninah, če gre za nepremičnine, ki se nahajajo v Sloveniji, in dohodki iz kmetijske in gozdarske dejavnosti, ki se opravlja na zemljiščih, ki se nahajajo v Sloveniji;

2. dohodki od izkoriščanja ali pravice do izkoriščanja nahajališč rude, virov ter drugega naravnega bogastva, ki se nahajajo v Sloveniji;

3. dohodki od vrednostnih papirjev, ki jih izdajo gospodarske družbe, zadrage in druge oblike organiziranja, ki so ustanovljene v skladu s predpisi v Sloveniji, Slovenija, samoupravne lokalne skupnosti in Banka Slovenije, ter od deležev v gospodarskih družbah, zadrugah in drugih oblikah organiziranja, ki so ustanovljene v skladu s predpisi v Sloveniji;

4. dohodki nerezidenta, doseženi v poslovni enoti tega nerezidenta ali preko poslovne enote tega nerezidenta, ki se nahaja v Sloveniji;

5. dividende, ki jih plača rezident Slovenije ali so mu bile zaračunane;

6. obresti, ki jih izplača rezident Slovenije ali nerezident preko svoje poslovne enote v Sloveniji ali so mu bile zaračunane;

7. dohodki od uporabe ali pravice uporabe avtorskih pravic, patentov, licenc, zaščitnih znakov in drugih premoženjskih pravic in dohodki od drugih podobnih plačil, ki jih izplača rezident Slovenije ali nerezident preko svoje poslovne enote v Sloveniji ali so mu bili zaračunani;

8. dohodki od odsvojitve nepremičnin iz 1. in premoženja iz 2. točke tega odstavka;

9. dohodki od odsvojitve premičnin, ki se nahajajo v Sloveniji;

10. dohodki od odsvojitve vrednostnih papirjev in lastniških deležev iz 3. točke tega odstavka;

11. dohodki od odsvojitve premičnin, ki so del poslovnega premoženja poslovne enote nerezidenta v Sloveniji, in dohodek iz odsvojitve take poslovne enote;

12. dohodki od storitev nastopajočih izvajalcev ali športnikov v Sloveniji, ki pripadajo drugi osebi;

13. vsak drug dohodek, pridobljen v Sloveniji;

14. vsak drug dohodek, ki ga je izplačal rezident ali nerezident preko svoje poslovne enote, ali mu je bil zaračunan.

(2) Dohodek iz 8. točke prvega odstavka tega člena je tudi dohodek od odsvojitve lastniških deležev in pravic iz lastniških deležev v družbi, zadrugi ali drugi obliki organiziranja, katerih več kot polovico vrednosti izhaja posredno ali neposredno iz nepremičnin in pravic na nepremičninah, ki se nahajajo v Sloveniji.

(3) Če Slovenija, samoupravne lokalne skupnosti in Banka Slovenije izplačujejo ali so jim bili zaračunani dohodki iz prvega odstavka tega člena, se štejejo za rezidenta.

(4) Dohodki po tem zakonu, ki nimajo vira v Sloveniji, so dohodki z virom izven Slovenije.

#### III. OPROSTITVE

9. člen (oprostitev davka za zavezanca, ki je ustanovljen

za opravljanje nepridobitne dejavnosti)

(1) Zavezanec, kot zavod, društvo, ustanova, verska skupnost, politična stranka, zbornica, reprezentativni sindikat, ne plača davka po tem zakonu, če:

1. je v skladu s posebnim zakonom ustanovljen za opravljanje nepridobitne dejavnosti, in

2. ima v vsem davčnem obdobju finančno in materialno poslovanje in akte v zvezi s tem, zlasti svoj temeljni akt, usklajeno z določbami zakona, ki ureja njegovo ustanovitev oziroma delovanje.

(2) Ne glede na prvi odstavek tega člena, plača zavezanec iz prvega odstavka tega člena davek po tem zakonu od dohodkov iz opravljanja pridobitne dejavnosti.

(3) Zavezanec izpolnjuje pogoje iz 2. točke prvega odstavka tega člena zlasti, če:

1. uporablja presežke prihodkov nad odhodki;

2. zmanjšuje ustanovitveno premoženje;

3. izplačuje plače;

4. nagraduje člane uprave in izkazuje stroške poslovanja;

5. nalaga prosta sredstva;

6. ravna z ostankom premoženja pri prenehanju v skladu z določbami zakona, ki ureja njegovo ustanovitev oziroma delovanje.

#### IV. PREDMET OBDAVČITVE IN DAVČNO OBDOBJE

##### 10. člen (predmet in obdobje obdavčitve)

(1) Z davkom so obdavčeni dohodki zavezanca, določeni s tem zakonom, v davčnem obdobju, ki je koledarsko leto.

(2) Ne glede na prvi odstavek tega člena, davčni zavezanec lahko izbere, da bo njegovo davčno obdobje enako njegovemu poslovnemu letu, ki se razlikuje od koledarskega leta, pri čemer davčno obdobje ne sme presegati obdobja 12 mesecev.

(3) Davčni zavezanec iz drugega odstavka tega člena mora o izbiri obvestiti davčni organ. Izbranega davčnega obdobja davčni zavezanec ne sme spreminjati sedem let.

#### V. DAVČNA OSNOVA

##### 1. Splošne določbe

##### 11. člen (davčna osnova)

(1) Osnova za davek rezidenta in nerezidenta za aktivnost, ki jo opravlja v poslovni enoti ali preko poslovne enote v Sloveniji, je dobiček, ki se ugotovi v skladu z določbami tega zakona.

(2) Dobitek je presežek prihodkov nad odhodki, ki so določeni s tem zakonom.

(3) Če ta zakon ne določa drugače, se za ugotavljanje dobička priznajo prihodki in odhodki, ugotovljeni v izkazu poslovnega izida oziroma letnem poročilu, ki ustreza izkazu poslovnega izida in prikazuje prihodke, odhodke in izid, na podlagi zakona in v skladu z njim uvedenimi računovodskimi standardi.

(4) Prihodki in odhodki se priznajo glede na čas nastanka.

(5) Osnova za davčni odtegljaj od dohodkov, navedenih v 68. členu tega zakona, je vsak posamezen dohodek.

##### 12. člen (davčna osnova pri poslovanju med povezanimi osebami)

(1) Pri ugotavljanju prihodkov zavezanca se upoštevajo transferne cene s povezanimi osebami za sredstva, vključno z neopredmetenimi sredstvi, ter storitve, vendar prihodki najmanj do višine, ugotovljene z upoštevanjem cen takih ali primerljivih sredstev ali storitev, ki se v primerljivih okoliščinah dosežejo ali bi se dosegle

na trgu med nepovezanimi osebami (v nadaljnjem besedilu: primerljive tržne cene).

(2) Pri ugotavljanju odhodkov zavezanca se upoštevajo transferne cene s povezanimi osebami za sredstva, vključno z neopredmetenimi sredstvi, ter storitve, vendar odhodki največ do višine, ugotovljene z upoštevanjem primerljivih tržnih cen.

(3) Primerljive tržne cene iz prvega in drugega odstavka tega člena se določijo z eno od naslednjih metod ali s kakršno koli kombinacijo naslednjih metod:

1. metodo primerljivih prostih cen;
2. metodo preprodajnih cen;
3. metodo dodatka na stroške;
4. metodo porazdelitve dobička;
5. metodo stopnje čistega dobička;

ali katerokoli drugo metodo.

(4) Za povezani osebi se štejeta zavezanec rezident in pravna oseba ali oseba brez pravne osebnosti, ki ni rezident (v nadaljnjem besedilu: tuja oseba), ki sta povezani tako, da je rezident neposredno ali posredno udeležen v upravljanju, nadzoru ali kapitalu tuje osebe, ali je tuja oseba neposredno ali posredno udeležena v upravljanju, nadzoru ali kapitalu rezidenta, ali je ista oseba neposredno ali posredno udeležena v upravljanju, nadzoru ali kapitalu rezidenta in tuje osebe ali dveh rezidentov.

(5) Osebi po četrtem odstavku tega člena se štejeta za povezani, če:

1. ima zavezanec rezident neposredno ali posredno v lasti najmanj 25% vrednosti ali števila delnic ali deležev v kapitalu ali glasovalnih pravic v tuji osebi; ali
2. ima tuja oseba neposredno ali posredno v lasti najmanj 25% vrednosti ali števila delnic ali deležev v kapitalu ali glasovalnih pravic v rezidentu; ali
3. ima ista pravna oseba hkrati neposredno ali posredno v lasti najmanj 25% vrednosti ali števila delnic ali deležev ali glasovalnih pravic v rezidentu in tuji osebi ali dveh rezidentih; ali
4. imajo iste fizične osebe ali njihovi družinski člani neposredno ali posredno v lasti najmanj 25% vrednosti ali števila delnic ali deležev ali glasovalnih pravic ali so udeleženi v nadzoru ali upravljanju v rezidentu in tuji osebi ali dveh rezidentih.

(6) Za družinske člane se po tem in po 13. členu tega zakona štejejo zakonec oziroma oseba, s katero fizična oseba živi v dalj časa trajajoči življenjski skupnosti, ki ima po zakonu, ki ureja zakonsko zvezo in družinska razmerja, enake pravne posledice kot zakonska zveza, brat ali sestra, neposredni prednik ali posvojitelj ali neposredni potomec ali posvojenec.

(7) Minister oziroma ministrica (v nadaljnjem besedilu: minister), pristojen za finance, podrobneje predpiše izvajanje tega člena.

13. člen (davčna osnova pri poslovanju med povezanimi osebami rezidenti)

(1) Pri ugotavljanju prihodkov in odhodkov za posle med zavezancema rezidentoma, ki sta povezani osebi, se davčna osnova ne povečuje oziroma zmanjša, če je zmanjšanje oziroma povečanje davčne osnove pri enem zavezancu enako povečanju oziroma zmanjšanju davčne osnove pri drugem zavezancu glede na določen posel med njima in takšno ugotavljanje prihodkov in odhodkov ne povzroči znižanja celotnega davčnega učinka.

(2) Za povezani osebi po prvem odstavku tega člena se štejeta rezidenta, če sta neposredno ali posredno povezana v kapitalu, upravljanju ali nadzoru in eden vpliva ali ima možnost vplivati na sprejemanje odločitev drugega, ali če med rezidentom in drugo osebo obstajajo druga razmerja, ki se razlikujejo od razmerij med nepovezanimi osebami, zlasti razmerje z osebo, ki ima ugodnejši davčni položaj, in bi se posli opravili pod drugačnimi pogoji, če ugodnejšega davčnega položaja ne bi bilo.

(3) Za povezani osebi iz drugega odstavka tega člena se štejeta zlasti osebi, ki sta povezani v kapitalu, upravljanju ali nadzoru tako, da ima ena oseba neposredno ali posredno v lasti najmanj 25% deležev ali delnic ali glasovalnih pravic v drugi osebi ali sta poslovno povezani ali če sodelujejo v nadzornih telesih ali upravljanju iste osebe ali njihovi družinski člani.

(4) Za osebo iz drugega odstavka tega člena, ki ima ugodnejši davčni položaj, se zlasti šteje:

1. oseba, ki je oproščena plačevanja davka po tem zakonu;
2. oseba, ki plačuje davek po stopnji, nižji od stopnje iz 53. člena tega zakona (25%);
3. oseba, ki izkazuje davčno izgubo.

14. člen (podatki v zvezi s povezanimi osebami po 12. in 13. členu tega zakona)

(1) Zavezanec zagotavlja in hrani podatke o povezanih osebah, poslovanju s temi osebami, vrsti uporabljenih metod za določanje primerljivih tržnih cen in razlogih za izbiro uporabljenih metod v obsegu, obliki in v roku v skladu z zakonom, ki ureja davčni postopek.

(2) Predlaganje podatkov iz prvega odstavka tega člena davčnemu organu ter njihovo dajanje na razpolago v času nadzora določa zakon, ki ureja davčni postopek.

15. člen (obresti med povezanimi osebami)

(1) Pri ugotavljanju prihodkov se upoštevajo obračunane obresti na dana posojila od povezanih oseb, vendar najmanj do višine zadnje objavljene, ob času odobritve posojila znane priznane obrestne mere.

(2) Pri ugotavljanju odhodkov se upoštevajo obračunane obresti na prejeta posojila od povezanih oseb, vendar največ do višine zadnje objavljene, ob času odobritve posojila znane priznane obrestne mere.

(3) Priznana obrestno mero iz prvega in drugega odstavka tega člena določi in objavi minister, pristojen za finance, pred začetkom davčnega obdobja, za katerega se bo uporabljala, pri tem pa upošteva, da gre za obrestno mero, ki se v primerljivih okoliščinah doseže ali bi se dosegla na trgu med nepovezanimi osebami.

16. člen (rezervacije)

(1) Pri ugotavljanju davčne osnove oziroma priznavanju prihodkov in odhodkov se oblikovanje rezervacij ne upošteva, razen če s tem zakonom ni določeno drugače.

(2) Odprava in poraba rezervacij se upošteva na način, da se prihodki izvzemajo in odhodki priznavajo tako, da v davčno osnovo niso ponovno vključeni prihodki in odhodki, ki so predhodno povečevali davčno osnovo, razen če s tem zakonom ni določeno drugače.

(3) Kot oblikovanje oziroma odprava in poraba rezervacij po prvem in drugem odstavku tega člena se obravnava tudi njihov popravek na sedanjo vrednost izdatkov na koncu obračunskega obdobja.

(4) Rezervacije, oblikovanje katerih se po tem zakonu prizna kot odhodek in se lahko odpravljajo kot nepotrebne v več letih, se pri določanju davčne osnove všttevajo v davčno osnovo kot prihodek v celoti v prvem letu odprave, in sicer največ do višine predhodno priznanega odhodka za njihovo oblikovanje.

17. člen (prevrednotenje)

(1) Pri ugotavljanju davčne osnove se odhodki prevrednotenja, ki je posledica spremembe kupne moči domače valute, ki se po slovenskih računovodskih standardih opravi na koncu poslovnega leta pri kapitalu, ne priznajo.

(2) Odhodki zaradi prevrednotenja, ki ni prevrednotenje iz prvega odstavka tega člena, razen odhodkov, nastalih zaradi prevrednotenja dolgov, terjatev, finančnih naložb in denarnih terjatev, kateri se po slovenskih računovodskih standardih prevrednotujejo zaradi spremembe valutnega tečaja, in odhodki zaradi uporabe kapitalske metode vrednotenja finančnih naložb, se ne priznajo. Odprava oslabitev se upošteva na način, da se prihodki izvzemajo, tako da v davčno osnovo niso vključeni, zato da se obdavčijo, če se predhodna oslabitev ni upoštevala.

(3) Odhodki zaradi prevrednotenja, ki se po drugem odstavku tega člena ne priznajo, se priznajo ob prodaji ali drugačni odtujitvi sredstev in ob poravnavi ali drugačni odtujitvi dolgov.

## 2. Prihodki

### 18. člen

(izvzem prihodkov od udeležbe na dobičku)

(1) Pri določanju davčne osnove zavezanca, ki prejme dividende oziroma druge deleže iz dobička (v nadaljnjem besedilu: prejemnik), se te dividende oziroma drugi deleži iz dobička (v nadaljnjem besedilu: dividende) izvzemajo iz davčne osnove, če:

1. je prejemnik udeležen v kapitalu oziroma pri upravljanju osebe, ki deli dobiček za dividende (v nadaljnjem besedilu: izplačevalec) tako, da je imetnik poslovnega deleža, delnic ali glasovalnih pravic v višini najmanj 25%, in

2. znaša čas trajanja udeležbe v kapitalu oziroma pri upravljanju izplačevalca v skladu s 1. točko tega odstavka najmanj 24 mesecev, in

3. je izplačevalec zavezanec za davek, ter ni rezident države, v primeru poslovne enote pa se ta ne nahaja v državi, z ugodnejšim davčnim okoljem, ki je za namene tega člena država, v kateri je splošna, povprečna, nominalna stopnja obdavčitve dobička družb nižja od 12,5%.

(2) Določbe prvega odstavka tega člena se za prejemnika nerezidenta uporabljajo, če je njegova udeležba v kapitalu oziroma upravljanju osebe, ki deli dobiček, povezana z aktivnostmi, ki jih nerezident opravlja v poslovni enoti v Sloveniji oziroma preko poslovne enote v Sloveniji.

(3) Prejemnik, ki še ne izpolnjuje pogoja iz 2. točke prvega odstavka tega člena, izpolnjuje pa druge pogoje iz prvega ali drugega odstavka tega člena, lahko izvzame dividende iz davčne osnove po prvem ali drugem odstavku tega člena pod pogojem, da izroči pristojnemu davčnemu organu ustrezno bančno garancijo za znesek davka, ki bi ga moral plačati, če jih ne bi izvzel. Davčni organ lahko unovči garancijo, če se pogoj iz 2. točke prvega odstavka tega člena ne izpolni. Garancija poteče z dnem, ko se pogoj iz 2. točke prvega odstavka tega člena izpolni.

(4) Šteje se, da je pogoj iz 3. točke prvega odstavka tega člena izpolnjen, če je izplačevalec:

1. oseba, ki ima eno od oblik, za katere se uporablja skupen sistem obdavčenja, ki velja za matične družbe in odvisne družbe iz različnih držav članic Evropske unije (v nadaljnjem besedilu: EU), in jih določi minister, pristojen za finance; in

2. je za davčne namene rezident v državi članici EU v skladu s pravom te države in se v skladu z mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka, sklenjene z državo nečlanico EU, ne šteje kot rezident izven EU; in

3. je zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja, ki velja za matične družbe in odvisne družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, kjer se za zavezanca ne šteje družba, ki je davka oproščena ali ima možnost izbire obdavčitve.

(5) Pri določanju davčne osnove po prvem oziroma drugem odstavku tega člena se odhodki, ki se nanašajo na udeležbo, ne priznajo.

(6) Za ustrezno bančno garancijo se šteje bančna garancija banke s sedežem v Sloveniji ali v državi članici EU, s katero se banka nepreklicno zavezuje, da bo na prvi poziv pristojnega davčnega organa ter brez ugovorov, davčnemu organu izplačala znesek davka iz tretjega odstavka tega člena, z rokom veljavnosti do dneva izpolnitve pogoja glede časa trajanja udeležbe v skladu z 2. točko prvega odstavka tega člena.

(7) Način izvajanja tega člena ureja zakon, ki ureja davčni postopek.

### 19. člen (izvzem prihodkov od nepridobitne dejavnosti)

Pri določanju davčne osnove zavezanca iz 9. člena tega zakona se prihodki iz opravljanja dejavnosti, ki ni pridobitna, ter dejanski ali sorazmerni stroški te dejavnosti izvzemajo iz davčne osnove.

3. Odhodki

20. člen (splošno)

(1) Za ugotavljanje dobička se priznajo odhodki, potrebni za pridobitev prihodkov, ki so obdavčeni po tem zakonu.

(2) Odhodki, ki niso potrebni za pridobitev prihodkov, so odhodki, za katere glede na dejstva in okoliščine izhaja, da:

1. niso neposreden pogoj za opravljanje dejavnosti in niso posledica opravljanja dejavnosti,

2. imajo značaj privatnosti,

3. niso skladni z običajno poslovno prakso.

(3) Odhodki niso skladni z običajno poslovno prakso, če niso običajni pri poslovanju v posamezni dejavnosti glede na pretekle in druge izkušnje in primerjavo z drugimi dejavnostmi ter dejstvi in okoliščinami, razen odhodkov, nastalih zaradi izrednih in nepogostih dogodkov, kot so naravne nesreče ali zaradi drugih izrednih in nepogostih dogodkov.

21. člen (nepriznani odhodki)

(1) Kot odhodki se ne priznajo:

1. naložbe, zlasti za pridobitev in izboljšanje zemljišča, pridobitev, izboljšanje, obnovo in rekonstrukcijo osnovnih sredstev, ki povečujejo nabavno vrednost osnovnih sredstev oziroma zmanjšujejo popravek vrednosti osnovnih sredstev, materialne pravice, delnice in deleže gospodarskih družb ter druge finančne naložbe in druga sredstva;

2. delitev dobička, zlasti za dividende in druge dohodke, ki so po določbah tega zakona podobni dividendam, rezerve iz dobička, nagrade upravi in članom nadzornega sveta zavezanca, ki imajo naravo udeležbe v dobičku;

3. odhodki za pokrivanje izgub iz preteklih let;

4. rezervacije za kritje možnih izgub;

5. stroški, ki se nanašajo na privatno življenje, primeroma za zabavo, oddih, šport in rekreacijo, vključno s pripadajočim davkom na dodano vrednost;

6. stroški prisilne izterjave davkov ali drugih dajatev;

7. kazni, ki jih izreče pristojni organ;

8. davki, in sicer:

a) davek, ki se pobira po tem zakonu;

b) davek na dodano vrednost, ki ga je zavezanec uveljavil kot odbitek davka v skladu z zakonom, ki ureja davek na dodano vrednost;

c) davki, ki jih je plačal družbenik kot fizična oseba;

9. obresti;

a) od nepravčasno plačanih davkov ali drugih dajatev;

b) od posojil, prejetih od oseb, ki imajo sedež ali prebivališče v državah z ugodnejšim davčnim okoljem, ki so za namene te podtočke države, razen držav članic EU, v katerih je splošna nominalna stopnja obdavčitve dobička nižja od 12,5%;

10. podkupnine in druge oblike premoženjskih koristi, dane fizičnim ali pravnim osebam zato, da nastane oziroma ne nastane določen dogodek, ki drugače ne bi, primeroma, da se hitreje ali ugodneje opravi ali se opusti določeno dejanje;

11. donacije.

(2) Stroški iz 5. točke prvega odstavka tega člena so:

1. stroški, ki se nanašajo na privatno življenje lastnikov in povezanih oseb, vključno s stroški sredstev v lasti ali najemu zavezanca, ki se nanašajo na privatno življenje teh oseb;

2. stroški, ki se nanašajo na privatno življenje drugih oseb, vključno s stroški sredstev v lasti ali najemu zavezanca, ki se nanašajo na privatno življenje teh oseb;

3. stroški ugodnosti, ki jih delavcem zagotavlja delodajalec (bonitete).

(3) Stroški iz 3. točke drugega odstavka tega člena so zlasti stroški:

1. premij za prostovoljno dodatno pokojninsko zavarovanje in drugih zavarovalnih premij;

2. danih, subvencioniranih ali s popustom prodanih proizvodov oziroma storitev;

3. počitniških nastanitev in drugih nastanitev, ki niso povezane z delom;

4. članarin poklicnim združenjem, razen če so potrebne za poslovanje in če so plačane za

članstvo v združenjih, v katerih delodajalec ne more biti član;

5. članarin in drugi stroški povezani z zabavo, oddihom, športom in rekreacijo in drugi stroški privatne rabe;

6. drugih ugodnosti, kot so zagotovitev parkirnega mesta, službene obleke, razen uniform.

(4) Stroški iz drugega odstavka tega člena se ne priznajo, če gre za brezplačno uporabo. Stroški iz 2. in 3. točke drugega odstavka tega člena se priznajo, če se te storitve oziroma ugodnosti plačujejo, vendar največ do višine takšnega plačila oziroma povračila. Stroški sredstev v lasti ali najemu zavezanca, ki se nanašajo na privatno življenje, nastali v času uporabe teh sredstev za privatno rabo, se ne priznajo sorazmerno takšni rabi.

22. člen (delno priznani odhodki)

Kot odhodki se priznajo v višini 50%:

1. stroški reprezentance,
2. stroški nadzornega sveta.

23. člen (odpis terjatev)

Odpis terjatve se prizna kot odhodek, ko je odpis terjatve evidentiran v poslovnih knjigah, če:

1. je bil znesek terjatve že vključen v prihodek, in
2. so bila opravljena vsa dejanja, ki bi jih opravil s skrbnostjo dober gospodarstvenik, za doseglo poplačila dolga.

24. člen (odhodki zalog)

(1) Porabljene oziroma prodane zaloge se priznajo kot odhodek v obračunanem znesku, vendar največ do zneska, ki se ugotovi v skladu z izbrano metodo vrednotenja zalog.

(2) Zavezanec ne sme spreminjati izbrane metode vrednotenja zalog najmanj pet let.

25. člen (obresti od presežka posojil)

(1) Kot odhodek se ne priznajo obresti od posojil, razen pri posojilojemalcih bankah in zavarovalnicah, ki so prejeta od delničarja oziroma družbenika, ki ima kadarkoli v davčnem obdobju neposredno ali posredno v lasti najmanj 25% delnic ali deležev v kapitalu ali glasovalnih pravic v zavezancu, če kadarkoli v davčnem obdobju ta posojila presegajo štirikratnik zneska

deleža tega delničarja oziroma družbenika v kapitalu zavezanca (v nadaljnjem besedilu: presežek posojil), ugotovljene glede na znesek in obdobje trajanja presežka posojil v davčnem obdobju.

(2) Za posojila delničarja oziroma družbenika po prvem odstavku tega člena se štejejo tudi posojila tretjih oseb, za katera jamči ta delničar oziroma družbenik, in posojila banke, če so dana v zvezi z depozitom tega delničarja oziroma družbenika v tej banki.

(3) Znesek deleža delničarja oziroma družbenika v kapitalu prejemnika posojila se določi za davčno obdobje kot povprečje na podlagi stanja vplačanega kapitala, prenesenega čistega dobička in rezerv na zadnji dan vsakega meseca v davčnem obdobju.

26. člen (amortizacija)

(1) Amortizacija opredmetenih osnovnih sredstev in neopredmetenih dolgoročnih sredstev se kot odhodek prizna v obračunanem znesku, vendar največ do zneska, obračunanega z uporabo metode enakomernega časovnega amortiziranja ter najvišje letne amortizacijske stopnje, ki je določena s tem zakonom.

(2) Amortizacija se obračunava posamično.

(3) Sredstva, ki se amortizirajo, ter pričetek obračunavanja amortizacije določajo predpisi in računovodski standardi.

(4) Najvišja letna amortizacijska stopnja po določbah prvega odstavka tega člena znaša za:

1. gradbene objekte 5%,
2. opremo, vozila, razen za osebne avtomobile, in mehanizacijo 25%,
3. osebne avtomobile 12,5%
4. računalnike in računalniško opremo 50%,
5. večletne nasade 10%,
6. osnovno čredo 20%,
7. druga vlaganja 10%,
8. dobro ime 10%.

(5) Ne glede na določbe prvega do četrtega odstavka tega člena se pri opredmetenem osnovnem sredstvu, katerega doba uporabnosti je daljša od enega leta in katerega posamična nabavna vrednost ne presega tolarске vrednosti

500 EUR, kot odhodek ob prenosu v uporabo prizna odpis celotne nabavne vrednosti.

(6) Amortizacija dokončno amortiziranega sredstva se ne prizna kot odhodek, tudi če se takšno sredstvo še naprej uporablja za opravljanje dejavnosti.

(7) Če zavezanec pridobi staro oziroma rabljeno opredmeteno osnovno sredstvo od povezane osebe, ki ni rezident, se šteje, da je pridobljeno osnovno sredstvo že dokončno amortizirano.

(8) Amortizacija opredmetenega osnovnega sredstva, ki ga zavezanec pridobi od osebe, ki ni rezident in se ne šteje za povezano osebo po tem zakonu, se prizna kot odhodek v znesku po prvem odstavku tega člena, če zavezanec dokaže, da opredmeteno osnovno sredstvo še ni dokončno amortizirano.

27. člen (rezervacije pri bankah in zavarovalnicah)

(1) Posebne rezervacije, ki jih mora oblikovati banka glede posebnih tveganj, se priznajo banki kot odhodek v obračunanih zneskih, vendar največ do višine, ki jo določa zakon, ki ureja bančništvo.

(2) Zavarovalno tehnične rezervacije, ki jih mora zavarovalnica obvezno oblikovati v skladu z zakonom, ki ureja zavarovalništvo, se pri zavarovalnici priznajo kot odhodek v obračunanih zneskih, vendar največ do višine ali zgornje meje v skladu z zakonom, ki ureja zavarovalništvo.

28. člen (plače in druga izplačila v zvezi z zaposlitvijo)

(1) Plače ter nadomestila plače za čas odsotnosti z dela zaradi izrabe letnega dopusta in zaradi drugih odsotnosti z dela delavcev se priznajo kot odhodek v obračunanem znesku v skladu s kolektivnimi pogodbami na ravni države.

(2) Plače ter nadomestila plače za čas odsotnosti z dela zaradi izrabe letnega dopusta in zaradi drugih odsotnosti z dela poslovodnih delavcev, prokuristov in delavcev s posebnimi pooblastili in odgovornostmi se priznajo kot odhodek v obračunanem znesku v skladu z zakonom oziroma s pogodbo o zaposlitvi s poslovodnimi osebami.

(3) Nagrade vajencem se priznajo kot odhodek v obračunanem znesku v skladu z zakonom.

(4) Regres za letni dopust, jubilejne nagrade, odpravnine ob upokojitvi, solidarnostne pomoči, povračila stroškov v zvezi z delom, to so stroški prehrane med delom, prevoza na delo in z dela, terenski dodatek, nadomestilo za ločeno življenje

ter povračila stroškov na službenem potovanju, to so:

1. dnevnic,

2. povračilo stroškov prevoza, vključno s povračilom stroškov za uporabo delojemalčevega osebnega vozila za službene namene (kilometrini),

3. povračilo stroškov za prenočišče,

se kot odhodek priznajo do višine, ki jo določi Vlada Republike Slovenije v skladu z zakonom, ki ureja dohodnino.

4. Izguba

29. člen

(izguba in pokrivanje izgube)

(1) Izguba po tem zakonu je presežek odhodkov nad prihodki, ki so določeni s tem zakonom.

(2) Izgubo v davčnem obdobju lahko zavezanec pokriva z zmanjšanjem davčne osnove v naslednjih petih davčnih obdobjih, če zakon ne določa drugače.

(3) Pri zmanjšanju davčne osnove na račun izgub iz preteklih davčnih obdobj, se davčna osnova najprej zmanjša za izgubo starejšega datuma.

(4) Zmanjšanje davčne osnove zaradi izgub iz preteklih davčnih obdobj je dovoljeno največ do višine davčne osnove davčnega obdobja.

(5) Če se v davčnem obdobju neposredno ali posredno lastništvo delniškega kapitala oziroma kapitalskih deležev ali glasovalnih pravic zavezanca spremeni za več kot 25% glede na njihovo vrednost ali število na začetku davčnega obdobja ali na koncu preteklega davčnega obdobja, drugi odstavek tega člena ne velja za izgube, ki so nastale v tem in v preteklih davčnih obdobjih.

## VI. OBDAVČITEV PRI PRENOSU DEJAVNOSTI, ZAMENJAVAH KAPITALSKIH DELEŽEV, ZDRUŽITVAH IN DELITVAH

1. Obdavčitev pri prenosu dejavnosti

30. člen (prenos dejavnosti)

Za prenos dejavnosti po tem členu se šteje transakcija, s katero družba (v nadaljnjem besedilu: prenosna družba), ne da bi prenehala, prenese eno ali več dejavnosti na drugo že ustanovljeno družbo (v nadaljnjem besedilu: družba prejemnica), v zameno za izdajo ali

prenos vrednostnih papirjev, ki predstavljajo deleže v kapitalu družbe prejemnice, prenosni družbi. Za dejavnost po tem členu se štejejo vsa sredstva in obveznosti, ki se pripišejo delu družbe, ki z organizacijskega vidika predstavlja posebno poslovanje.

### 31. člen (pravice)

Pri prenosu dejavnosti je:

1. prenosna družba oproščena davka v zvezi z dobički in izgubami, ki nastanejo pri prenosu sredstev in obveznosti, ki pripadajo prenešeni dejavnosti ali dejavnostim,

2. družba prejemnica upravičena do:

a) prenosa rezerv in rezervacij, ki jih je oblikovala prenosna družba in se pripišejo prenešeni dejavnosti ali dejavnostim, z upoštevanjem davčnih oprostitev in pogojev, ki bi veljali za prenosno družbo, če prenos ne bi bil izvršen;

b) prenosa izgub, ki se pripišejo prenešeni dejavnosti ali dejavnostim, pod pogoji, ki bi veljali za prenosno družbo, če prenos ne bi bil izvršen.

### 32. člen (pogoji)

(1) Prenosna družba in družba prejemnica imata pravice iz 31. člena tega zakona, če sta rezidenta Slovenije in/ali rezidenta države članice EU, ki ni Slovenija, in sicer:

1. če sta prenosna družba in družba prejemnica rezidenta Slovenije, za prenos dejavnosti v Sloveniji ali v državi članici EU, ki ni Slovenija;

2. če je prenosna družba rezident države članice EU, ki ni Slovenija, in je družba prejemnica rezident Slovenije, za prenos dejavnosti, ki se nahaja(jo) v Sloveniji, če po prenosu prenešana sredstva, obveznosti, rezervacije, rezerve in izgube ne pripadajo poslovni enoti družbe prejemnice izven Slovenije;

3. če je družba prejemnica rezident države članice EU, ki ni Slovenija, in je prenosna družba rezident Slovenije ali države članice EU, ki ni Slovenija, pod pogojem, da po prenosu prenešana sredstva, obveznosti, rezervacije, rezerve in izgube pripadajo poslovni enoti družbe prejemnice v Sloveniji.

(2) Za rezidenta države članice EU, ki ni Slovenija, se šteje družba:

1. ki ima eno od oblik, za katere se uporablja skupen sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, in jih določi minister, pristojen za finance;

2. ki je za namene obdavčitve rezident države članice EU v skladu s pravom te države in se ne šteje kot rezident izven EU v skladu z mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka, sklenjenega z državo nečlanico; in

3. ki je zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, in jih določi minister, pristojen za finance. Za zavezanca se ne šteje družba, ki je davka oproščena ali ima možnost izbire.

33. člen (vrednotenje in prevzem pravic in obveznosti)

(1) Prenosna družba iz 31. člena tega zakona ovrednoti prejete vrednostne papirje družbe prejemnice po tržni ceni na dan prenosa.

(2) Družba prejemnica iz 31. člena tega zakona ovrednoti prevzeta sredstva in obveznosti po knjigovodski vrednosti, ki jo imajo pri prenosni družbi ob prenosu, amortizira prenešana sredstva tako, kot bi se amortizirala pri prenosni družbi, če prenos ne bi bil izvršen in prevzame pravice in obveznosti prenosne družbe v zvezi s prenešenimi rezervami in rezervacijami.

34. člen (posebna ureditev v primeru poslovne enote)

Če je prenosna družba rezident Slovenije in je družba prejemnica rezident države članice EU, ki ni Slovenija, se za prenos ene ali več dejavnosti, ki predstavljajo eno ali več poslovnih enot, ki se nahajajo v državi članici EU, ki ni Slovenija, 31. člen tega zakona ter 33. člen tega zakona ne uporabljata, prenosna družba pa ima pravico do odbitka davka, ki je posledica prenosa, ki bi ga ta država članica EU zaračunala kot posledico tega prenosa, če ne bi bila uveljavljena ureditev enotnega sistema obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU.

35. člen (dovoljenje)

(1) Prenosni družbi in družbi prejemnici se upravičenja od 30. do 35. člena tega zakona priznajo na podlagi dovoljenja davčnega organa, če so izpolnjeni pogoji po teh členih in če prenosna družba obdrži prejete vrednostne papirje družbe prejemnice za obdobje najmanj 36 mesecev po prenosu dejavnosti.

(2) Če prenosna družba odsvoji prejete vrednostne papirje pred potekom roka iz prvega odstavka tega člena, se šteje, da pogoj trajanja udeležbe ni izpolnjen, razen če prenosna družba



in družba prejemnica dokažeta, da glavni namen ali eden glavnih namenov prenosa dejavnosti ni izogibanje davčnim obveznostim.

2. Obdavčitev pri zamenjavi kapitalskih deležev

36. člen (zamenjava kapitalskih deležev)

(1) Za zamenjavo kapitalskih deležev se šteje transakcija, s katero pridobi družba (v nadaljnjem besedilu: družba prevzemnica) vrednostne papirje druge družbe (v nadaljnjem besedilu: prevzeta družba) v zamenjavo za izdajo ali prenos lastnih vrednostnih papirjev (v nadaljnjem besedilu: novi vrednostni papirji) družbenikom prevzete družbe, v zamenjavo za vrednostne papirje, ki jih imajo ti družbeniki v prevzeti družbi (v nadaljnjem besedilu: prvotni vrednostni papirji), pod pogojem, da ima po zamenjavi kapitalskih deležev družba prevzemnica najmanj večino glasovalnih pravic v prevzeti družbi ali najmanj 25% vrednosti kapitala prevzete družbe. Prevzem, ki ga opravi prevzemna družba preko priznane borze, se šteje kot en posel, če je izvršen v obdobju šest mesecev. Priznana borza je borza, katere organizator je polnopravni član svetovnega združenja borz (World Federation of Exchanges – WFE oziroma Federation Internationale des Bourses de valeurs – FIBV)

(2) Poleg izdaje ali prenosa vrednostnih papirjev po prvem odstavku tega člena lahko družba prevzemnica družbenikom prevzete družbe opravi plačilo v denarju do 10% nominalne vrednosti oziroma če te vrednosti ni, računovodske vrednosti vrednostnih papirjev. Plačilo v denarju se lahko v celoti ali delno opravi manjšinskim družbenikom prevzete družbe, namesto izdaje ali prenosa vrednostnih papirjev, toda največ v višini 5% nominalne vrednosti oziroma če te vrednosti ni, računovodske vrednosti vrednostnih papirjev.

37. člen (upravičenje) (1) Pri zamenjavi kapitalskih deležev je družbenik prevzete družbe v zvezi z zamenjavo kapitalskih deležev po 36. do 40. členu tega zakona oproščen davka v zvezi z dobičkom ali izgubo, doseženo z odsvojitvijo prvotnih vrednostnih papirjev, razen če prejme plačilo v denarju.

(2) Če prejme plačilo v denarju, je družbenik zavezan za davek glede na plačilo v denarju, pri čemer se doseženi dobiček ali izguba v sorazmernem delu pripiše gotovinskemu plačilu in tržni vrednosti novih vrednostnih papirjev.

38. člen (pogoji) (1) Družbenik ima pravico iz 37. člena tega zakona:

1. če sta družba prevzemnica in prevzeta družba rezidenta Slovenije in/ali rezidenta države članice EU, ki ni Slovenija; in

2. če je družbenik rezident Slovenije ali ni rezident Slovenije in je imetnik prvotnih in novih vrednostnih papirjev preko poslovne enote, ki jo ima v Sloveniji.

(2) Za rezidenta države članice EU, ki ni Slovenija, se šteje družba:

1. ki ima eno od oblik, za katere se uporablja skupen sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, razen oseb, ustanovljenih v skladu s pravom Slovenije, in jih določi minister, pristojen za finance;

2. ki je za davčne namene rezident države članice EU v skladu s pravom te države članice in se ne šteje za rezidenta izven EU v skladu z mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka, sklenjenega z državo nečlanico; in

3. ki je zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, in jih določi minister, pristojen za finance. Za zavezanca se ne šteje družba, ki je davka oproščena ali ima možnost izbire.

39. člen (vrednotenje) (1) Družbenik iz 38. člena tega zakona ovrednoti nove vrednostne papirje po knjigovodski vrednosti, ki so jo imeli prvotni vrednostni papirji pri njem v času zamenjave.

(2) Družba prevzemnica ovrednoti prejete vrednostne papirje v prevzeti družbi po njihovi tržni vrednosti na dan zamenjave.

40. člen (dovoljenje) Družbeniku, ki zamenja vrednostne papirje, se upravičenje po 36. do 40. členu tega zakona prizna na podlagi dovoljenja, ki ga izda davčni organ, če so izpolnjeni pogoji po 36. do 40. členu tega zakona.

3. Obdavčitev pri združitvah in delitvah

41. člen (združitve in delitve) (1) Za združitev se šteje transakcija, s katero:

1. ena ali več družb (v nadaljnjem besedilu: prenosna družba), pri prenehanju brez postopka likvidacije, prenese vsa svoja sredstva in obveznosti na drugo obstoječo družbo (v nadaljnjem besedilu: družba prejemnica), v zamenjavo za izdajo ali prenos vrednostnih papirjev, ki predstavljajo kapital družbe prejemnice, svojim družbenikom,

2. dve ali več družb (v nadaljnjem besedilu: prenosna družba), pri prenehanju brez postopka

likvidacije, prenesejo vsa svoja sredstva in obveznosti na družbo, ki jo ustanovijo (v nadaljnjem besedilu: družba prejemnica), v zamenjavo za izdajo ali prenos vrednostnih papirjev, ki predstavljajo kapital družbe prejemnice, svojim družbenikom.

(2) Za delitev se šteje transakcija, s katero:

1. družba (v nadaljnjem besedilu: prenosna družba), pri prenehanju brez postopka likvidacije, prenese vsa svoja sredstva in obveznosti na dve ali več obstoječih ali novoustanovljenih družb (v nadaljnjem besedilu: družbe prejemnice), v zamenjavo za izdajo ali prenos vrednostnih papirjev, ki predstavljajo kapital družb prejemnic, svojim družbenikom, v sorazmernem deležu;

2. družba (v nadaljnjem besedilu: prenosna družba) prenese eno ali več dejavnosti na družbo, ki jo ustanovi (v nadaljnjem besedilu: družba prejemnica), v zamenjavo za izdajo ali prenos vrednostnih papirjev, ki predstavljajo kapital družbe prejemnice, ki jih pridobi prenosna družba sama ali njeni družbeniki. Kot dejavnost se šteje celota sredstev in obveznosti, ki se pripišejo delu družbe, ki z organizacijskega vidika predstavlja posebno poslovanje.

(3) Pri združitvi ali delitvi iz prvega ali drugega odstavka tega člena lahko družba prejemnica poleg izdaje ali prenosa vrednostnih papirjev, opravi plačilo v denarju do višine 10% nominalne vrednosti oziroma če te vrednosti ni, računovodske vrednosti vrednostnih papirjev. Plačilo v denarju se lahko v celoti ali delno opravi manjšinskim družbenikom prenosne družbe namesto izdaje ali prenosa vrednostnih papirjev, toda največ 5% nominalne vrednosti oziroma če te vrednosti ni, računovodske vrednosti vrednostnih papirjev.

42. člen (upravičenja) Pri združitvah in delitvah je:

1. prenosna družba oproščena davka v zvezi z dobički in izgubami, ki nastanejo pri prenosu sredstev in obveznosti;

2. družba prejemnica upravičena:

a) do prenosa rezerv in rezervacij, ki jih je oblikovala prenosna družba, ob upoštevanju davčnih oprostitev in pogojev, ki bi veljali za prenosno družbo, če prenos ne bil izvršen;

b) do prenosa izgub prenosne družbe pod enakimi pogoji, ki bi veljali za prenosno družbo, če prenos ne bi bil izvršen;

c) do oprostitve davka v zvezi z dobički ali izgubami, ki jih doseže ob prenehanju udeležbe v

kapitalu prenosne družbe, če ima udeležbo v kapitalu prenosne družbe.

43. člen (pogoji)

(1) Prenosna družba in družba prejemnica imata pravice iz 42. člena tega zakona, če sta rezidenta Slovenije in/ali rezidenta države članice EU, ki ni Slovenija, in sicer:

1. če sta prenosna družba in družba prejemnica rezidenta Slovenije, ne glede na to, ali se dejavnost prenosne družbe opravlja v Sloveniji ali v državi članici EU, ki ni Slovenija;

2. če je prenosna družba rezident države članice EU, ki ni Slovenija in je družba prejemnica rezident Slovenije, pod pogojem, da po združitvi ali delitvi prenešana sredstva, obveznosti, rezervacije, rezerve in izgube ne pripadajo poslovni enoti družbe prejemnice izven Slovenije;

3. če je družba prejemnica rezident države članice EU, ki ni Slovenija in je prenosna družba rezident Slovenije ali druge države članice EU, ki ni Slovenija, pod pogojem, da po združitvi ali delitvi prenešana sredstva, obveznosti, rezervacije, rezerve in izgube pripadajo poslovni enoti družbe prejemnice v Sloveniji.

(2) Za rezidenta države članice EU, ki ni Slovenija, se šteje družba:

1. ki ima eno od oblik, za katere se uporablja enoten sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, razen oseb, ustanovljenih v skladu s pravom Slovenije, in jih določi minister, pristojen za finance;

2. ki je za davčne namene rezident države članice EU v skladu s pravom te države članice in se ne šteje za rezidenta izven EU v skladu z mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka, sklenjenega z državo nečlanico; in

3. ki je zavezanec za enega od davkov, v zvezi s katerimi se uporablja enoten sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, in jih določi minister, pristojen za finance. Za zavezanca se ne šteje družba, ki je davka oproščena ali ima možnost izbire.

44. člen (vrednotenje in prevzem pravic in obveznosti)

Družba prejemnica:

1. ovrednoti prenešana sredstva in obveznosti po njihovi knjigovodski vrednosti pri prenosni družbi ob združitvi ali delitvi;

2. amortizira prenešena poslovna sredstva tako, kot bi se amortizirala pri prenosni družbi;

3. prevzame pravice in obveznosti prenosne družbe v zvezi s prenešenimi rezervacijami in rezervami.

45. člen (posebne določbe)

(1) Če je prenosna družba rezident Slovenije in je družba prejemnica rezident države članice EU, ki ni Slovenija in združenje ali delitev vključuje prenos dejavnosti, ki predstavlja poslovno enoto v državi članici EU, ki ni Slovenija, se ne uporablja 1. točka 42. člena, 1. in 2. točka 44. člena in 46. člen tega zakona, prenosna družba pa je upravičena do odbitka davka, ki izvira iz združitve ali delitve, ki bi ga država članica EU zaračunala zaradi združitve ali delitve, če ne bi bila uveljavljena ureditev enotnega sistema obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU.

(2) Družbenik prenosne družbe iz 1. točke 42. člena tega zakona, ki pri združitvi ali delitvi zamenja vrednostne papirje v prenosni družbi za vrednostne papirje v družbi prejemnici, ni zavezanec za davek v zvezi z dobičkom ali izgubo, ki nastane ob odsvojitvi vrednostnih papirjev prenosne družbe, razen če prejme plačilo v denarju, in sicer:

1. če je družbenik rezident Slovenije; ali

2. če družbenik ni rezident Slovenije in je imetnik vrednostnih papirjev v prenosni družbi in družbi prejemnici preko poslovne enote, ki jo ima v Sloveniji.

(3) Če prejme plačilo v denarju, je družbenik iz drugega odstavka tega člena zavezan za davek glede na plačilo v denarju, pri čemer se dobiček ali izguba, ki nastane v zvezi z vrednostnimi papirji prenosne družbe, v sorazmernem delu pripiše gotovinskemu plačilu in tržni vrednosti vrednostnih papirjev družbe prejemnice. Družbenik ovrednoti prejete vrednostne papirje družbe prejemnice po knjigovodski vrednosti vrednostnih papirjev prenosne družbe v času združitve ali delitve.

46. člen (uporaba določb 41. do 47. člena tega zakona)

Določbe 41. do 47. člena tega zakona, ki se uporabljajo za prenosno družbo ali družbo prejemnico, se smiselno uporabljajo tudi za dve ali več prenosnih družb oziroma dve ali več družb prejemnic.

47. člen (dovoljenje)

Prenosni družbi, družbi prejemnici in družbeniku prenosne družbe se upravičenja po 41. do 47. členu tega zakona priznajo na podlagi dovoljenja, ki ga izda davčni organ, če so izpolnjeni pogoji po 41. do 47. členu tega zakona.

4. Skupna določba

48. člen (uporaba določb 30. do 47. člena tega zakona)

Za obdavčitev pri prenosu dejavnosti, obdavčitev pri zamenjavi kapitalskih deležev in obdavčitev pri združitvah in delitvah po 30. do 47. členu tega zakona, se določbe o prenosih vrednostnih papirjev, ki predstavljajo delež v kapitalu, uporabljajo tudi za družbe, kot na primer družbe z omejeno odgovornostjo, pri katerih kapitala ne predstavljajo vrednostni papirji.

## VII. DAVČNE OLAJŠAVE

49. člen (olajšava za investiranje)

(1) Zavezanec lahko uveljavlja zmanjšanje davčne osnove v višini 10% investiranega zneska v opremo, razen v osebna motorna vozila ter razen v pohištvo in pisarniško opremo brez računalniške opreme, in neopredmetena dolgoročna sredstva, vendar največ v višini davčne osnove, če gre za investicije v opremo in neopredmetena dolgoročna sredstva v Sloveniji.

(2) Zavezanec lahko uveljavlja dodatno zmanjšanje davčne osnove v višini 10% investiranega zneska v opremo za raziskave in razvoj, ki jo na predlog Agencije na področju raziskovalne dejavnosti in Agencije na področju tehnološkega razvoja, ki sta ustanovljeni po zakonu, ki ureja raziskovalno in razvojno dejavnost, določi minister, pristojen za znanost, ob soglasju ministra, pristojnega za finance, pri tem pa se upošteva, da gre za opremo, ki se uporablja za ustvarjalno delo, opravljano na sistematični podlagi z namenom povečanja znanja ter uporabo tega znanja za razvoj, vendar največ v višini davčne osnove, če gre za investicije v opremo v Sloveniji.

(3) V primeru finančnega najema lahko uveljavlja zmanjšanje davčne osnove po prvem in drugem odstavku tega člena zavezanec, ki opredmeteno osnovno sredstvo pridobi na podlagi finančnega najema.

(4) Zavezanec, ki koristi davčno olajšavo po prvem, drugem in tretjem odstavku tega člena, ne sme razporejati dobička za udeležbo v dobičku pred potekom treh davčnih obdobj po davčnem obdobju, za katero je izkoristil davčno olajšavo. Če zavezanec razporedi dobiček za udeležbo v dobičku pred potekom treh davčnih obdobj po davčnem obdobju, za katero je izkoristil davčno

olajšavo, mora za znesek izkoriščene davčne olajšave povečati davčno osnovo v obdobju razporeditve dobička za udeležbo v dobičku.

(5) Če zavezanec proda oziroma odtuji ali prenese izven Slovenije opredmeteno osnovno sredstvo oziroma neopredmeteno dolgoročno sredstvo, za katero je izkoristil davčno olajšavo po prvem in drugem odstavku tega člena, prej kot v treh letih po letu, za katerega je izkoristil davčno olajšavo po prvem in drugem odstavku tega člena, mora za znesek izkoriščene davčne olajšave povečati davčno osnovo, in sicer v letu prodaje oziroma odtujitve ali prenosa sredstva. Za odtujitev sredstva po tem členu se šteje tudi prenehanje zavezanca, pri prenehanju s stečajem oziroma likvidacijo pa začetek stečajnega postopka oziroma postopka likvidacije. Za odtujitev sredstva se ne šteje, če gre za prenos dejavnosti, zamenjavo kapitalskih deležev, združitve in delitve v skladu s 30. do 48. členom tega zakona.

(6) V primeru finančnega najema se določba petega odstavka tega člena uporablja tudi, če najemojemalec izgubi pravico uporabe opredmetenega osnovnega sredstva.

(7) Zavezanec lahko za neizkoriščen del davčne olajšave po tem členu v davčnem obdobju zmanjšuje davčno osnovo v naslednjih petih davčnih obdobjih. V tem primeru se za tek roka treh let iz petega odstavka tega člena šteje, da je olajšavo izkoristil v obdobju, ko je ni izkoristil ali jo je delno izkoristil, ker ni imel ali ni imel dovolj davčne osnove.

(8) Pri zmanjšanju davčne osnove na račun neizkoriščenega dela davčne olajšave iz preteklih davčnih obdobj se davčna osnova najprej zmanjša za neizkoriščen del davčne olajšave starejšega datuma.

(9) Zmanjšanje davčne osnove zaradi neizkoriščenega dela davčne olajšave iz preteklih davčnih obdobj je dovoljeno največ do višine davčne osnove davčnega obdobja.

## 50. člen

(olajšava za zaposlovanje)

(1) Zavezanec, ki v davčnem obdobju za nedoločen čas in najmanj za dve leti zaposli pripravnika ali drugega delavca, ki prvič sklene delovno razmerje, ali delavca, ki je bil pred sklenitvijo pogodbe o zaposlitvi najmanj 12 mesecev prijavljen pri Zavodu Republike Slovenije za zaposlovanje, lahko uveljavlja zmanjšanje davčne osnove v višini 30% plače tega delavca, in sicer največ za prvih 12 mesecev zaposlitve teh oseb, vendar največ v višini davčne osnove.

(2) Zavezanec, gospodarska družba, ki v davčnem obdobju za nedoločen čas in najmanj za dve leti zaposli osebo, ki ima doktorat znanosti in pred tem ni bila zaposlena v gospodarski družbi, lahko uveljavlja zmanjšanje davčne osnove v višini 30% plače te osebe, in sicer največ za prvih 12 mesecev zaposlitve teh oseb, vendar največ v višini davčne osnove. Olajšava po tem odstavku se izključuje z olajšavo po prvem odstavku tega člena.

(3) Če zavezanec odpove pogodbo o zaposlitvi osebi iz prvega odstavka, razen če ta sama odpove pogodbo o zaposlitvi, prej kot v dveh letih od zaposlitve te osebe, mora za znesek izkoriščene olajšave po prvem odstavku povečati davčno osnovo, in sicer v davčnem obdobju, v katerem je bila pogodba o zaposlitvi odpovedana. Če se pogodba o zaposlitvi osebe iz drugega odstavka tega člena odpove ali preneha veljati s sporazumno razveljavitvijo prej kot v dveh letih od zaposlitve te osebe, mora zavezanec za znesek izkoriščene olajšave po drugem odstavku tega člena povečati davčno osnovo, in sicer v davčnem obdobju, v katerem je bila pogodba o zaposlitvi odpovedana oziroma razveljavljena.

(4) Zavezanec, ki zaposluje invalida, po zakonu, ki ureja zaposlitveno rehabilitacijo in zaposlovanje invalidov, lahko uveljavlja zmanjšanje davčne osnove v višini 50% plač te osebe, vendar največ v višini davčne osnove, zavezanec, ki zaposluje invalidno osebo s 100% telesno okvaro in gluho osebo, pa v višini 70% plač te osebe, vendar največ v višini davčne osnove. Olajšava po tem odstavku se izključuje z olajšavo po prvem in drugem odstavku tega člena.

(5) Zavezanec, ki zaposluje invalide iz četrtega odstavka tega člena nad predpisano kvoto in katerih invalidnost ni posledica poškodbe pri delu ali poklicne bolezni pri istem delodajalcu po zakonu, ki ureja zaposlitveno rehabilitacijo in zaposlovanje invalidov, lahko uveljavlja zmanjšanje davčne osnove v višini 70% plač za te osebe, vendar največ v višini davčne osnove. Za namene tega odstavka se osebe iz tega odstavka všttevajo v kvoto po datumu sklenitve pogodbe o zaposlitvi, in sicer se najprej všttevajo tiste osebe s starejšim datumom sklenitve pogodbe o zaposlitvi. Olajšava po tem odstavku se izključuje z olajšavo po prvem, drugem in četrtem odstavku tega člena.

## 51. člen

(olajšava za prostovoljno dodatno pokojninsko zavarovanje)

Zavezanec - delodajalec, ki financira pokojninski načrt kolektivnega zavarovanja in izpolnjuje pogoje iz 302. do 305. člena Zakona o pokojninskem in invalidskem zavarovanju (Uradni

list RS, št. 20/04-uradno prečiščeno besedilo), lahko uveljavlja zmanjšanje davčne osnove za premije prostovoljnega dodatnega pokojninskega zavarovanja, ki jih delno ali v celoti plača v korist delojemalcev - zavarovancev, izvajalcu pokojninskega načrta s sedežem v Sloveniji ali v državi članici EU po pokojninskem načrtu, ki je odobren in vpisan v poseben register v skladu s predpisi, ki urejajo prostovoljno dodatno pokojninsko in invalidsko zavarovanje, za leto, v katerem so bile premije plačane, vendar največ do zneska, ki je enak 24% obveznih prispevkov za pokojninsko in invalidsko zavarovanje za delojemalca - zavarovanca in ne več kot 549.400 tolarjev letno, vendar največ do višine davčne osnove davčnega obdobja. Glede valorizacije premije in načina objave valoriziranih zneskov premije, se uporabljajo določbe zakona, ki ureja dohodnino.

52. člen

(olajšava za donacije)

(1) Zavezanec lahko uveljavlja zmanjšanje davčne osnove za znesek izplačil v denarju in v naravi za humanitarne, dobrodelne, znanstvene, vzgojnoizobraževalne, športne, kulturne, ekološke in religiozne namene, in sicer le za takšna izplačila rezidentom Slovenije, ki so po posebnih predpisih ustanovljeni za opravljanje navedenih dejavnosti, do zneska, ki ustreza 0,3% obdavčenega prihodka davčnega obdobja zavezanca, vendar največ do višine davčne osnove davčnega obdobja.

(2) Zavezanec lahko uveljavlja tudi zmanjšanje davčne osnove za znesek izplačil v denarju in naravi političnim strankam in reprezentativnim sindikatom, vendar največ do zneska, ki je enak trikratni povprečni mesečni plači na zaposlenega pri zavezancu, vendar največ do višine davčne osnove davčnega obdobja.

(3) Za znesek, ki ustreza 0,3% obdavčenega prihodka davčnega obdobja zavezanca iz prvega odstavka tega člena in za znesek, ki je enak trikratni povprečni mesečni plači na zaposlenega pri zavezancu iz drugega odstavka tega člena, se šteje znesek vseh izplačil v celotnem davčnem obdobju.

## VIII. DAVČNA STOPNJA

53. člen

(splošna stopnja)

Davek se plačuje po stopnji 25% od davčne osnove.

54. člen

(posebna stopnja)

(1) Investicijski skladi, obdavčeni po tem zakonu, ki so ustanovljeni po zakonu, ki ureja investicijske sklade in družbe za upravljanje, plačujejo davek v davčnem obdobju po stopnji 0% od davčne osnove, če do 30. novembra tega obdobja razdelijo najmanj 90% poslovnega dobička prejšnjega davčnega obdobja.

(2) Pokojninski skladi, obdavčeni po tem zakonu, ki so ustanovljeni po zakonu, ki ureja pokojninsko in invalidsko zavarovanje, plačujejo davek po stopnji 0% od davčne osnove.

(3) Zavarovalnice, ki lahko izvajajo pokojninski načrt v skladu z zakonom, ki ureja pokojninsko in invalidsko zavarovanje, plačujejo od dejavnosti izvajanja pokojninskega načrta davek po stopnji 0% od davčne osnove, če sestavijo ločen davčni obračun samo za ta pokojninski načrt.

## IX. ODPRAVA DVOJNEGA OBDAVČENJA DOHODKOV REZIDENTA

### IZ VIROV IZVEN SLOVENIJE

55. člen

(odbitek tujega davka)

Rezident lahko od obveznosti za plačilo davka po davčnem obračunu za posamezno davčno obdobje odšteje znesek, ki je enak davku, ki ustreza davku po tem zakonu, ki ga je plačal od dohodkov iz virov izven Slovenije (v nadaljnjem besedilu: tuji davek) na dohodek iz virov izven Slovenije (v nadaljnjem besedilu: tuji dohodek), ki je vključen v njegovo davčno osnovo.

56. člen

(omejitev odbitka tujega davka)

(1) Odbitek iz 55. člena tega zakona ne sme preseči nižjega od:

1. zneska tujega davka na tuji dohodek, ki je bil končen in dejansko plačan; ali

2. zneska davka, ki bi ga bilo treba plačati po tem zakonu za tuje dohodke, če odbitek ne bi bil možen.

(2) Če ima Slovenija sklenjeno mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka z drugo državo, se za končen tuji davek na dohodek iz te države šteje znesek tujega davka, izračunan po stopnji, določeni v mednarodni pogodbi.

(3) Zneska iz 1. in 2. točke prvega odstavka tega člena se računata po posameznih državah, v katerih imajo tuji dohodki svoj vir in sicer za vsako državo posebej.

57. člen

(dokazila v zvezi z odbitkom)

(1) Zavezanec, ki uveljavlja odbitek po 55. členu tega zakona, zagotavlja dokazila, ki vsebujejo podatke glede davčne obveznosti izven Slovenije, o znesku davka od tujih dohodkov, osnovi za plačilo davka in znesku davka, ki je bil plačan.

(2) Način predložitve dokazil in njihova vsebina sta določena z zakonom, ki ureja davčni postopek.

58. člen

(sprememba odbitka)

Če se zaradi sprememb, zlasti vračil tujega davka, spremeni odbitek, mora zavezanec v obdobju, ko je do spremembe prišlo, povečati davek in sicer za znesek, enak razliki med priznanim odbitkom in odbitkom, ki bi bil možen, če bi se sprememba upoštevala.

59. člen

(prenašanje presežka odbitka)

Če je znesek iz 1. točke prvega odstavka 56. člena tega zakona višji od zneska iz 2. točke prvega odstavka istega člena (presežek odbitka), se razlika ne more prenašati med državami ali uveljavljati kot odbitek v naslednjih ali preteklih davčnih obdobjih.

60. člen

(nižji odbitek)

(1) Če je znesek davka po tem zakonu nižji od vsakega posameznega zneska iz 1. in 2. točke prvega odstavka 56. člena tega zakona, je najvišji možen odbitek odbitek v višini zneska davka.

(2) Odbitek, ki presega znesek davka, se ne prenaša v naslednja ali pretekla davčna obdobja.

X. OBRAČUNAVANJE IN PLAČEVANJE DAVKA

1. Obveznost plačevanja davka

61. člen

(obveznost obračunavanja in plačevanja davka)

Zavezanec sam izračuna in plača davek.

62. člen

(obveznost akontacij davka)

(1) Od dohodkov zavezanca, določenih s tem zakonom, se med davčnim obdobjem plačuje akontacija davka, če ni s tem zakonom ali zakonom, ki ureja davčni postopek, drugače določeno.

(2) Akontacija davka se določi, izračuna in plača v rokih in na način, določen s tem zakonom oziroma zakonom, ki ureja davčni postopek.

(3) Za plačano akontacijo davka se rezidentu in nerezidentu od dohodkov, ki jih dosega z opravljanjem aktivnosti v poslovni enoti ali preko poslovne enote v Sloveniji, zmanjša obveznost za plačilo davka po davčnem obračunu za posamezno davčno obdobje na način, določen s tem zakonom oziroma zakonom, ki ureja davčni postopek.

2. Obdavčenje v skupini

63. člen

(obdavčenje skupine)

(1) Davčna obveznost se lahko ugotovi na podlagi obdavčenja skupine.

(2) Pri obdavčenju skupine se dobiček in izguba davčnega obdobja, za katerega se ugotavlja davčna obveznost, ugotovljena v skladu s tem zakonom v posamičnih davčnih obračunih članov skupine, seštejeta.

64. člen

(skupina)

(1) Skupino po tem zakonu oblikujeta dva zavezanca, ki:

1. sta oba rezidenta Slovenije; in

2. če enemu (v nadaljnjem besedilu: glavni zavezanec) pripadajo neposredno vsi deleži v kapitalu drugega zavezanca (v nadaljnjem besedilu: podrejeni zavezanec).

(2) Zavezanci, za katere velja oprostitev po 9. členu tega zakona, ne morejo biti člani skupine.

65. člen

(pogoji za obdavčenje v skupini)

Skupina se oblikuje najmanj za obdobje treh let, če:

1. oba člana skupine sestavljata računovodske izkaze in letno poročilo za poslovno obdobje, ki je enako davčnemu obdobju; in

2. če imata člana skupine za obdobje najmanj 36 mesecev med seboj sklenjeno podjetniško pogodbo v skladu z zakonom, ki ureja gospodarske družbe, po kateri mora podrejeni zavezanec prenesti ves svoj dobiček glavnemu zavezancu, glavni zavezanec pa mora pokrivati izgubo podrejenega zavezanca.

66. člen

(začetek in prenehanje obdavčenja v skupini)

(1) Obdavčenje v skupini se prične izvajati z začetkom davčnega obdobja po letu, v katerem je bilo izdano dovoljenje za obdavčenje v skupini. Dovoljenje z učinkom za nazaj ni dopustno.

(2) Obdavčenje v skupini preneha:

1. s potekom obdobja, za katero je bilo izdano dovoljenje, če skupina ne zaprosi za dovoljenje za nadaljnje obdobje ali če zaprosi in ji dovoljenje za obdavčenje v skupini za naslednje obdobje ni izdano, ali

2. če člani skupine ne izpolnjujejo več pogojev po tem zakonu za obdavčenje v skupini; ali

3. pri združitvi glavnega in podrejenega zavezanca ali pri združitvah kateregakoli člana skupine s tretjo osebo; ali

4. če se nad glavnim oziroma podrejenim zavezancem začne postopek likvidacije ali stečaja; ali

5. če se pogodba iz 2. točke 65. člena tega zakona ne uresničuje.

(3) V primerih iz 2., 3., 4. in 5. točke drugega odstavka tega člena se davčna obveznost, ugotovljena v skupinskem davčnem obračunu, odpravi in se uveljavi posamična obveznost članov skupine, kot da skupinskega obdavčenja ne bi bilo.

67. člen

(izgube pri obdavčenju v skupini)

(1) Izgub članov skupine, ki so vključene v obdavčenje v skupini, ni mogoče pokrivati na drug način.

(2) Na začetku obdavčenja v skupini se vsaka izguba članov skupine, ugotovljena v skladu s tem zakonom, ki še ni bila pokrita, zmanjša na nič (0).

#### XI. OBDAVČITEV DOHODKOV Z VIROM V SLOVENIJI

68. člen

(davčni odtegljaj)

(1) Davek se izračuna, odtegne in plača po stopnji 25% od dohodkov rezidentov in nerezidentov - razen dividend in podobnih dohodkov, razdeljenih preko poslovne enote nerezidenta, ki se nahaja v Sloveniji - ki imajo vir v Sloveniji, in sicer od:

1. dividend in podobnih dohodkov iz 72. člena tega zakona;

2. obresti, razen obresti:

a) od kreditov, ki jih najema, in vrednostnih papirjev, ki jih izdaja Slovenija;

b) iz najetih kreditov in izdanih dolžniških vrednostnih papirjev s strani pooblašene institucije v skladu z zakonom, ki ureja zavarovanje in financiranje mednarodnih gospodarskih poslov, za katera po navedenem zakonu daje poročilo Slovenija;

3. plačil za uporabo ali pravico do uporabe avtorskih pravic, patentov, licenc, zaščitnih znakov in drugih premoženjskih pravic in drugih podobnih dohodkov;

4. plačil za zakup;

5. plačil za storitve nastopajočih izvajalcev ali športnikov, če ta plačila pripadajo drugi osebi.

(2) Davek se ne izračuna, odtegne in plača od dohodkov iz prvega odstavka tega člena plačanih:

1. Sloveniji ali samoupravni lokalni skupnosti v Sloveniji;

2. Banki Slovenije;

3. zavezancu rezidentu, ki izplačevalcu sporoči svojo davčno številko;

4. zavezancu nerezidentu, ki je zavezan za davek od dohodkov, ki jih dosega z aktivnostmi v poslovni enoti ali preko poslovne enote v Sloveniji, in izplačevalcu sporoči svojo davčno številko, če gre za dohodke, plačane tej poslovni enoti.

(3) Če je v mednarodnih pogodbah o izogibanju dvojnega obdavčevanja dohodka določena drugačna davčna stopnja kot v tem členu, se neposredno uporablja davčna stopnja iz teh pogodb. Za to upravičenje je potrebno predložiti dokazila, v skladu z zakonom, ki ureja davčni postopek, da se izplačilo resnično izplačuje prejemniku, ki je rezident države, s katero je sklenjena pogodba.

69. člen

(obdavčenje, ki velja za matične družbe in odvisne družbe

iz različnih držav članic EU)

(1) Davka se ne odtegne od plačil dividend in dohodkov, podobnih dividendam, ki se razdelijo osebam, ki imajo eno od oblik, za katere se uporablja skupen sistem obdavčenja, ki velja za matične družbe in odvisne družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, če:

1. ima prejemnik najmanj 25% vrednosti ali števila delnic ali deležev v delniškem kapitalu, osnovnem kapitalu ali glasovalnih pravicah osebe, ki deli dobiček;

2. traja najnižja udeležba iz 1. točke tega odstavka najmanj 24 mesecev; in je

3. prejemnik:

a) oseba, ki ima eno od oblik, za katere se uporablja skupen sistem obdavčenja, ki velja za matične družbe in odvisne družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance;

b) za davčne namene rezident v državi članici EU v skladu s pravom te države in se ne šteje kot rezident izven EU v skladu z mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka, sklenjene z državo nečlanico; in

c) je zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja, ki velja za matične družbe in odvisne družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, kjer se za zavezanca ne šteje družba, ki je davka oproščena ali ima možnost izbire.

(2) Dividenda, ki je izplačana osebi, ki še ne izpolnjuje pogoja 24 mesecev po 2. točki prvega odstavka tega člena, sicer pa izpolnjuje pogoje iz prvega odstavka tega člena, se lahko izplača brez odtegljaja davka, če izplačevalec dividende ali posrednik, za zavarovanje izpolnitve morebitne davčne obveznosti, izroči ustrezno bančno garancijo pristojnemu davčnemu organu. Znesek bančne garancije je znesek davka, izračunan od osnove, ki je enaka znesku dividende, izračunane na podlagi preračunane stopnje.

(3) Pristojni davčni organ lahko unovči garancijo, če prejemnik dividende ni razpolagal 24 mesecev z najnižjo udeležbo iz 1. točke prvega odstavka tega člena. Garancija poteče s potekom 24 mesecev razpolaganja z najnižjo udeležbo.

(4) Za ustrezno bančno garancijo se šteje bančna garancija banke s sedežem v Sloveniji ali v državi

članici EU, s katero se banka nepreklicno zavezuje, da bo na prvi poziv pristojnega davčnega organa ter brez ugovorov, na poseben račun davčnega organa izplačala vsoto iz drugega odstavka tega člena, z rokom veljavnosti do dneva izpolnitve pogoja glede časa trajanja udeležbe v skladu z 2. točko prvega odstavka tega člena.

70. člen

(obdavčenje, ki velja v zvezi s plačili obresti in plačili uporabe

premoženjskih pravic med povezanimi družbami iz različnih držav članic EU)

(1) Davka se ne odtegne od plačil obresti in plačil za uporabo premoženjskih pravic družbam, ki imajo eno od oblik, za katere se uporablja skupen sistem obdavčenja v zvezi s plačili obresti in plačili uporabe premoženjskih pravic, ki velja za povezane družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, če, v času plačila,:

1. so obresti in plačila uporabe premoženjskih pravic izplačane upravičenemu lastniku, ki je družba države članice EU, ki ni Slovenija, ali poslovna enota družbe države članice EU, ki se nahaja v drugi državi članici EU;

2. sta plačnik in upravičeni lastnik povezana tako, da:

a) je plačnik neposredno najmanj 25% udeležen v kapitalu upravičenega lastnika, ali

b) je upravičeni lastnik neposredno najmanj 25% udeležen v kapitalu plačnika;

c) je ista družba neposredno najmanj 25% udeležena v kapitalu plačnika in upravičenega lastnika,

pri tem pa gre za udeležbo med družbami iz držav članic EU;

3. traja najnižja udeležba iz 2. točke tega odstavka najmanj 24 mesecev; in je

4. plačnik ali upravičeni lastnik:

a) družba, ki ima eno od oblik, za katere se uporablja skupen sistem obdavčenja v zvezi s plačili obresti in plačili uporabe premoženjskih pravic, ki velja za povezane družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance;

b) za davčne namene rezident v državi članici EU v skladu s pravom te države in se ne šteje kot rezident izven EU v skladu z mednarodno pogodbo



o izogibanju dvojnega obdavčevanja dohodka, sklenjene z državo nečlanico EU; in

c) je zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja v zvezi s plačili obresti in plačili uporabe premoženjskih pravic, ki velja za povezane družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, kjer se za zavezanca ne šteje družba, ki je davka oproščena, ali za davek, ki je istoveten ali bistveno podoben in je dodatno uveden ali nadomesti obstoječi davek.

(2) Določba prvega odstavka tega člena se uporablja samo za znesek obresti po drugem odstavku 15. člena tega zakona in znesek plačil uporabe premoženjskih pravic po drugem odstavku 12. člena tega zakona.

(3) Poslovna enota se šteje za plačnika obresti in plačil uporabe premoženjskih pravic po tem členu, če so te obresti in plačila uporabe premoženjskih pravic zanjo odhodek po tem zakonu.

(4) Upravičeni lastnik obresti in plačil uporabe premoženjskih pravic iz prvega odstavka tega člena je družba države članice EU, ki ni Slovenija, ki je prejemnik teh obresti in plačil uporabe premoženjskih pravic v svojo korist. Ne šteje se za upravičenega lastnika posrednik za drugo osebo, kot predstavnik, pooblaščenec ali pooblaščen podpisnik (zastopnik).

(5) Poslovna enota se šteje za upravičenega lastnika obresti in plačil uporabe premoženjskih pravic, če:

a) je terjatev, pravica ali uporaba informacije, v zvezi s katerimi nastanejo obresti ali plačila uporabe premoženjskih pravic, dejansko povezana s to poslovno enoto; in

b) obresti ali plačila uporabe premoženjskih pravic predstavljajo dohodek, za katerega je ta poslovna enota v državi članici EU, v kateri se nahaja, zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja v zvezi s plačili obresti in plačili uporabe premoženjskih pravic, ki velja za povezane družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, kjer se za zavezanca ne šteje družba, ki je davka oproščena, ali za davek, ki je istoveten ali bistveno podoben in je dodatno uveden ali nadomesti obstoječi davek.

(6) Kadar se poslovna enota družbe države članice EU šteje za plačnika ali upravičenega lastnika za obresti in plačila uporabe premoženjskih pravic, se noben drug del te družbe ne šteje kot plačnik ali upravičeni lastnik za te obresti in ta plačila uporabe premoženjskih pravic za namene tega člena.

(7) Določbe tega člena se ne uporabljajo za plačila obresti in plačila uporabe premoženjskih pravic poslovne enote ali poslovni enoti družbe države članice EU, ki se nahaja v tretji državi, in prek nje v celoti ali delno potekajo posli družbe.

(8) Za namene tega člena vključujejo obresti dohodek iz vseh vrst terjatev ne glede na to, ali so zavarovane s hipoteko, in ne glede na to, ali imajo pravico do udeležbe v dolžnikovem dobičku, in še posebej dohodek iz državnih vrednostnih papirjev ter dohodek iz obveznic ali zadolžnic, vključno s premijami in nagradami, ki pripadajo takim vrednostnim papirjem, obveznicam ali zadolžnicam. Kazni zaradi zamude pri plačilu se za namene tega člena ne štejejo za obresti.

(9) Za namene tega člena vključujejo plačila uporabe premoženjskih pravic plačila vsake vrste, prejeta za uporabo ali pravico do uporabe kakršnihkoli avtorskih pravic za literarno, umetniško ali znanstveno delo, vključno s kinematografskimi filmi in programsko opremo, kateregakoli patenta, blagovne znamke, vzorca ali modela, načrta, tajne formule ali postopka ali za informacije o industrijskih, komercialnih ali znanstvenih izkušnjah.

(10) Upravičenje po tem členu se prizna na podlagi dovoljenja davčnega organa, če so izpolnjeni pogoji iz tega člena. Dovoljenje se izda na podlagi vloge. Vloga ter postopek glede vloge in izdaje dovoljenja je urejen z zakonom, ki ureja davčni postopek.

71. člen

(uporaba določb 70. člena tega zakona)

Določbe 70. člena tega zakona se ne uporabljajo, če gre za:

1. plačila, ki imajo naravo delitve dobička ali vračila kapitala,
2. obresti iz kreditov, ki vsebujejo pravico udeležbe na dolžnikovem dobičku,
3. obresti iz kreditov, ki kreditodajalcu dajejo pravico zamenjave njegove pravice do obresti v pravico do udeležbe v dobičku,
4. plačila iz kreditov, ki ne vsebujejo določb za vračilo glavnice ali vračilo glavnice zapade po 50 letih po nastanku.

72. člen

(dividende in dohodki, podobni dividendam)

Za namene tega zakona vključujejo dividende in dohodki, podobni dividendam:

1. dobiček ali presežek, ki se razdeli družbenikom ali članom izplačevalca, v zvezi z udeležbo v izplačevalcu ali druga razdelitev družbenikom ali članom izplačevalca, v zvezi z udeležbo v izplačevalcu;

(uporaba določb Zakona o davku od dobička pravnih oseb

v zvezi z olajšavami)

2. dobiček, ki se razdeli v zvezi z vrednostnimi papirji in krediti, ki zagotavljajo udeležbo v dobičku izplačevalca;

Zavezanec, kateremu so pred dnem začetka uporabe tega zakona začeli teči roki po 39., 40., 41. in 42. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), se glede teh rokov obravnava po dosedanjih predpisih.

3. obresti, plačane v zvezi z zamenljivimi obveznicami;

75. člen

4. dobiček ali rezerve izplačevalca, ki se delijo v zvezi z udeležbo v izplačevalcu ob prenehanju ali ob izključitvi ali izstopu delničarja, družbenika ali člana iz izplačevalca;

(uporaba določb Zakona o davku od dobička pravnih oseb

v zvezi z olajšavo za zaposlovanje)

5. povečanje osnovnega kapitala izplačevalca, ki se je povečal iz rezerv, oblikovanih iz dobička, ali dobička ali prevrednotovalnega popravka teh dveh kategorij;

Zavezanec, ki ima na dan začetka uporabe tega zakona, pravico do zniževanja davčne osnove po prvem odstavku 42. člena Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), jo lahko znižuje do poteka obdobja 12 mesecev po 42. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo).

6. zmanjšanje osnovnega kapitala izplačevalca, če ima izplačevalec dobiček ali presežek, ki ni bil razdeljen;

76. člen

(obračunavanje zalog)

7. izplačana vrednost delnic ali deležev v primeru odsvojitve delnic ali deležev v okviru pridobivanja lastnih delnic oziroma deležev družbe, razen v primeru, ko družba pridobiva lastne delnice preko borze, zmanjšana za nominalno vrednost delnic;

(1) Zavezancu se v dobo iz drugega odstavka 24. člena tega Zakona všteta tudi čas obračunavanja zalog pred dnem začetka uporabe tega zakona po 14. členu zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), in sicer od zadnje spremembe izbrane metode.

8. dobiček, prenešen na podlagi podjetniške pogodbe v skladu z zakonom, ki ureja gospodarske družbe.

(2) Ne glede na določbo prvega odstavka tega člena, zavezanec, ki obračunava zaloge po 14. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), lahko z dnem začetka uporabe tega zakona izbere drugo metodo obračunavanja zalog, pri tem pa mora prikazati vrednostni učinek sprememb.

73. člen

77. člen

(sprememba amortizacijskih stopenj)

(vštevajte davčnega odtegljaja v davčno osnovo)

(1) Rezident, ki prejme dohodek, od katerega se odtegne davek v skladu z določbami tega poglavja, vštete dohodek v svojo davčno osnovo pred zmanjšanjem za odtegnjen davek.

(2) Nerezident, ki prejme dohodek, od katerega se odtegne davek po določbah tega poglavja v zvezi z aktivnostjo, ki jo opravlja v poslovni enoti v Sloveniji ali preko poslovne enote v Sloveniji, vštete dohodek v svojo davčno osnovo pred zmanjšanjem za odtegnjen davek.

(3) Za plačan znesek odtegnjenega davka se zmanjša obveznost zavezanca iz prvega in drugega odstavka tega člena za plačilo davka po davčnem obračunu za posamezno davčno obdobje na način, določen s tem zakonom oziroma zakonom, ki ureja davčni postopek.

Zavezancu, ki je pričel z amortizacijo opredmetenih osnovnih sredstev in neopredmetenih dolgoročnih sredstev pred dnem začetka uporabe tega zakona, se kot odhodek prizna amortizacija teh opredmetenih osnovnih sredstev in neopredmetenih dolgoročnih sredstev do dokončne amortizacije v višini v skladu s 15., 16. in 17. členom Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo).

## XII. PREHODNE DOLOČBE

74. člen

78. člen

(uporaba 25. člena tega zakona)

(1) Za obresti iz 25. člena tega zakona, ki se ne priznajo kot odhodek, se štejejo obresti na posojila, nastala po dnevu začetka uporabe tega zakona.

(2) Ne glede na določbo 25. člena tega zakona, se kot odhodek ne priznajo obresti od posojil, razen pri posojiljemalcih bankah in zavarovalnicah, ki so prejeta od družbenika, ki ima kadarkoli v davčnem obdobju neposredno ali posredno v lasti najmanj 25% delnic ali deležev v kapitalu ali glasovalnih pravic v zavezancu, če kadarkoli v davčnem obdobju ta posojila presegajo

1. v prvem, drugem in tretjem letu po dnevu začetka uporabe zakona osemkratnik,

2. v četrtem, petem in šestem letu šestkratnik,

3. v sedmem letu pa petkratnik

zneska deleža tega družbenika v kapitalu zavezanca, ugotovljene glede na znesek in obdobje trajanja presežka posojil v davčnem obdobju.

79. člen

(uporaba določb Zakona o davku od dobička pravnih oseb pri obdavčitvi

pri prenosu dejavnosti, obdavčitvi pri zamenjavi kapitalskih deležev

in obdavčitvi pri združitvah in delitvah)

(1) Pri obdavčitvi pri prenosu dejavnosti, obdavčitvi pri zamenjavi kapitalskih deležev in obdavčitvi pri združitvah in delitvah po 30. do 48. členu tega zakona, se prenos dejavnosti, zamenjava kapitalskih deležev in združitve in delitve ne štejejo za dogodke, ki po 40., 41. in 42. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo) povzročijo, da mora zavezanec v letu takšnega dogodka povečati davčno osnovo za izkoriščeno olajšavo po 39. do 42. členu zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo). Upoštevajo pa se olajšave in pogoji, ki bi veljali, če ne bi prišlo do prenosa dejavnosti, zamenjave kapitalskih deležev in združitve in delitve.

(2) Določbe Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), ki zapadejo pod prehodno ureditev, se pri obdavčitvi pri prenosu dejavnosti, obdavčitvi pri zamenjavi kapitalskih deležev in obdavčitvi pri združitvah in delitvah po 30. do 48. členu tega

zakona upoštevajo, kot bi veljalo, če ne bi prišlo do prenosa dejavnosti, zamenjave kapitalskih deležev in združitve in delitve.

80. člen

(uporaba 49. člena tega zakona)

(1) Ne glede na določbo prvega odstavka 49. člena tega zakona, lahko zavezanec za leto 2005 uveljavlja znižanje davčne osnove v višini 20% investiranega zneska v opredmetena osnovna sredstva, razen v osebna motorna vozila, in neopredmetena dolgoročna sredstva, vendar največ v višini davčne osnove, če gre za investicije v opredmetena osnovna sredstva in neopredmetena dolgoročna sredstva v Sloveniji, in dodatno zmanjšanje davčne osnove v višini 20% investiranega zneska v opremo, razen v osebna motorna vozila ter razen v pohištvo in pisarniško opremo brez računalniške opreme, in neopredmetena dolgoročna sredstva, vendar največ v višini davčne osnove, če gre za investicije v opremo in neopredmetena dolgoročna sredstva v Sloveniji.

(2) Sedmi odstavek 49. člena tega zakona se ne uporablja za priznavanje davčne olajšave po prvem odstavku tega člena.

81. člen

(uporaba 200. člena Zakona o davčnem postopku)

Zavezanci, ki ugotavljajo davek na podlagi skupinskega davčnega obračuna v skladu z 200. členom Zakona o davčnem postopku (Uradni list RS, št. 18/96, 87/97, 35/98-odločba US, 82/98, 91/98, 108/99, 37/01-odločba US, 97/01 in 105/03-odločba US) in je bila odobritev davčnega organa dana pred dnem začetka uporabe tega zakona lahko:

a) ugotavljajo davek v skladu s 200. členom Zakona o davčnem postopku (Uradni list RS, št. 18/96, 78/96, 87/97, 35/98, 76/98, 82/98, 91/98, 1/99, 108/99, 37/01, 97/01, 52/02 in 33/03) do poteka dobe iz petega odstavka navedenega člena, ali

b) ugotavljajo davčno obveznost v skladu s 63. do 67. členom tega zakona, pri tem pa se sprememba načina ugotavljanja ne šteje za opredelitev za posamično obdavčenje in člani ne ravnajo po šestem odstavku 200. člena Zakona o davčnem postopku (Uradni list RS, št. 18/96, 78/96, 87/97, 35/98, 76/98, 82/98, 91/98, 1/99, 108/99, 37/01, 97/01, 52/02 in 33/03).

82. člen

(uporaba 23. člena Zakona o davku od dobička pravnih oseb)

Določbe drugega odstavka 16. člena tega zakona se uporabljajo tudi za rezervacije po 23. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), oblikovane pred dnem začetka uporabe tega zakona.

83. člen

(pretekle izgube)

(1) Določbe petega odstavka 29. člena tega zakona se ne uporabljajo za izgube iz davčnih obdobj pred davčnim obdobjem, za katerega se že uporablja ta zakon.

(2) Izgube iz davčnih obdobj pred dnem začetka uporabe tega zakona se lahko pokrivajo v skladu s 34. do 36. členom Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo).

84. člen

(uporaba 68. člena tega zakona)

Določbe 68. člena tega zakona se ne uporabljajo za plačila iz 2. do 5. točke prvega odstavka 68. člena tega zakona, ki so obračunana za obdobja pred 1. januarjem 2005.

85. člen

(uporaba 65.c člena Zakona o davku od dobička pravnih oseb)

Določba 65.c člena Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), ki določa, da se davčna osnova zmanjšuje za obračunane obresti od dolgoročnih in kratkoročnih vrednostnih papirjev, ki so jih do 8. aprila 1995 izdale Slovenija, občine ali javna podjetja, ki so jih ustanovile Slovenija oziroma občine, vendar največ do višine davčne osnove, se uporablja tudi po dnevu začetka uporabe tega zakona.

86. člen

(prehod na izbrano davčno obdobje)

(1) Pri prehodu na davčno obdobje, ki se razlikuje od koledarskega leta, so obdavčeni dohodki zavezanca v davčnem obdobju, ki je obdobje od konca koledarskega leta do začetka naslednjega davčnega obdobja, ki se razlikuje od koledarskega leta, kot bi šlo za celotno davčno obdobje.

(2) Pri prehodu na davčno obdobje, ki se ne razlikuje od koledarskega leta, so obdavčeni dohodki zavezanca v davčnem obdobju, ki je obdobje od konca davčnega obdobja, ki se razlikuje od koledarskega leta, do začetka

naslednjega davčnega obdobja, ki se ne razlikuje od koledarskega leta, kot bi šlo za celotno davčno obdobje.

(3) Na način, kot je določeno v prvem in drugem odstavku tega člena, so obdavčeni tudi dohodki zavezanca v obdobju pri prehodu iz enega davčnega obdobja, ki se razlikuje od koledarskega leta, na drugo davčno obdobje, ki se tudi razlikuje od koledarskega leta.

87. člen

(uporaba določb 5. člena Zakona o davku od dobička pravnih oseb

v zvezi s stalno poslovno enoto)

Gradbišče ali kraj, kjer se opravljajo gradbena oziroma montažna dela, če je gradbišče bilo oblikovano oziroma so se dela začela opravljati pred dnevom začetka uporabe tega zakona, se šteje za poslovno enoto nerezidenta, če aktivnosti trajajo dlje od obdobja določenega v 5. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo).

### XIII. KONČNI DOLOČBI

88. člen

(prenehanje veljavnosti)

(1) Zakon o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo) in predpisi, izdani na njegovi podlagi, prenehajo veljati z dnem uveljavitve tega zakona, uporabljajo pa se do 31. decembra 2004. Od 1. maja 2004 do 31. decembra 2004 pa se uporabljajo, če niso v nasprotju z določbami členov, naštetih v 89. členu tega zakona.

(2) Z dnem uveljavitve tega zakona preneha veljati Zakon o obdavčitvi tujih oseb (Uradni list SRS, št. 3/73, 15/83, 39/85, 16/86, 22/86-popr.).

(3) 3. člen Zakona o spremembah in dopolnitvah zakona o zavarovalništvu (Uradni list RS, št. 21/02) preneha veljati z dnem začetka uporabe tega zakona. Ne glede na določbe tega zakona o rezervacijah, pa se 3. člen Zakona o spremembah in dopolnitvah zakona o zavarovalništvu (Uradni list RS, št. 21/02) tudi po dnevu začetka uporabe tega zakona, uporablja za rezervacije, oblikovane pred dnem začetka uporabe tega zakona.

89. člen

(začetek veljavnosti in uporabe)

(1) Ta zakon začne veljati naslednji dan po objavi v Uradnem listu Republike Slovenije, uporablja pa se od 1. januarja 2005 dalje, razen določb 18.,

30. do 48., 51., 68., kolikor se nanaša na plačila iz 1. točke prvega odstavka 68. člena tega zakona, ter 69. do 71. člen tega zakona, ki se uporabljajo od 1. maja 2004 dalje.

(2) Ne glede na prvi odstavek tega člena, se 68. člen tega zakona, kolikor se nanaša na plačila dividend iz 32. člena Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo) za prenos v tujino, uporablja tako, da se za ta plačila do 31. decembra 2004 davek odtegne, obračuna in plača po stopnji 15%.

### 12.6.3. Zakon O Davku od KON O DAVKU OD DOHODKOV PRAVNIH OSEB (ZDDPO-1)

#### I. SPLOŠNI DOLOČBI

##### 1. člen

(vsebina zakona)

S tem zakonom se ureja sistem in uvaja obveznost plačevanja davka od dohodkov pravnih oseb.

##### 2. člen

(pripadnost davka)

Davek od dohodkov pravnih oseb (v nadaljnjem besedilu: davek) po tem zakonu je prihodek državnega proračuna.

#### II. ZAVEZANEC ZA DAVEK IN DAVČNA OBVEZNOST

##### 3. člen

(zavezanec za davek)

(1) Zavezanec oziroma zavezanka za davek je pravna oseba domačega in tujega prava (v nadaljnjem besedilu: zavezanec).

(2) Ne glede na prvi odstavek tega člena, je zavezanec tudi združenje oseb po tujem pravu, ki je brez pravne osebnosti in ni zavezanec po zakonu, ki ureja dohodnino.

(3) Republika Slovenija, samoupravne lokalne skupnosti in Banka Slovenije niso zavezanci, če s tem zakonom ni določeno drugače.

##### 4. člen

(obseg davčne obveznosti)

(1) Rezident oziroma rezidentka Slovenije (v nadaljnjem besedilu: rezident) je zavezan za davek od vseh dohodkov, ki imajo svoj vir v Republiki Sloveniji (v nadaljnjem besedilu:

Slovenija), in od vseh dohodkov, ki imajo svoj vir izven Slovenije.

(2) Nerezident oziroma nerezidentka Slovenije (v nadaljnjem besedilu: nerezident) je zavezan za davek od vseh dohodkov, ki imajo svoj vir v Sloveniji v skladu z 8. členom tega zakona, in sicer:

1. dohodkov, ki jih dosega z opravljanjem aktivnosti v poslovni enoti ali preko poslovne enote v Sloveniji; in

2. drugih dohodkov.

##### 5. člen

(rezident in nerezident)

(1) Zavezanec je rezident Slovenije, če izpolnjuje vsaj enega izmed naslednjih pogojev:

1. ima sedež v Sloveniji,

2. ima kraj dejanskega upravljanja v Sloveniji.

(2) Zavezanec je nerezident Slovenije, če ne izpolnjuje vsaj enega od pogojev iz prvega odstavka tega člena.

##### 6. člen

(poslovna enota nerezidenta)

(1) Poslovna enota nerezidenta po tem zakonu je kraj poslovanja, to je kraj, v katerem ali preko katerega nerezident v celoti ali delno opravlja aktivnosti v Sloveniji.

(2) Za poslovno enoto nerezidenta se šteje zlasti:

1. pisarna, podružnica, tovarna, delavnica, rudnik, kamnolom ali drug kraj, kjer se pridobivajo ali izkoriščajo naravni viri;

2. gradbišče, projekt gradnje, montaže ali postavitve ali nadzor ali svetovanje v zvezi z njimi, če aktivnosti trajajo dlje kot šest mesecev.

(3) Za poslovno enoto nerezidenta se šteje tudi opravljanje storitev, vključno s svetovalnimi ali poslovodskimi storitvami, če za isti ali povezan projekt opravljanje storitev traja dlje kot 90 dni v kateremkoli obdobju zaporednih 12 mesecev.

(4) Kot poslovna enota nerezidenta se obravnava tudi posrednik, ki deluje v imenu nerezidenta, v zvezi s katerimikoli aktivnostmi za nerezidenta, če:

1. ima in običajno uporablja pooblastilo za sklepanje pogodb v imenu nerezidenta, razen če

so aktivnosti posrednika omejene na tiste iz 7. člena tega zakona, zaradi česar se ta kraj poslovanja ne bi štel za poslovno enoto nerezidenta; ali

2. nima pooblastila iz 1. točke tega odstavka, vendar običajno vzdržuje zaloge proizvodov ali trgovskega blaga, iz katerih redno dostavlja to blago v imenu nerezidenta.

(5) Kot poslovna enota nerezidenta se obravnava tudi posrednik, ki v svojem imenu deluje za nerezidenta, v okviru svoje redne dejavnosti kot borzni posrednik, posrednik s splošnim pooblastilom ali katerikoli drug neodvisni posrednik, kadar deluje v celoti ali pretežno v imenu nerezidenta in se pogoji in okoliščine v poslovnih in finančnih razmerjih med tem nerezidentom in tem posrednikom razlikujejo od tistih, ki bi bili v razmerjih med nepovezanimi osebami.

(6) Gradbišče, projekt gradnje, montaže ali postavitve ali nadzor ali svetovanje v zvezi z njimi, ki trajajo dlje kot šest mesecev, se šteje za poslovno enoto nerezidenta od dneva začetka aktivnosti, vključno s pripravljalnimi deli.

#### 7. člen

(kraj poslovanja, ki ni poslovna enota)

Kraj poslovanja se ne šteje za poslovno enoto nerezidenta, če nerezident:

1. uporablja prostore le za skladiščenje, razstavljanje ali dostavo dobrin ali blaga, ki mu pripadajo;

2. vzdržuje zaloge dobrin ali blaga, ki mu pripadajo, le zaradi skladiščenja, razstavljanja ali dostave;

3. vzdržuje zaloge dobrin ali blaga, ki mu pripadajo, le zaradi predelave s strani druge osebe;

4. vzdržuje kraj poslovanja le zaradi nakupa dobrin ali blaga ali zbiranja informacij zase;

5. vzdržuje kraj poslovanja le zaradi opravljanja kakršnekoli druge aktivnosti pripravljalne ali pomožne narave zase;

6. vzdržuje kraj poslovanja le za kakršnokoli kombinacijo aktivnosti, določenih v 1. do 5. točki tega člena, pod pogojem, da je splošna aktivnost kraja poslovanja, ki je posledica te kombinacije, pripravljalne ali pomožne narave.

#### 8. člen

(vir dohodkov)

(1) Dohodki po tem zakonu, ki imajo vir v Sloveniji, so:

1. dohodki od nepremičnin in pravic na nepremičninah, če gre za nepremičnine, ki se nahajajo v Sloveniji, in dohodki iz kmetijske in gozdarske dejavnosti, ki se opravlja na zemljiščih, ki se nahajajo v Sloveniji;

2. dohodki od izkoriščanja ali pravice do izkoriščanja nahajališč rude, virov ter drugega naravnega bogastva, ki se nahajajo v Sloveniji;

3. dohodki od vrednostnih papirjev, ki jih izdajo gospodarske družbe, zadruga in druge oblike organiziranja, ki so ustanovljene v skladu s predpisi v Sloveniji, Slovenija, samoupravne lokalne skupnosti in Banka Slovenije, ter od deležev v gospodarskih družbah, zadrugah in drugih oblikah organiziranja, ki so ustanovljene v skladu s predpisi v Sloveniji;

4. dohodki nerezidenta, doseženi v poslovni enoti tega nerezidenta ali preko poslovne enote tega nerezidenta, ki se nahaja v Sloveniji;

5. dividende, ki jih plača rezident Slovenije ali so mu bile zaračunane;

6. obresti, ki jih izplača rezident Slovenije ali nerezident preko svoje poslovne enote v Sloveniji ali so mu bile zaračunane;

7. dohodki od uporabe ali pravice uporabe avtorskih pravic, patentov, licenc, zaščitnih znakov in drugih premoženjskih pravic in dohodki od drugih podobnih plačil, ki jih izplača rezident Slovenije ali nerezident preko svoje poslovne enote v Sloveniji ali so mu bili zaračunani;

8. dohodki od odsvojitve nepremičnin iz 1. in premoženja iz 2. točke tega odstavka;

9. dohodki od odsvojitve premičnin, ki se nahajajo v Sloveniji;

10. dohodki od odsvojitve vrednostnih papirjev in lastniških deležev iz 3. točke tega odstavka;

11. dohodki od odsvojitve premičnin, ki so del poslovnega premoženja poslovne enote nerezidenta v Sloveniji, in dohodek iz odsvojitve take poslovne enote;

12. dohodki od storitev nastopajočih izvajalcev ali športnikov v Sloveniji, ki pripadajo drugi osebi;

13. vsak drug dohodek, pridobljen v Sloveniji;

14. vsak drug dohodek, ki ga je izplačal rezident ali nerezident preko svoje poslovne enote, ali mu je bil zaračunan.

(2) Dohodek iz 8. točke prvega odstavka tega člena je tudi dohodek od odsvojitve lastniških deležev in pravic iz lastniških deležev v družbi, zadrugi ali drugi obliki organiziranja, katerih več kot polovico vrednosti izhaja posredno ali neposredno iz nepremičnin in pravic na nepremičninah, ki se nahajajo v Sloveniji.

(3) Če Slovenija, samoupravne lokalne skupnosti in Banka Slovenije izplačujejo ali so jim bili zaračunani dohodki iz prvega odstavka tega člena, se štejejo za rezidenta.

(4) Dohodki po tem zakonu, ki nimajo vira v Sloveniji, so dohodki z virom izven Slovenije.

### III. OPROSTITVE

#### 9. člen

(oprostititev davka za zavezanca, ki je ustanovljen za opravljanje nepridobitne dejavnosti)

(1) Zavezanec, kot zavod, društvo, ustanova, verska skupnost, politična stranka, zbornica, reprezentativni sindikat, ne plača davka po tem zakonu, če:

1. je v skladu s posebnim zakonom ustanovljen za opravljanje nepridobitne dejavnosti, in

2. ima v vsem davčnem obdobju finančno in materialno poslovanje in akte v zvezi s tem, zlasti svoj temeljni akt, usklajeno z določbami zakona, ki ureja njegovo ustanovitev oziroma delovanje.

(2) Ne glede na prvi odstavek tega člena, plača zavezanec iz prvega odstavka tega člena davek po tem zakonu od dohodkov iz opravljanja pridobitne dejavnosti.

(3) Zavezanec izpolnjuje pogoje iz 2. točke prvega odstavka tega člena zlasti, če:

1. uporablja presežke prihodkov nad odhodki;

2. zmanjšuje ustanovitveno premoženje;

3. izplačuje plače;

4. nagrajuje člane uprave in izkazuje stroške poslovanja;

5. nalaga prosta sredstva;

6. ravna z ostankom premoženja pri prenehanju v skladu z določbami zakona, ki ureja njegovo ustanovitev oziroma delovanje.

### IV. PREDMET OBDAVČITVE IN DAVČNO OBDOBJE

#### 10. člen

(predmet in obdobje obdavčitve)

(1) Z davkom so obdavčeni dohodki zavezanca, določeni s tem zakonom, v davčnem obdobju, ki je koledarsko leto.

(2) Ne glede na prvi odstavek tega člena, davčni zavezanec lahko izbere, da bo njegovo davčno obdobje enako njegovemu poslovnemu letu, ki se razlikuje od koledarskega leta, pri čemer davčno obdobje ne sme presegati obdobja 12 mesecev.

(3) Davčni zavezanec iz drugega odstavka tega člena mora o izbiri obvestiti davčni organ. Izbranega davčnega obdobja davčni zavezanec ne sme spreminjati sedem let.

### V. DAVČNA OSNOVA

#### 1. Splošne določbe

#### 11. člen

(davčna osnova)

(1) Osnova za davek rezidenta in nerezidenta za aktivnost, ki jo opravlja v poslovni enoti ali preko poslovne enote v Sloveniji, je dobiček, ki se ugotovi v skladu z določbami tega zakona.

(2) Dobitek je presežek prihodkov nad odhodki, ki so določeni s tem zakonom.

(3) Če ta zakon ne določa drugače, se za ugotavljanje dobička priznajo prihodki in odhodki, ugotovljeni v izkazu poslovnega izida oziroma letnem poročilu, ki ustreza izkazu poslovnega izida in prikazuje prihodke, odhodke in izid, na podlagi zakona in v skladu z njim uvedenimi računovodskimi standardi.

(4) Prihodki in odhodki se priznajo glede na čas nastanka.

(5) Osnova za davčni odtegljaj od dohodkov, navedenih v 68. členu tega zakona, je vsak posamezen dohodek.

#### 12. člen

(davčna osnova pri poslovanju med povezanimi osebami)

(1) Pri ugotavljanju prihodkov zavezanca se upoštevajo transferne cene s povezanimi osebami za sredstva, vključno z neopredmetenimi sredstvi, ter storitve, vendar prihodki najmanj do višine, ugotovljene z upoštevanjem cen takih ali primerljivih sredstev ali storitev, ki se v primerljivih okoliščinah dosežejo ali bi se dosegle

na trgu med nepovezanimi osebami (v nadaljnjem besedilu: primerljive tržne cene).

(2) Pri ugotavljanju odhodkov zavezanca se upoštevajo transferne cene s povezanimi osebami za sredstva, vključno z neopredmetenimi sredstvi, ter storitve, vendar odhodki največ do višine, ugotovljene z upoštevanjem primerljivih tržnih cen.

(3) Primerljive tržne cene iz prvega in drugega odstavka tega člena se določijo z eno od naslednjih metod ali s kakršno koli kombinacijo naslednjih metod:

1. metodo primerljivih prostih cen;
2. metodo preprodajnih cen;
3. metodo dodatka na stroške;
4. metodo porazdelitve dobička;
5. metodo stopnje čistega dobička;

ali katerokoli drugo metodo.

(4) Za povezani osebi se štejeta zavezanec rezident in pravna oseba ali oseba brez pravne osebnosti, ki ni rezident (v nadaljnjem besedilu: tuja oseba), ki sta povezani tako, da je rezident neposredno ali posredno udeležen v upravljanju, nadzoru ali kapitalu tuje osebe, ali je tuja oseba neposredno ali posredno udeležena v upravljanju, nadzoru ali kapitalu rezidenta, ali je ista oseba neposredno ali posredno udeležena v upravljanju, nadzoru ali kapitalu rezidenta in tuje osebe ali dveh rezidentov.

(5) Osebi po četrtem odstavku tega člena se štejeta za povezani, če:

1. ima zavezanec rezident neposredno ali posredno v lasti najmanj 25% vrednosti ali števila delnic ali deležev v kapitalu ali glasovalnih pravic v tuji osebi; ali
2. ima tuja oseba neposredno ali posredno v lasti najmanj 25% vrednosti ali števila delnic ali deležev v kapitalu ali glasovalnih pravic v rezidentu; ali
3. ima ista pravna oseba hkrati neposredno ali posredno v lasti najmanj 25% vrednosti ali števila delnic ali deležev ali glasovalnih pravic v rezidentu in tuji osebi ali dveh rezidentih; ali
4. imajo iste fizične osebe ali njihovi družinski člani neposredno ali posredno v lasti najmanj 25% vrednosti ali števila delnic ali deležev ali glasovalnih pravic ali so udeleženi v nadzoru ali upravljanju v rezidentu in tuji osebi ali dveh rezidentih.

(6) Za družinske člane se po tem in po 13. členu tega zakona štejejo zakonec oziroma oseba, s katero fizična oseba živi v dalj časa trajajoči življenjski skupnosti, ki ima po zakonu, ki ureja zakonsko zvezo in družinska razmerja, enake pravne posledice kot zakonska zveza, brat ali sestra, neposredni prednik ali posvojitelj ali neposredni potomec ali posvojenec.

(7) Minister oziroma ministrica (v nadaljnjem besedilu: minister), pristojen za finance, podrobneje predpiše izvajanje tega člena.

#### 13. člen

(davčna osnova pri poslovanju med povezanimi osebami rezidenti)

(1) Pri ugotavljanju prihodkov in odhodkov za posle med zavezancema rezidentoma, ki sta povezani osebi, se davčna osnova ne povečuje oziroma zmanjša, če je zmanjšanje oziroma povečanje davčne osnove pri enem zavezancu enako povečanju oziroma zmanjšanju davčne osnove pri drugem zavezancu glede na določen posel med njima in takšno ugotavljanje prihodkov in odhodkov ne povzroči znižanja celotnega davčnega učinka.

(2) Za povezani osebi po prvem odstavku tega člena se štejeta rezidenta, če sta neposredno ali posredno povezana v kapitalu, upravljanju ali nadzoru in eden vpliva ali ima možnost vplivati na sprejemanje odločitev drugega, ali če med rezidentom in drugo osebo obstajajo druga razmerja, ki se razlikujejo od razmerij med nepovezanimi osebami, zlasti razmerje z osebo, ki ima ugodnejši davčni položaj, in bi se posli opravili pod drugačnimi pogoji, če ugodnejšega davčnega položaja ne bi bilo.

(3) Za povezani osebi iz drugega odstavka tega člena se štejeta zlasti osebi, ki sta povezani v kapitalu, upravljanju ali nadzoru tako, da ima ena oseba neposredno ali posredno v lasti najmanj 25% deležev ali delnic ali glasovalnih pravic v drugi osebi ali sta poslovno povezani ali če sodelujejo v nadzornih telesih ali upravljanju iste osebe ali njihovi družinski člani.

(4) Za osebo iz drugega odstavka tega člena, ki ima ugodnejši davčni položaj, se zlasti šteje:

1. oseba, ki je oproščena plačevanja davka po tem zakonu;
2. oseba, ki plačuje davek po stopnji, nižji od stopnje iz 53. člena tega zakona (25%);
3. oseba, ki izkazuje davčno izgubo.

#### 14. člen



(podatki v zvezi s povezanimi osebami po 12. in 13. členu tega zakona)

(1) Zavezanec zagotavlja in hrani podatke o povezanih osebah, poslovanju s temi osebami, vrsti uporabljenih metod za določanje primerljivih tržnih cen in razlogih za izbiro uporabljenih metod v obsegu, obliki in v roku v skladu z zakonom, ki ureja davčni postopek.

(2) Predlaganje podatkov iz prvega odstavka tega člena davčnemu organu ter njihovo dajanje na razpolago v času nadzora določa zakon, ki ureja davčni postopek.

15. člen

(obresti med povezanimi osebami)

(1) Pri ugotavljanju prihodkov se upoštevajo obračunane obresti na dana posojila od povezanih oseb, vendar najmanj do višine zadnje objavljene, ob času odobritve posojila znane priznane obrestne mere.

(2) Pri ugotavljanju odhodkov se upoštevajo obračunane obresti na prejeta posojila od povezanih oseb, vendar največ do višine zadnje objavljene, ob času odobritve posojila znane priznane obrestne mere.

(3) Priznana obrestno mero iz prvega in drugega odstavka tega člena določi in objavi minister, pristojen za finance, pred začetkom davčnega obdobja, za katerega se bo uporabljala, pri tem pa upošteva, da gre za obrestno mero, ki se v primerljivih okoliščinah doseže ali bi se dosegla na trgu med nepovezanimi osebami.

16. člen

(rezervacije)

(1) Pri ugotavljanju davčne osnove oziroma priznavanju prihodkov in odhodkov se oblikovanje rezervacij ne upošteva, razen če s tem zakonom ni določeno drugače.

(2) Odprava in poraba rezervacij se upošteva na način, da se prihodki izvemajo in odhodki priznavajo tako, da v davčno osnovo niso ponovno vključeni prihodki in odhodki, ki so predhodno povečevali davčno osnovo, razen če s tem zakonom ni določeno drugače.

(3) Kot oblikovanje oziroma odprava in poraba rezervacij po prvem in drugem odstavku tega člena se obravnava tudi njihov popravek na sedanjo vrednost izdatkov na koncu obračunskega obdobja.

(4) Rezervacije, oblikovanje katerih se po tem zakonu prizna kot odhodek in se lahko odpravljajo

kot nepotrebne v več letih, se pri določanju davčne osnove všteto v davčno osnovo kot prihodek v celoti v prvem letu odprave, in sicer največ do višine predhodno priznanega odhodka za njihovo oblikovanje.

17. člen

(prevrednotenje)

(1) Pri ugotavljanju davčne osnove se odhodki prevrednotenja, ki je posledica spremembe kupne moči domače valute, ki se po slovenskih računovodskih standardih opravi na koncu poslovnega leta pri kapitalu, ne priznajo.

(2) Odhodki zaradi prevrednotenja, ki ni prevrednotenje iz prvega odstavka tega člena, razen odhodkov, nastalih zaradi prevrednotenja dolgov, terjatev, finančnih naložb in denarnih terjatev, kateri se po slovenskih računovodskih standardih prevrednotujejo zaradi spremembe valutnega tečaja, in odhodki zaradi uporabe kapitalske metode vrednotenja finančnih naložb, se ne priznajo. Odprava oslabitev se upošteva na način, da se prihodki izvemajo, tako da v davčno osnovo niso vključeni, zato da se obdavčijo, če se predhodna oslabitev ni upoštevala.

(3) Odhodki zaradi prevrednotenja, ki se po drugem odstavku tega člena ne priznajo, se priznajo ob prodaji ali drugačni odtujitvi sredstev in ob poravnavi ali drugačni odtujitvi dolgov.

2. Prihodki

18. člen

(izvem prihodkov od udeležbe na dobičku)

(1) Pri določanju davčne osnove zavezanca, ki prejme dividende oziroma druge deleže iz dobička (v nadaljnjem besedilu: prejemnik), se te dividende oziroma drugi deleži iz dobička (v nadaljnjem besedilu: dividende) izvemajo iz davčne osnove, če:

1. je prejemnik udeležen v kapitalu oziroma pri upravljanju osebe, ki deli dobiček za dividende (v nadaljnjem besedilu: izplačevalec) tako, da je imetnik poslovnega deleža, delnic ali glasovalnih pravic v višini najmanj 25%, in

2. znaša čas trajanja udeležbe v kapitalu oziroma pri upravljanju izplačevalca v skladu s 1. točko tega odstavka najmanj 24 mesecev, in

3. je izplačevalec zavezanec za davek, ter ni rezident države, v primeru poslovne enote pa se ta ne nahaja v državi, z ugodnejšim davčnim okoljem, ki je za namene tega člena država, v kateri je splošna, povprečna, nominalna stopnja obdavčitve dobička družb nižja od 12,5%.

(2) Določbe prvega odstavka tega člena se za prejemnika nerezidenta uporabljajo, če je njegova udeležba v kapitalu oziroma upravljanju osebe, ki deli dobiček, povezana z aktivnostmi, ki jih nerezident opravlja v poslovni enoti v Sloveniji oziroma preko poslovne enote v Sloveniji.

(3) Prejemnik, ki še ne izpolnjuje pogoja iz 2. točke prvega odstavka tega člena, izpolnjuje pa druge pogoje iz prvega ali drugega odstavka tega člena, lahko izvzame dividende iz davčne osnove po prvem ali drugem odstavku tega člena pod pogojem, da izroči pristojnemu davčnemu organu ustrezno bančno garancijo za znesek davka, ki bi ga moral plačati, če jih ne bi izvzel. Davčni organ lahko unovči garancijo, če se pogoj iz 2. točke prvega odstavka tega člena ne izpolni. Garancija poteče z dnem, ko se pogoj iz 2. točke prvega odstavka tega člena izpolni.

(4) Šteje se, da je pogoj iz 3. točke prvega odstavka tega člena izpolnjen, če je izplačevalec:

1. oseba, ki ima eno od oblik, za katere se uporablja skupen sistem obdavčenja, ki velja za matične družbe in odvisne družbe iz različnih držav članic Evropske unije (v nadaljnjem besedilu: EU), in jih določi minister, pristojen za finance; in

2. je za davčne namene rezident v državi članici EU v skladu s pravom te države in se v skladu z mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka, sklenjene z državo nečlanico EU, ne šteje kot rezident izven EU; in

3. je zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja, ki velja za matične družbe in odvisne družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, kjer se za zavezanca ne šteje družba, ki je davka oproščena ali ima možnost izbire obdavčitve.

(5) Pri določanju davčne osnove po prvem oziroma drugem odstavku tega člena se odhodki, ki se nanašajo na udeležbo, ne priznajo.

(6) Za ustrezno bančno garancijo se šteje bančna garancija banke s sedežem v Sloveniji ali v državi članici EU, s katero se banka nepreklicno zavezuje, da bo na prvi poziv pristojnega davčnega organa ter brez ugovorov, davčnemu organu izplačala znesek davka iz tretjega odstavka tega člena, z rokom veljavnosti do dneva izpolnitve pogoja glede časa trajanja udeležbe v skladu z 2. točko prvega odstavka tega člena.

(7) Način izvajanja tega člena ureja zakon, ki ureja davčni postopek.

19. člen

(izvzem prihodkov od nepridobitne dejavnosti)

Pri določanju davčne osnove zavezanca iz 9. člena tega zakona se prihodki iz opravljanja dejavnosti, ki ni pridobitna, ter dejanski ali sorazmerni stroški te dejavnosti izvzemajo iz davčne osnove.

3. Odhodki

20. člen

(splošno)

(1) Za ugotavljanje dobička se priznajo odhodki, potrebni za pridobitev prihodkov, ki so obdavčeni po tem zakonu.

(2) Odhodki, ki niso potrebni za pridobitev prihodkov, so odhodki, za katere glede na dejstva in okoliščine izhaja, da:

1. niso neposreden pogoj za opravljanje dejavnosti in niso posledica opravljanja dejavnosti,
2. imajo značaj privatnosti,
3. niso skladni z običajno poslovno prakso.

(3) Odhodki niso skladni z običajno poslovno prakso, če niso običajni pri poslovanju v posamezni dejavnosti glede na pretekle in druge izkušnje in primerjavo z drugimi dejavnostmi ter dejstvi in okoliščinami, razen odhodkov, nastalih zaradi izrednih in nepogostih dogodkov, kot so naravne nesreče ali zaradi drugih izrednih in nepogostih dogodkov.

21. člen

(nepriznani odhodki)

(1) Kot odhodki se ne priznajo:

1. naložbe, zlasti za pridobitev in izboljšanje zemljišča, pridobitev, izboljšanje, obnovo in rekonstrukcijo osnovnih sredstev, ki povečujejo nabavno vrednost osnovnih sredstev oziroma zmanjšujejo popravek vrednosti osnovnih sredstev, materialne pravice, delnice in deleže gospodarskih družb ter druge finančne naložbe in druga sredstva;

2. delitev dobička, zlasti za dividende in druge dohodke, ki so po določbah tega zakona podobni dividendam, rezerve iz dobička, nagrade upravi in članom nadzornega sveta zavezanca, ki imajo naravo udeležbe v dobičku;

3. odhodki za pokrivanje izgub iz preteklih let;

4. rezervacije za kritje možnih izgub;

5. stroški, ki se nanašajo na privatno življenje, primeroma za zabavo, oddih, šport in rekreacijo, vključno s pripadajočim davkom na dodano vrednost;

6. stroški prisilne izterjave davkov ali drugih dajatev;

7. kazni, ki jih izreče pristojni organ;

8. davki, in sicer:

a) davek, ki se pobira po tem zakonu;

b) davek na dodano vrednost, ki ga je zavezanec uveljavil kot odbitek davka v skladu z zakonom, ki ureja davek na dodano vrednost;

c) davki, ki jih je plačal družbenik kot fizična oseba;

9. obresti;

a) od nepravočasno plačanih davkov ali drugih dajatev;

b) od posojil, prejetih od oseb, ki imajo sedež ali prebivališče v državah z ugodnejšim davčnim okoljem, ki so za namene te podtočke države, razen držav članic EU, v katerih je splošna nominalna stopnja obdavčitve dobička nižja od 12,5%;

10. podkupnine in druge oblike premoženjskih koristi, dane fizičnim ali pravnim osebam zato, da nastane oziroma ne nastane določen dogodek, ki drugače ne bi, primeroma, da se hitreje ali ugodneje opravi ali se opusti določeno dejanje;

11. donacije.

(2) Stroški iz 5. točke prvega odstavka tega člena so:

1. stroški, ki se nanašajo na privatno življenje lastnikov in povezanih oseb, vključno s stroški sredstev v lasti ali najemu zavezanca, ki se nanašajo na privatno življenje teh oseb;

2. stroški, ki se nanašajo na privatno življenje drugih oseb, vključno s stroški sredstev v lasti ali najemu zavezanca, ki se nanašajo na privatno življenje teh oseb;

3. stroški ugodnosti, ki jih delavcem zagotavlja delodajalec (bonitete).

(3) Stroški iz 3. točke drugega odstavka tega člena so zlasti stroški:

1. premij za prostovoljno dodatno pokojninsko zavarovanje in drugih zavarovalnih premij;

2. danih, subvencioniranih ali s popustom prodanih proizvodov oziroma storitev;

3. počitniških nastanitev in drugih nastanitev, ki niso povezane z delom;

4. članarin poklicnim združenjem, razen če so potrebne za poslovanje in če so plačane za članstvo v združenjih, v katerih delodajalec ne more biti član;

5. članarin in drugi stroški povezani z zabavo, oddihom, športom in rekreacijo in drugi stroški privatne rabe;

6. drugih ugodnosti, kot so zagotovitev parkirnega mesta, službene obleke, razen uniform.

(4) Stroški iz drugega odstavka tega člena se ne priznajo, če gre za brezplačno uporabo. Stroški iz 2. in 3. točke drugega odstavka tega člena se priznajo, če se te storitve oziroma ugodnosti plačujejo, vendar največ do višine takšnega plačila oziroma povračila. Stroški sredstev v lasti ali najemu zavezanca, ki se nanašajo na privatno življenje, nastali v času uporabe teh sredstev za privatno rabo, se ne priznajo sorazmerno takšni rabi.

22. člen

(delno priznani odhodki)

Kot odhodki se priznajo v višini 50%:

1. stroški reprezentance,

2. stroški nadzornega sveta.

23. člen

(odpis terjatev)

Odpis terjatve se prizna kot odhodek, ko je odpis terjatve evidentiran v poslovnih knjigah, če:

1. je bil znesek terjatve že vključen v prihodke, in

2. so bila opravljena vsa dejanja, ki bi jih opravil s skrbnostjo dober gospodarstvenik, za doseg poplačila dolga.

24. člen

(odhodki zalog)

(1) Porabljene oziroma prodane zaloge se priznajo kot odhodek v obračunanem znesku, vendar največ do zneska, ki se ugotovi v skladu z izbrano metodo vrednotenja zalog.

(2) Zavezanec ne sme spreminjati izbrane metode vrednotenja zalog najmanj pet let.

25. člen

(obresti od presežka posojil)

(1) Kot odhodek se ne priznajo obresti od posojil, razen pri posojilojemalcih bankah in zavarovalnicah, ki so prejeta od delničarja oziroma družbenika, ki ima kadarkoli v davčnem obdobju neposredno ali posredno v lasti najmanj 25% delnic ali deležev v kapitalu ali glasovalnih pravic v zavezancu, če kadarkoli v davčnem obdobju ta posojila presegajo štirikratnik zneska deleža tega delničarja oziroma družbenika v kapitalu zavezanca (v nadaljnjem besedilu: presežek posojil), ugotovljene glede na znesek in obdobje trajanja presežka posojil v davčnem obdobju.

(2) Za posojila delničarja oziroma družbenika po prvem odstavku tega člena se štejejo tudi posojila tretjih oseb, za katera jamči ta delničar oziroma družbenik, in posojila banke, če so dana v zvezi z depozitom tega delničarja oziroma družbenika v tej banki.

(3) Znesek deleža delničarja oziroma družbenika v kapitalu prejemnika posojila se določi za davčno obdobje kot povprečje na podlagi stanja vplačanega kapitala, prenesenega čistega dobička in rezerv na zadnji dan vsakega meseca v davčnem obdobju.

26. člen

(amortizacija)

(1) Amortizacija opredmetenih osnovnih sredstev in neopredmetenih dolgoročnih sredstev se kot odhodek prizna v obračunanem znesku, vendar največ do zneska, obračunanega z uporabo metode enakomernega časovnega amortiziranja ter najvišje letne amortizacijske stopnje, ki je določena s tem zakonom.

(2) Amortizacija se obračunava posamično.

(3) Sredstva, ki se amortizirajo, ter pričetek obračunavanja amortizacije določajo predpisi in računovodski standardi.

(4) Najvišja letna amortizacijska stopnja po določbah prvega odstavka tega člena znaša za:

1. gradbene objekte 5%,
2. opremo, vozila, razen za osebne avtomobile, in mehanizacijo 25%,
3. osebne avtomobile 12,5%

4. računalnike in računalniško opremo 50%,

5. večletne nasade 10%,

6. osnovno čredo 20%,

7. druga vlaganja 10%,

8. dobro ime 10%.

(5) Ne glede na določbe prvega do četrtega odstavka tega člena se pri opredmetenem osnovnem sredstvu, katerega doba uporabnosti je daljša od enega leta in katerega posamična nabavna vrednost ne presega tolarске vrednosti 500 EUR, kot odhodek ob prenosu v uporabo prizna odpis celotne nabavne vrednosti.

(6) Amortizacija dokončno amortiziranega sredstva se ne prizna kot odhodek, tudi če se takšno sredstvo še naprej uporablja za opravljanje dejavnosti.

(7) Če zavezanec pridobi staro oziroma rabljeno opredmeteno osnovno sredstvo od povezane osebe, ki ni rezident, se šteje, da je pridobljeno osnovno sredstvo že dokončno amortizirano.

(8) Amortizacija opredmetenega osnovnega sredstva, ki ga zavezanec pridobi od osebe, ki ni rezident in se ne šteje za povezano osebo po tem zakonu, se prizna kot odhodek v znesku po prvem odstavku tega člena, če zavezanec dokaže, da opredmeteno osnovno sredstvo še ni dokončno amortizirano.

27. člen

(rezervacije pri bankah in zavarovalnicah)

(1) Posebne rezervacije, ki jih mora oblikovati banka glede posebnih tveganj, se priznajo banki kot odhodek v obračunanih zneskih, vendar največ do višine, ki jo določa zakon, ki ureja bančništvo.

(2) Zavarovalno tehnične rezervacije, ki jih mora zavarovalnica obvezno oblikovati v skladu z zakonom, ki ureja zavarovalništvo, se pri zavarovalnici priznajo kot odhodek v obračunanih zneskih, vendar največ do višine ali zgornje meje v skladu z zakonom, ki ureja zavarovalništvo.

28. člen

(plače in druga izplačila v zvezi z zaposlitvijo)

(1) Plače ter nadomestila plače za čas odsotnosti z dela zaradi izrabe letnega dopusta in zaradi drugih odsotnosti z dela delavcev se priznajo kot odhodek v obračunanem znesku v skladu s kolektivnimi pogodbami na ravni države.

(2) Plače ter nadomestila plače za čas odsotnosti z dela zaradi izrabe letnega dopusta in zaradi drugih odsotnosti z dela poslovnih delavcev, prokuristov in delavcev s posebnimi pooblastili in odgovornostmi se priznajo kot odhodek v obračunanem znesku v skladu z zakonom oziroma s pogodbo o zaposlitvi s poslovnimi osebami.

(3) Nagrade vajencem se priznajo kot odhodek v obračunanem znesku v skladu z zakonom.

(4) Regres za letni dopust, jubilejne nagrade, odpravnine ob upokojitvi, solidarnostne pomoči, povračila stroškov v zvezi z delom, to so stroški prehrane med delom, prevoza na delo in z dela, terenski dodatek, nadomestilo za ločeno življenje ter povračila stroškov na službenem potovanju, to so:

1. dnevnic,

2. povračilo stroškov prevoza, vključno s povračilom stroškov za uporabo delojemalčevega osebnega vozila za službene namene (kilometrini),

3. povračilo stroškov za prenočišče,

se kot odhodek priznajo do višine, ki jo določi Vlada Republike Slovenije v skladu z zakonom, ki ureja dohodnino.

4. Izguba

29. člen

(izguba in pokrivanje izgube)

(1) Izguba po tem zakonu je presežek odhodkov nad prihodki, ki so določeni s tem zakonom.

(2) Izgubo v davčnem obdobju lahko zavezanec pokriva z zmanjšanjem davčne osnove v naslednjih petih davčnih obdobjih, če zakon ne določa drugače.

(3) Pri zmanjšanju davčne osnove na račun izgub iz preteklih davčnih obdobj, se davčna osnova najprej zmanjša za izgubo starejšega datuma.

(4) Zmanjšanje davčne osnove zaradi izgub iz preteklih davčnih obdobj je dovoljeno največ do višine davčne osnove davčnega obdobja.

(5) Če se v davčnem obdobju neposredno ali posredno lastništvo delniškega kapitala oziroma kapitalskih deležev ali glasovalnih pravic zavezanca spremeni za več kot 25% glede na njihovo vrednost ali število na začetku davčnega obdobja ali na koncu preteklega davčnega obdobja, drugi odstavek tega člena ne velja za izgube, ki so nastale v tem in v preteklih davčnih obdobjih.

VI. OBDAVČITEV PRI PRENOSU DEJAVNOSTI, ZAMENJAVAH KAPITALSKIH DELEŽEV, ZDRUŽITVAH IN DELITVAH

1. Obdavčitev pri prenosu dejavnosti

30. člen

(prenos dejavnosti)

Za prenos dejavnosti po tem členu se šteje transakcija, s katero družba (v nadaljnjem besedilu: prenosna družba), ne da bi prenehala, prenese eno ali več dejavnosti na drugo že ustanovljeno družbo (v nadaljnjem besedilu: družba prejemnica), v zamenjavo za izdajo ali prenos vrednostnih papirjev, ki predstavljajo deleže v kapitalu družbe prejemnice, prenosni družbi. Za dejavnost po tem členu se štejejo vsa sredstva in obveznosti, ki se pripišejo delu družbe, ki z organizacijskega vidika predstavlja posebno poslovanje.

31. člen

(pravice)

Pri prenosu dejavnosti je:

1. prenosna družba oproščena davka v zvezi z dobički in izgubami, ki nastanejo pri prenosu sredstev in obveznosti, ki pripadajo prenešeni dejavnosti ali dejavnostim,

2. družba prejemnica upravičena do:

a) prenosa rezerv in rezervacij, ki jih je oblikovala prenosna družba in se pripišejo prenešeni dejavnosti ali dejavnostim, z upoštevanjem davčnih oprostitev in pogojev, ki bi veljali za prenosno družbo, če prenos ne bi bil izvršen;

b) prenosa izgub, ki se pripišejo prenešeni dejavnosti ali dejavnostim, pod pogoji, ki bi veljali za prenosno družbo, če prenos ne bi bil izvršen.

32. člen

(pogoji)

(1) Prenosna družba in družba prejemnica imata pravice iz 31. člena tega zakona, če sta rezidenta Slovenije in/ali rezidenta države članice EU, ki ni Slovenija, in sicer:

1. če sta prenosna družba in družba prejemnica rezidenta Slovenije, za prenos dejavnosti v Sloveniji ali v državi članici EU, ki ni Slovenija;

2. če je prenosna družba rezident države članice EU, ki ni Slovenija, in je družba prejemnica rezident Slovenije, za prenos dejavnosti, ki se

nahaja(jo) v Sloveniji, če po prenosu prenešana sredstva, obveznosti, rezervacije, rezerve in izgube ne pripadajo poslovnim enotam družbe prejemnice izven Slovenije;

3. če je družba prejemnica rezident države članice EU, ki ni Slovenija, in je prenosna družba rezident Slovenije ali države članice EU, ki ni Slovenija, pod pogojem, da po prenosu prenešana sredstva, obveznosti, rezervacije, rezerve in izgube pripadajo poslovnim enotam družbe prejemnice v Sloveniji.

(2) Za rezidenta države članice EU, ki ni Slovenija, se šteje družba:

1. ki ima eno od oblik, za katere se uporablja skupen sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, in jih določi minister, pristojen za finance;

2. ki je za namene obdavčitve rezident države članice EU v skladu s pravom te države in se ne šteje kot rezident izven EU v skladu z mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka, sklenjenega z državo nečlanico; in

3. ki je zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, in jih določi minister, pristojen za finance. Za zavezanca se ne šteje družba, ki je davka oproščena ali ima možnost izbire.

33. člen

(vrednotenje in prevzem pravic in obveznosti)

(1) Prenosna družba iz 31. člena tega zakona ovrednoti prejete vrednostne papirje družbe prejemnice po tržni ceni na dan prenosa.

(2) Družba prejemnica iz 31. člena tega zakona ovrednoti prevzeta sredstva in obveznosti po knjigovodski vrednosti, ki jo imajo pri prenosni družbi ob prenosu, amortizira prenešana sredstva tako, kot bi se amortizirala pri prenosni družbi, če prenos ne bi bil izvršen in prevzame pravice in obveznosti prenosne družbe v zvezi s prenešenimi rezervami in rezervacijami.

34. člen

(posebna ureditev v primeru poslovne enote)

Če je prenosna družba rezident Slovenije in je družba prejemnica rezident države članice EU, ki ni Slovenija, se za prenos ene ali več dejavnosti, ki predstavljajo eno ali več poslovnih enot, ki se nahajajo v državi članici EU, ki ni Slovenija, 31.

člen tega zakona ter 33. člen tega zakona ne uporabljata, prenosna družba pa ima pravico do odbitka davka, ki je posledica prenosa, ki bi ga ta država članica EU zaračunala kot posledico tega prenosa, če ne bi bila uveljavljena ureditev enotnega sistema obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU.

35. člen

(dovoljenje)

(1) Prenosni družbi in družbi prejemnici se upravičenja od 30. do 35. člena tega zakona priznajo na podlagi dovoljenja davčnega organa, če so izpolnjeni pogoji po teh členih in če prenosna družba obdrži prejete vrednostne papirje družbe prejemnice za obdobje najmanj 36 mesecev po prenosu dejavnosti.

(2) Če prenosna družba odsvoji prejete vrednostne papirje pred potekom roka iz prvega odstavka tega člena, se šteje, da pogoj trajanja udeležbe ni izpolnjen, razen če prenosna družba in družba prejemnica dokažeta, da glavni namen ali eden glavnih namenov prenosa dejavnosti ni izogibanje davčnim obveznostim.

2. Obdavčitev pri zamenjavi kapitalskih deležev

36. člen

(zamenjava kapitalskih deležev)

(1) Za zamenjavo kapitalskih deležev se šteje transakcija, s katero pridobi družba (v nadaljnjem besedilu: družba prevzemnica) vrednostne papirje druge družbe (v nadaljnjem besedilu: prevzeta družba) v zamenjavo za izdajo ali prenos lastnih vrednostnih papirjev (v nadaljnjem besedilu: novi vrednostni papirji) družbenikom prevzete družbe, v zamenjavo za vrednostne papirje, ki jih imajo ti družbeniki v prevzeti družbi (v nadaljnjem besedilu: prvotni vrednostni papirji), pod pogojem, da ima po zamenjavi kapitalskih deležev družba prevzemnica najmanj večino glasovalnih pravic v prevzeti družbi ali najmanj 25% vrednosti kapitala prevzete družbe. Prevzem, ki ga opravi prevzemna družba preko priznane borze, se šteje kot en posel, če je izvršen v obdobju šest mesecev. Priznana borza je borza, katere organizator je polnopravni član svetovnega združenja borz (World Federation of Exchanges – WFE oziroma Federation Internationale des Bourses de valeurs – FIBV)

(2) Poleg izdaje ali prenosa vrednostnih papirjev po prvem odstavku tega člena lahko družba prevzemnica družbenikom prevzete družbe opravi plačilo v denarju do 10% nominalne vrednosti oziroma če te vrednosti ni, računovodske

vrednosti vrednostnih papirjev. Plačilo v denarju se lahko v celoti ali delno opravi manjšinskim družbenikom prevzete družbe, namesto izdaje ali prenosa vrednostnih papirjev, toda največ v višini 5% nominalne vrednosti oziroma če te vrednosti ni, računovodske vrednosti vrednostnih papirjev.

37. člen

(upravičenja)

(1) Pri zamenjavi kapitalskih deležev je družbenik prevzete družbe v zvezi z zamenjavo kapitalskih deležev po 36. do 40. členu tega zakona oproščen davka v zvezi z dobičkom ali izgubo, doseženo z odsvojitvijo prvotnih vrednostnih papirjev, razen če prejme plačilo v denarju.

(2) Če prejme plačilo v denarju, je družbenik zavezan za davek glede na plačilo v denarju, pri čemer se doseženi dobiček ali izguba v sorazmernem delu pripiše gotovinskemu plačilu in tržni vrednosti novih vrednostnih papirjev.

38. člen

(pogoji)

(1) Družbenik ima pravico iz 37. člena tega zakona:

1. če sta družba prevzemnica in prevzeta družba rezidenta Slovenije in/ali rezidenta države članice EU, ki ni Slovenija; in

2. če je družbenik rezident Slovenije ali ni rezident Slovenije in je imetnik prvotnih in novih vrednostnih papirjev preko poslovne enote, ki jo ima v Sloveniji.

(2) Za rezidenta države članice EU, ki ni Slovenija, se šteje družba:

1. ki ima eno od oblik, za katere se uporablja skupen sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, razen oseb, ustanovljenih v skladu s pravom Slovenije, in jih določi minister, pristojen za finance;

2. ki je za davčne namene rezident države članice EU v skladu s pravom te države članice in se ne šteje za rezidenta izven EU v skladu z mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka, sklenjenega z državo nečlanico; in

3. ki je zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, in jih določi minister, pristojen za

finance. Za zavezanca se ne šteje družba, ki je davka oproščena ali ima možnost izbire.

39. člen

(vrednotenje)

(1) Družbenik iz 38. člena tega zakona ovrednoti nove vrednostne papirje po knjigovodski vrednosti, ki so jo imeli prvotni vrednostni papirji pri njem v času zamenjave.

(2) Družba prevzemnica ovrednoti prejete vrednostne papirje v prevzeti družbi po njihovi tržni vrednosti na dan zamenjave.

40. člen

(dovoljenje)

Družbeniku, ki zamenja vrednostne papirje, se upravičenje po 36. do 40. členu tega zakona prizna na podlagi dovoljenja, ki ga izda davčni organ, če so izpolnjeni pogoji po 36. do 40. členu tega zakona.

3. Obdavčitev pri združitvah in delitvah

41. člen

(združitve in delitve)

(1) Za združitev se šteje transakcija, s katero:

1. ena ali več družb (v nadaljnjem besedilu: prenosna družba), pri prenehanju brez postopka likvidacije, prenese vsa svoja sredstva in obveznosti na drugo obstoječo družbo (v nadaljnjem besedilu: družba prejemnica), v zamenjavo za izdajo ali prenos vrednostnih papirjev, ki predstavljajo kapital družbe prejemnice, svojim družbenikom,

2. dve ali več družb (v nadaljnjem besedilu: prenosna družba), pri prenehanju brez postopka likvidacije, prenesejo vsa svoja sredstva in obveznosti na družbo, ki jo ustanovijo (v nadaljnjem besedilu: družba prejemnica), v zamenjavo za izdajo ali prenos vrednostnih papirjev, ki predstavljajo kapital družbe prejemnice, svojim družbenikom.

(2) Za delitev se šteje transakcija, s katero:

1. družba (v nadaljnjem besedilu: prenosna družba), pri prenehanju brez postopka likvidacije, prenese vsa svoja sredstva in obveznosti na dve ali več obstoječih ali novoustanovljenih družb (v nadaljnjem besedilu: družbe prejemnice), v zamenjavo za izdajo ali prenos vrednostnih papirjev, ki predstavljajo kapital družb prejemnic, svojim družbenikom, v sorazmernem deležu;

2. družba (v nadaljnjem besedilu: prenosna družba) prenese eno ali več dejavnosti na družbo, ki jo ustanovi (v nadaljnjem besedilu: družba prejemnica), v zamenjavo za izdajo ali prenos vrednostnih papirjev, ki predstavljajo kapital družbe prejemnice, ki jih pridobi prenosna družba sama ali njeni družbeniki. Kot dejavnost se šteje celota sredstev in obveznosti, ki se pripišejo delu družbe, ki z organizacijskega vidika predstavlja posebno poslovanje.

(3) Pri združitvi ali delitvi iz prvega ali drugega odstavka tega člena lahko družba prejemnica poleg izdaje ali prenosa vrednostnih papirjev, opravi plačilo v denarju do višine 10% nominalne vrednosti oziroma če te vrednosti ni, računovodske vrednosti vrednostnih papirjev. Plačilo v denarju se lahko v celoti ali delno opravi manjšinskim družbenikom prenosne družbe namesto izdaje ali prenosa vrednostnih papirjev, toda največ 5% nominalne vrednosti oziroma če te vrednosti ni, računovodske vrednosti vrednostnih papirjev.

42. člen

(upravičenja)

Pri združitvah in delitvah je:

1. prenosna družba oproščena davka v zvezi z dobički in izgubami, ki nastanejo pri prenosu sredstev in obveznosti;

2. družba prejemnica upravičena:

a) do prenosa rezerv in rezervacij, ki jih je oblikovala prenosna družba, ob upoštevanju davčnih oprostitev in pogojev, ki bi veljali za prenosno družbo, če prenos ne bil izvršen;

b) do prenosa izgub prenosne družbe pod enakimi pogoji, ki bi veljali za prenosno družbo, če prenos ne bi bil izvršen;

c) do oprostitve davka v zvezi z dobički ali izgubami, ki jih doseže ob prenehanju udeležbe v kapitalu prenosne družbe, če ima udeležbo v kapitalu prenosne družbe.

43. člen

(pogoji)

(1) Prenosna družba in družba prejemnica imata pravice iz 42. člena tega zakona, če sta rezidenta Slovenije in/ali rezidenta države članice EU, ki ni Slovenija, in sicer:

1. če sta prenosna družba in družba prejemnica rezidenta Slovenije, ne glede na to, ali se dejavnost prenosne družbe opravlja v Sloveniji ali v državi članici EU, ki ni Slovenija;

2. če je prenosna družba rezident države članice EU, ki ni Slovenija in je družba prejemnica rezident Slovenije, pod pogojem, da po združitvi ali delitvi prenešana sredstva, obveznosti, rezervacije, rezerve in izgube ne pripadajo poslovni enoti družbe prejemnice izven Slovenije;

3. če je družba prejemnica rezident države članice EU, ki ni Slovenija in je prenosna družba rezident Slovenije ali druge države članice EU, ki ni Slovenija, pod pogojem, da po združitvi ali delitvi prenešana sredstva, obveznosti, rezervacije, rezerve in izgube pripadajo poslovni enoti družbe prejemnice v Sloveniji.

(2) Za rezidenta države članice EU, ki ni Slovenija, se šteje družba:

1. ki ima eno od oblik, za katere se uporablja enoten sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, razen oseb, ustanovljenih v skladu s pravom Slovenije, in jih določi minister, pristojen za finance;

2. ki je za davčne namene rezident države članice EU v skladu s pravom te države članice in se ne šteje za rezidenta izven EU v skladu z mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka, sklenjenega z državo nečlanico; in

3. ki je zavezanec za enega od davkov, v zvezi s katerimi se uporablja enoten sistem obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU, in jih določi minister, pristojen za finance. Za zavezanca se ne šteje družba, ki je davka oproščena ali ima možnost izbire.

44. člen

(vrednotenje in prevzem pravic in obveznosti)

Družba prejemnica:

1. ovrednoti prenešana sredstva in obveznosti po njihovi knjigovodski vrednosti pri prenosni družbi ob združitvi ali delitvi;

2. amortizira prenešana poslovna sredstva tako, kot bi se amortizirala pri prenosni družbi;

3. prevzame pravice in obveznosti prenosne družbe v zvezi s prenešenimi rezervacijami in rezervami.

45. člen

(posebne določbe)

(1) Če je prenosna družba rezident Slovenije in je družba prejemnica rezident države članice EU, ki



ni Slovenija in združitve ali delitev vključuje prenos dejavnosti, ki predstavlja poslovno enoto v državi članici EU, ki ni Slovenija, se ne uporablja 1. točka 42. člena, 1. in 2. točka 44. člena in 46. člen tega zakona, prenosna družba pa je upravičena do odbitka davka, ki izvira iz združitve ali delitve, ki bi ga država članica EU zaračunala zaradi združitve ali delitve, če ne bi bila uveljavljena ureditev enotnega sistema obdavčenja, ki velja za združitve, delitve, prenose sredstev in zamenjave kapitalskih deležev družb iz različnih držav članic EU.

(2) Družbenik prenosne družbe iz 1. točke 42. člena tega zakona, ki pri združitvi ali delitvi zamenja vrednostne papirje v prenosni družbi za vrednostne papirje v družbi prejemnici, ni zavezanec za davek v zvezi z dobičkom ali izgubo, ki nastane ob odsvojitvi vrednostnih papirjev prenosne družbe, razen če prejme plačilo v denarju, in sicer:

1. če je družbenik rezident Slovenije; ali

2. če družbenik ni rezident Slovenije in je imetnik vrednostnih papirjev v prenosni družbi in družbi prejemnici preko poslovne enote, ki jo ima v Sloveniji.

(3) Če prejme plačilo v denarju, je družbenik iz drugega odstavka tega člena zavezan za davek glede na plačilo v denarju, pri čemer se dobiček ali izguba, ki nastane v zvezi z vrednostnimi papirji prenosne družbe, v sorazmernem delu pripiše gotovinskemu plačilu in tržni vrednosti vrednostnih papirjev družbe prejemnice. Družbenik ovrednoti prejete vrednostne papirje družbe prejemnice po knjigovodski vrednosti vrednostnih papirjev prenosne družbe v času združitve ali delitve.

46. člen

(uporaba določb 41. do 47. člena tega zakona)

Določbe 41. do 47. člena tega zakona, ki se uporabljajo za prenosno družbo ali družbo prejemnico, se smiselno uporabljajo tudi za dve ali več prenosnih družb oziroma dve ali več družb prejemnic.

47. člen

(dovoljenje)

Prenosni družbi, družbi prejemnici in družbeniku prenosne družbe se upravičenja po 41. do 47. členu tega zakona priznajo na podlagi dovoljenja, ki ga izda davčni organ, če so izpolnjeni pogoji po 41. do 47. členu tega zakona.

4. Skupna določba

48. člen

(uporaba določb 30. do 47. člena tega zakona)

Za obdavčitev pri prenosu dejavnosti, obdavčitev pri zamenjavi kapitalskih deležev in obdavčitev pri združitvah in delitvah po 30. do 47. členu tega zakona, se določbe o prenosih vrednostnih papirjev, ki predstavljajo delež v kapitalu, uporabljajo tudi za družbe, kot na primer družbe z omejeno odgovornostjo, pri katerih kapitala ne predstavljajo vrednostni papirji.

VII. DAVČNE OLAJŠAVE

49. člen

(olajšava za investiranje)

(1) Zavezanec lahko uveljavlja zmanjšanje davčne osnove v višini 10% investiranega zneska v opremo, razen v osebna motorna vozila ter razen v pohištvo in pisarniško opremo brez računalniške opreme, in neopredmetena dolgoročna sredstva, vendar največ v višini davčne osnove, če gre za investicije v opremo in neopredmetena dolgoročna sredstva v Sloveniji.

(2) Zavezanec lahko uveljavlja dodatno zmanjšanje davčne osnove v višini 10% investiranega zneska v opremo za raziskave in razvoj, ki jo na predlog Agencije na področju raziskovalne dejavnosti in Agencije na področju tehnološkega razvoja, ki sta ustanovljeni po zakonu, ki ureja raziskovalno in razvojno dejavnost, določi minister, pristojen za znanost, ob soglasju ministra, pristojnega za finance, pri tem pa se upošteva, da gre za opremo, ki se uporablja za ustvarjalno delo, opravljano na sistematični podlagi z namenom povečanja znanja ter uporabo tega znanja za razvoj, vendar največ v višini davčne osnove, če gre za investicije v opremo v Sloveniji.

(3) V primeru finančnega najema lahko uveljavlja zmanjšanje davčne osnove po prvem in drugem odstavku tega člena zavezanec, ki opredmeteno osnovno sredstvo pridobi na podlagi finančnega najema.

(4) Zavezanec, ki koristi davčno olajšavo po prvem, drugem in tretjem odstavku tega člena, ne sme razporejati dobička za udeležbo v dobičku pred potekom treh davčnih obdobj po davčnem obdobju, za katero je izkoristil davčno olajšavo. Če zavezanec razporedi dobiček za udeležbo v dobičku pred potekom treh davčnih obdobj po davčnem obdobju, za katero je izkoristil davčno olajšavo, mora za znesek izkoriščene davčne olajšave povečati davčno osnovo v obdobju razporeditve dobička za udeležbo v dobičku.

(5) Če zavezanec proda oziroma odtuji ali prenese izven Slovenije opredmeteno osnovno sredstvo oziroma neopredmeteno dolgoročno sredstvo, za katero je izkoristil davčno olajšavo po prvem in drugem odstavku tega člena, prej kot v treh letih po letu, za katerega je izkoristil davčno olajšavo po prvem in drugem odstavku tega člena, mora za znesek izkoriščene davčne olajšave povečati davčno osnovo, in sicer v letu prodaje oziroma odtujitve ali prenosa sredstva. Za odtujitev sredstva po tem členu se šteje tudi prenehanje zavezanca, pri prenehanju s stečajem oziroma likvidacijo pa začetek stečajnega postopka oziroma postopka likvidacije. Za odtujitev sredstva se ne šteje, če gre za prenos dejavnosti, zamenjavo kapitalskih deležev, združitve in delitve v skladu s 30. do 48. členom tega zakona.

(6) V primeru finančnega najema se določba petega odstavka tega člena uporablja tudi, če najemojemalec izgubi pravico uporabe opredmetenega osnovnega sredstva.

(7) Zavezanec lahko za neizkoriščen del davčne olajšave po tem členu v davčnem obdobju zmanjšuje davčno osnovo v naslednjih petih davčnih obdobjih. V tem primeru se za tek roka treh let iz petega odstavka tega člena šteje, da je olajšavo izkoristil v obdobju, ko je ni izkoristil ali jo je delno izkoristil, ker ni imel ali ni imel dovolj davčne osnove.

(8) Pri zmanjšanju davčne osnove na račun neizkoriščenega dela davčne olajšave iz preteklih davčnih obdobj se davčna osnova najprej zmanjša za neizkoriščen del davčne olajšave starejšega datuma.

(9) Zmanjšanje davčne osnove zaradi neizkoriščenega dela davčne olajšave iz preteklih davčnih obdobj je dovoljeno največ do višine davčne osnove davčnega obdobja.

50. člen

(olajšava za zaposlovanje)

(1) Zavezanec, ki v davčnem obdobju za nedoločen čas in najmanj za dve leti zaposli pripravnika ali drugega delavca, ki prvič sklene delovno razmerje, ali delavca, ki je bil pred sklenitvijo pogodbe o zaposlitvi najmanj 12 mesecev prijavljen pri Zavodu Republike Slovenije za zaposlovanje, lahko uveljavlja zmanjšanje davčne osnove v višini 30% plače tega delavca, in sicer največ za prvih 12 mesecev zaposlitve teh oseb, vendar največ v višini davčne osnove.

(2) Zavezanec, gospodarska družba, ki v davčnem obdobju za nedoločen čas in najmanj za dve leti zaposli osebo, ki ima doktorat znanosti in pred tem ni bila zaposlena v gospodarski družbi, lahko uveljavlja zmanjšanje davčne osnove v višini 30%

plače te osebe, in sicer največ za prvih 12 mesecev zaposlitve teh oseb, vendar največ v višini davčne osnove. Olajšava po tem odstavku se izključuje z olajšavo po prvem odstavku tega člena.

(3) Če zavezanec odpove pogodbo o zaposlitvi osebi iz prvega odstavka, razen če ta sama odpove pogodbo o zaposlitvi, prej kot v dveh letih od zaposlitve te osebe, mora za znesek izkoriščene olajšave po prvem odstavku povečati davčno osnovo, in sicer v davčnem obdobju, v katerem je bila pogodba o zaposlitvi odpovedana. Če se pogodba o zaposlitvi osebe iz drugega odstavka tega člena odpove ali preneha veljati s sporazumno razveljavitvijo prej kot v dveh letih od zaposlitve te osebe, mora zavezanec za znesek izkoriščene olajšave po drugem odstavku tega člena povečati davčno osnovo, in sicer v davčnem obdobju, v katerem je bila pogodba o zaposlitvi odpovedana oziroma razveljavljena.

(4) Zavezanec, ki zaposluje invalida, po zakonu, ki ureja zaposlitveno rehabilitacijo in zaposlovanje invalidov, lahko uveljavlja zmanjšanje davčne osnove v višini 50% plač te osebe, vendar največ v višini davčne osnove, zavezanec, ki zaposluje invalidno osebo s 100% telesno okvaro in gluho osebo, pa v višini 70% plač te osebe, vendar največ v višini davčne osnove. Olajšava po tem odstavku se izključuje z olajšavo po prvem in drugem odstavku tega člena.

(5) Zavezanec, ki zaposluje invalide iz četrtega odstavka tega člena nad predpisano kvoto in katerih invalidnost ni posledica poškodbe pri delu ali poklicne bolezni pri istem delodajalcu po zakonu, ki ureja zaposlitveno rehabilitacijo in zaposlovanje invalidov, lahko uveljavlja zmanjšanje davčne osnove v višini 70% plač za te osebe, vendar največ v višini davčne osnove. Za namene tega odstavka se osebe iz tega odstavka všttevajo v kvoto po datumu sklenitve pogodbe o zaposlitvi, in sicer se najprej všttevajo tiste osebe s starejšim datumom sklenitve pogodbe o zaposlitvi. Olajšava po tem odstavku se izključuje z olajšavo po prvem, drugem in četrtem odstavku tega člena.

51. člen

(olajšava za prostovoljno dodatno pokojninsko zavarovanje)

Zavezanec - delodajalec, ki financira pokojninski načrt kolektivnega zavarovanja in izpolnjuje pogoje iz 302. do 305. člena Zakona o pokojninskem in invalidskem zavarovanju (Uradni list RS, št. 20/04-uradno prečiščeno besedilo), lahko uveljavlja zmanjšanje davčne osnove za premije prostovoljnega dodatnega pokojninskega zavarovanja, ki jih delno ali v celoti plača v korist delojemalcev - zavarovancev, izvajalca

pokojninskega načrta s sedežem v Sloveniji ali v državi članici EU po pokojninskem načrtu, ki je odobren in vpisan v poseben register v skladu s predpisi, ki urejajo prostovoljno dodatno pokojninsko in invalidsko zavarovanje, za leto, v katerem so bile premije plačane, vendar največ do zneska, ki je enak 24% obveznih prispevkov za pokojninsko in invalidsko zavarovanje za delojemalca - zavarovanca in ne več kot 549.400 tolarjev letno, vendar največ do višine davčne osnove davčnega obdobja. Glede valorizacije premije in načina objave valoriziranih zneskov premije, se uporabljajo določbe zakona, ki ureja dohodnino.

52. člen

(olajšava za donacije)

(1) Zavezanec lahko uveljavlja zmanjšanje davčne osnove za znesek izplačil v denarju in v naravi za humanitarne, dobrodelne, znanstvene, vzgojnoizobraževalne, športne, kulturne, ekološke in religiozne namene, in sicer le za takšna izplačila rezidentom Slovenije, ki so po posebnih predpisih ustanovljeni za opravljanje navedenih dejavnosti, do zneska, ki ustreza 0,3% obdavčenega prihodka davčnega obdobja zavezanca, vendar največ do višine davčne osnove davčnega obdobja.

(2) Zavezanec lahko uveljavlja tudi zmanjšanje davčne osnove za znesek izplačil v denarju in naravi političnim strankam in reprezentativnim sindikatom, vendar največ do zneska, ki je enak trikratni povprečni mesečni plači na zaposlenega pri zavezancu, vendar največ do višine davčne osnove davčnega obdobja.

(3) Za znesek, ki ustreza 0,3% obdavčenega prihodka davčnega obdobja zavezanca iz prvega odstavka tega člena in za znesek, ki je enak trikratni povprečni mesečni plači na zaposlenega pri zavezancu iz drugega odstavka tega člena, se šteje znesek vseh izplačil v celotnem davčnem obdobju.

#### VIII. DAVČNA STOPNJA

53. člen

(splošna stopnja)

Davek se plačuje po stopnji 25% od davčne osnove.

54. člen

(posebna stopnja)

(1) Investicijski skladi, obdavčeni po tem zakonu, ki so ustanovljeni po zakonu, ki ureja investicijske sklade in družbe za upravljanje, plačujejo davek v davčnem obdobju po stopnji 0% od davčne

osnove, če do 30. novembra tega obdobja razdelijo najmanj 90% poslovnega dobička prejšnjega davčnega obdobja.

(2) Pokojninski skladi, obdavčeni po tem zakonu, ki so ustanovljeni po zakonu, ki ureja pokojninsko in invalidsko zavarovanje, plačujejo davek po stopnji 0% od davčne osnove.

(3) Zavarovalnice, ki lahko izvajajo pokojninski načrt v skladu z zakonom, ki ureja pokojninsko in invalidsko zavarovanje, plačujejo od dejavnosti izvajanja pokojninskega načrta davek po stopnji 0% od davčne osnove, če sestavijo ločen davčni obračun samo za ta pokojninski načrt.

#### IX. ODPRAVA DVOJNEGA OBDAVČENJA DOHODKOV REZIDENTA

##### IZ VIROV IZVEN SLOVENIJE

55. člen

(odbitek tujega davka)

Rezident lahko od obveznosti za plačilo davka po davčnem obračunu za posamezno davčno obdobje odšteje znesek, ki je enak davku, ki ustreza davku po tem zakonu, ki ga je plačal od dohodkov iz virov izven Slovenije (v nadaljnjem besedilu: tuji davek) na dohodek iz virov izven Slovenije (v nadaljnjem besedilu: tuji dohodek), ki je vključen v njegovo davčno osnovo.

56. člen

(omejitev odbitka tujega davka)

(1) Odbitek iz 55. člena tega zakona ne sme preseči nižjega od:

1. zneska tujega davka na tuji dohodek, ki je bil končen in dejansko plačan; ali

2. zneska davka, ki bi ga bilo treba plačati po tem zakonu za tuje dohodke, če odbitek ne bi bil možen.

(2) Če ima Slovenija sklenjeno mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka z drugo državo, se za končen tuji davek na dohodke iz te države šteje znesek tujega davka, izračunan po stopnji, določeni v mednarodni pogodbi.

(3) Zneska iz 1. in 2. točke prvega odstavka tega člena se računata po posameznih državah, v katerih imajo tuji dohodki svoj vir in sicer za vsako državo posebej.

57. člen

(dokazila v zvezi z odbitkom)

(1) Zavezanec, ki uveljavlja odbitek po 55. členu tega zakona, zagotavlja dokazila, ki vsebujejo podatke glede davčne obveznosti izven Slovenije, o znesku davka od tujih dohodkov, osnovi za plačilo davka in znesku davka, ki je bil plačan.

(2) Način predložitve dokazil in njihova vsebina sta določena z zakonom, ki ureja davčni postopek.

58. člen

(sprememba odbitka)

Če se zaradi sprememb, zlasti vračil tujega davka, spremeni odbitek, mora zavezanec v obdobju, ko je do spremembe prišlo, povečati davek in sicer za znesek, enak razliki med priznanim odbitkom in odbitkom, ki bi bil možen, če bi se sprememba upoštevala.

59. člen

(prenašanje presežka odbitka)

Če je znesek iz 1. točke prvega odstavka 56. člena tega zakona višji od zneska iz 2. točke prvega odstavka istega člena (presežek odbitka), se razlika ne more prenašati med državami ali uveljavljati kot odbitek v naslednjih ali preteklih davčnih obdobjih.

60. člen

(nižji odbitek)

(1) Če je znesek davka po tem zakonu nižji od vsakega posameznega zneska iz 1. in 2. točke prvega odstavka 56. člena tega zakona, je najvišji možen odbitek odbitek v višini zneska davka.

(2) Odbitek, ki presega znesek davka, se ne prenaša v naslednja ali pretekla davčna obdobja.

## X. OBRAČUNAVANJE IN PLAČEVANJE DAVKA

### 1. Obveznost plačevanja davka

61. člen

(obveznost obračunavanja in plačevanja davka)

Zavezanec sam izračuna in plača davek.

62. člen

(obveznost akontacij davka)

(1) Od dohodkov zavezanca, določenih s tem zakonom, se med davčnim obdobjem plačuje akontacija davka, če ni s tem zakonom ali

zakonom, ki ureja davčni postopek, drugače določeno.

(2) Akontacija davka se določi, izračuna in plača v rokih in na način, določen s tem zakonom oziroma zakonom, ki ureja davčni postopek.

(3) Za plačano akontacijo davka se rezidentu in nerezidentu od dohodkov, ki jih dosegajo z opravljanjem aktivnosti v poslovni enoti ali preko poslovne enote v Sloveniji, zmanjša obveznost za plačilo davka po davčnem obračunu za posamezno davčno obdobje na način, določen s tem zakonom oziroma zakonom, ki ureja davčni postopek.

### 2. Obdavčenje v skupini

63. člen

(obdavčenje skupine)

(1) Davčna obveznost se lahko ugotovi na podlagi obdavčenja skupine.

(2) Pri obdavčenju skupine se dobiček in izguba davčnega obdobja, za katerega se ugotavlja davčna obveznost, ugotovljena v skladu s tem zakonom v posamičnih davčnih obračunih članov skupine, seštejeta.

64. člen

(skupina)

(1) Skupino po tem zakonu oblikujeta dva zavezanca, ki:

1. sta oba rezidenta Slovenije; in

2. če enemu (v nadaljnjem besedilu: glavni zavezanec) pripadajo neposredno vsi deleži v kapitalu drugega zavezanca (v nadaljnjem besedilu: podrejeni zavezanec).

(2) Zavezanci, za katere velja oprostitev po 9. členu tega zakona, ne morejo biti člani skupine.

65. člen

(pogoji za obdavčenje v skupini)

Skupina se oblikuje najmanj za obdobje treh let, če:

1. oba člana skupine sestavljata računovodske izkaze in letno poročilo za poslovno obdobje, ki je enako davčnemu obdobju; in

2. če imata člana skupine za obdobje najmanj 36 mesecev med seboj sklenjeno podjetniško pogodbo v skladu z zakonom, ki ureja gospodarske družbe, po kateri mora podrejeni

zavezanec prenesti ves svoj dobiček glavnemu zavezancu, glavni zavezanec pa mora pokrivati izgubo podrejenega zavezanca.

#### 66. člen

(začetek in prenehanje obdavčenja v skupini)

(1) Obdavčenje v skupini se prične izvajati z začetkom davčnega obdobja po letu, v katerem je bilo izdano dovoljenje za obdavčenje v skupini. Dovoljenje z učinkom za nazaj ni dopustno.

(2) Obdavčenje v skupini preneha:

1. s potekom obdobja, za katero je bilo izdano dovoljenje, če skupina ne zaprosi za dovoljenje za nadaljnje obdobje ali če zaprosi in ji dovoljenje za obdavčenje v skupini za naslednje obdobje ni izdano, ali

2. če člani skupine ne izpolnjujejo več pogojev po tem zakonu za obdavčenje v skupini; ali

3. pri združitvi glavnega in podrejenega zavezanca ali pri združitvah kateregakoli člana skupine s tretjo osebo; ali

4. če se nad glavnim oziroma podrejenim zavezancem začne postopek likvidacije ali stečaja; ali

5. če se pogodba iz 2. točke 65. člena tega zakona ne uresničuje.

(3) V primerih iz 2., 3., 4. in 5. točke drugega odstavka tega člena se davčna obveznost, ugotovljena v skupinskem davčnem obračunu, odpravi in se uveljavi posamična obveznost članov skupine, kot da skupinskega obdavčenja ne bi bilo.

#### 67. člen

(izgube pri obdavčenju v skupini)

(1) Izgub članov skupine, ki so vključene v obdavčenje v skupini, ni mogoče pokrivati na drug način.

(2) Na začetku obdavčenja v skupini se vsaka izguba članov skupine, ugotovljena v skladu s tem zakonom, ki še ni bila pokrita, zmanjša na nič (0).

#### XI. OBDAVČITEV DOHODKOV Z VIROM V SLOVENIJI

#### 68. člen

(davčni odtegljaj)

(1) Davek se izračuna, odtegne in plača po stopnji 25% od dohodkov rezidentov in nerezidentov - razen dividend in podobnih dohodkov, razdeljenih preko poslovne enote nerezidenta, ki se nahaja v Sloveniji - ki imajo vir v Sloveniji, in sicer od:

1. dividend in podobnih dohodkov iz 72. člena tega zakona;

2. obresti, razen obresti:

a) od kreditov, ki jih najema, in vrednostnih papirjev, ki jih izdaja Slovenija;

b) iz najetih kreditov in izdanih dolžniških vrednostnih papirjev s strani pooblaščne institucije v skladu z zakonom, ki ureja zavarovanje in financiranje mednarodnih gospodarskih poslov, za katera po navedenem zakonu daje poroštvo Slovenija;

3. plačil za uporabo ali pravico do uporabe avtorskih pravic, patentov, licenc, zaščitnih znakov in drugih premoženjskih pravic in drugih podobnih dohodkov;

4. plačil za zakup;

5. plačil za storitve nastopajočih izvajalcev ali športnikov, če ta plačila pripadajo drugi osebi.

(2) Davek se ne izračuna, odtegne in plača od dohodkov iz prvega odstavka tega člena plačanih:

1. Sloveniji ali samoupravni lokalni skupnosti v Sloveniji;

2. Banki Slovenije;

3. zavezancu rezidentu, ki izplačevalcu sporoči svojo davčno številko;

4. zavezancu nerezidentu, ki je zavezan za davek od dohodkov, ki jih dosega z aktivnostmi v poslovni enoti ali preko poslovne enote v Sloveniji, in izplačevalcu sporoči svojo davčno številko, če gre za dohodke, plačane tej poslovni enoti.

(3) Če je v mednarodnih pogodbah o izogibanju dvojnega obdavčevanja dohodka določena drugačna davčna stopnja kot v tem členu, se neposredno uporablja davčna stopnja iz teh pogodb. Za to upravičenje je potrebno predložiti dokazila, v skladu z zakonom, ki ureja davčni postopek, da se izplačilo resnično izplačuje prejemniku, ki je rezident države, s katero je sklenjena pogodba.

#### 69. člen

(obdavčenje, ki velja za matične družbe in odvisne družbe

iz različnih držav članic EU)

(1) Davka se ne odtegne od plačil dividend in dohodkov, podobnih dividendam, ki se razdelijo osebam, ki imajo eno od oblik, za katere se uporablja skupen sistem obdavčenja, ki velja za matične družbe in odvisne družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, če:

1. ima prejemnik najmanj 25% vrednosti ali števila delnic ali deležev v delniškem kapitalu, osnovnem kapitalu ali glasovalnih pravicah osebe, ki deli dobiček;

2. traja najnižja udeležba iz 1. točke tega odstavka najmanj 24 mesecev; in je

3. prejemnik:

a) oseba, ki ima eno od oblik, za katere se uporablja skupen sistem obdavčenja, ki velja za matične družbe in odvisne družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance;

b) za davčne namene rezident v državi članici EU v skladu s pravom te države in se ne šteje kot rezident izven EU v skladu z mednarodno pogodbo o izogibanju dvojnega obdavčevanja dohodka, sklenjene z državo nečlanico; in

c) je zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja, ki velja za matične družbe in odvisne družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, kjer se za zavezanca ne šteje družba, ki je davka oproščena ali ima možnost izbire.

(2) Dividenda, ki je izplačana osebi, ki še ne izpolnjuje pogoja 24 mesecev po 2. točki prvega odstavka tega člena, sicer pa izpolnjuje pogoje iz prvega odstavka tega člena, se lahko izplača brez odtegljaja davka, če izplačevalec dividende ali posrednik, za zavarovanje izpolnitve morebitne davčne obveznosti, izroči ustrezno bančno garancijo pristojnemu davčnemu organu. Znesek bančne garancije je znesek davka, izračunan od osnove, ki je enaka znesku dividende, izračunane na podlagi preračunane stopnje.

(3) Pristojni davčni organ lahko unovči garancijo, če prejemnik dividende ni razpolagal 24 mesecev z najnižjo udeležbo iz 1. točke prvega odstavka tega člena. Garancija poteče s potekom 24 mesecev razpolaganja z najnižjo udeležbo.

(4) Za ustrezno bančno garancijo se šteje bančna garancija banke s sedežem v Sloveniji ali v državi

članici EU, s katero se banka nepreklicno zavezuje, da bo na prvi poziv pristojnega davčnega organa ter brez ugovorov, na poseben račun davčnega organa izplačala vsoto iz drugega odstavka tega člena, z rokom veljavnosti do dneva izpolnitve pogoja glede časa trajanja udeležbe v skladu z 2. točko prvega odstavka tega člena.

70. člen

(obdavčenje, ki velja v zvezi s plačili obresti in plačili uporabe

premoženjskih pravic med povezanimi družbami iz različnih držav članic EU)

(1) Davka se ne odtegne od plačil obresti in plačil za uporabo premoženjskih pravic družbam, ki imajo eno od oblik, za katere se uporablja skupen sistem obdavčenja v zvezi s plačili obresti in plačili uporabe premoženjskih pravic, ki velja za povezane družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, če, v času plačila,:

1. so obresti in plačila uporabe premoženjskih pravic izplačane upravičenemu lastniku, ki je družba države članice EU, ki ni Slovenija, ali poslovna enota družbe države članice EU, ki se nahaja v drugi državi članici EU;

2. sta plačnik in upravičeni lastnik povezana tako, da:

a) je plačnik neposredno najmanj 25% udeležen v kapitalu upravičenega lastnika, ali

b) je upravičeni lastnik neposredno najmanj 25% udeležen v kapitalu plačnika;

c) je ista družba neposredno najmanj 25% udeležena v kapitalu plačnika in upravičenega lastnika,

pri tem pa gre za udeležbo med družbami iz držav članic EU;

3. traja najnižja udeležba iz 2. točke tega odstavka najmanj 24 mesecev; in je

4. plačnik ali upravičeni lastnik:

a) družba, ki ima eno od oblik, za katere se uporablja skupen sistem obdavčenja v zvezi s plačili obresti in plačili uporabe premoženjskih pravic, ki velja za povezane družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance;

b) za davčne namene rezident v državi članici EU v skladu s pravom te države in se ne šteje kot rezident izven EU v skladu z mednarodno pogodbo

o izogibanju dvojnega obdavčevanja dohodka, sklenjene z državo nečlanico EU; in

c) je zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja v zvezi s plačili obresti in plačili uporabe premoženjskih pravic, ki velja za povezane družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, kjer se za zavezanca ne šteje družba, ki je davka oproščena, ali za davek, ki je istoveten ali bistveno podoben in je dodatno uveden ali nadomesti obstoječi davek.

(2) Določba prvega odstavka tega člena se uporablja samo za znesek obresti po drugem odstavku 15. člena tega zakona in znesek plačil uporabe premoženjskih pravic po drugem odstavku 12. člena tega zakona.

(3) Poslovna enota se šteje za plačnika obresti in plačil uporabe premoženjskih pravic po tem členu, če so te obresti in plačila uporabe premoženjskih pravic zanjo odhodek po tem zakonu.

(4) Upravičeni lastnik obresti in plačil uporabe premoženjskih pravic iz prvega odstavka tega člena je družba države članice EU, ki ni Slovenija, ki je prejemnik teh obresti in plačil uporabe premoženjskih pravic v svojo korist. Ne šteje se za upravičenega lastnika posrednik za drugo osebo, kot predstavnik, pooblaščenec ali pooblaščen podpisnik (zastopnik).

(5) Poslovna enota se šteje za upravičenega lastnika obresti in plačil uporabe premoženjskih pravic, če:

a) je terjatev, pravica ali uporaba informacije, v zvezi s katerimi nastanejo obresti ali plačila uporabe premoženjskih pravic, dejansko povezana s to poslovno enoto; in

b) obresti ali plačila uporabe premoženjskih pravic predstavljajo dohodek, za katerega je ta poslovna enota v državi članici EU, v kateri se nahaja, zavezanec za enega od davkov, v zvezi s katerimi se uporablja skupen sistem obdavčenja v zvezi s plačili obresti in plačili uporabe premoženjskih pravic, ki velja za povezane družbe iz različnih držav članic EU, in jih določi minister, pristojen za finance, kjer se za zavezanca ne šteje družba, ki je davka oproščena, ali za davek, ki je istoveten ali bistveno podoben in je dodatno uveden ali nadomesti obstoječi davek.

(6) Kadar se poslovna enota družbe države članice EU šteje za plačnika ali upravičenega lastnika za obresti in plačila uporabe premoženjskih pravic, se noben drug del te družbe ne šteje kot plačnik ali upravičeni lastnik za te obresti in ta plačila uporabe premoženjskih pravic za namene tega člena.

(7) Določbe tega člena se ne uporabljajo za plačila obresti in plačila uporabe premoženjskih pravic poslovne enote ali poslovni enoti družbe države članice EU, ki se nahaja v tretji državi, in prek nje v celoti ali delno potekajo posli družbe.

(8) Za namene tega člena vključujejo obresti dohodek iz vseh vrst terjatev ne glede na to, ali so zavarovane s hipoteko, in ne glede na to, ali imajo pravico do udeležbe v dolžnikovem dobičku, in še posebej dohodek iz državnih vrednostnih papirjev ter dohodek iz obveznic ali zadolžnic, vključno s premijami in nagradami, ki pripadajo takim vrednostnim papirjem, obveznicam ali zadolžnicam. Kazni zaradi zamude pri plačilu se za namene tega člena ne štejejo za obresti.

(9) Za namene tega člena vključujejo plačila uporabe premoženjskih pravic plačila vsake vrste, prejeta za uporabo ali pravico do uporabe kakršnihkoli avtorskih pravic za literarno, umetniško ali znanstveno delo, vključno s kinematografskimi filmi in programsko opremo, kateregakoli patenta, blagovne znamke, vzorca ali modela, načrta, tajne formule ali postopka ali za informacije o industrijskih, komercialnih ali znanstvenih izkušnjah.

(10) Upravičenje po tem členu se prizna na podlagi dovoljenja davčnega organa, če so izpolnjeni pogoji iz tega člena. Dovoljenje se izda na podlagi vloge. Vloga ter postopek glede vloge in izdaje dovoljenja je urejen z zakonom, ki ureja davčni postopek.

71. člen

(uporaba določb 70. člena tega zakona)

Določbe 70. člena tega zakona se ne uporabljajo, če gre za:

1. plačila, ki imajo naravo delitve dobička ali vračila kapitala,
2. obresti iz kreditov, ki vsebujejo pravico udeležbe na dolžnikovem dobičku,
3. obresti iz kreditov, ki kreditodajalcu dajejo pravico zamenjave njegove pravice do obresti v pravico do udeležbe v dobičku,
4. plačila iz kreditov, ki ne vsebujejo določb za vračilo glavnice ali vračilo glavnice zapade po 50 letih po nastanku.

72. člen

(dividende in dohodki, podobni dividendam)

Za namene tega zakona vključujejo dividende in dohodki, podobni dividendam:

1. dobiček ali presežek, ki se razdeli družbenikom ali članom izplačevalca, v zvezi z udeležbo v izplačevalcu ali druga razdelitev družbenikom ali članom izplačevalca, v zvezi z udeležbo v izplačevalcu;

(uporaba določb Zakona o davku od dobička pravnih oseb

v zvezi z olajšavami)

2. dobiček, ki se razdeli v zvezi z vrednostnimi papirji in krediti, ki zagotavljajo udeležbo v dobičku izplačevalca;

Zavezanec, kateremu so pred dnem začetka uporabe tega zakona začeli teči roki po 39., 40., 41. in 42. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), se glede teh rokov obravnava po dosedanjih predpisih.

3. obresti, plačane v zvezi z zamenljivimi obveznicami;

75. člen

4. dobiček ali rezerve izplačevalca, ki se delijo v zvezi z udeležbo v izplačevalcu ob prenehanju ali ob izključitvi ali izstopu delničarja, družbenika ali člana iz izplačevalca;

(uporaba določb Zakona o davku od dobička pravnih oseb

v zvezi z olajšavo za zaposlovanje)

5. povečanje osnovnega kapitala izplačevalca, ki se je povečal iz rezerv, oblikovanih iz dobička, ali dobička ali prevrednotovalnega popravka teh dveh kategorij;

Zavezanec, ki ima na dan začetka uporabe tega zakona, pravico do zniževanja davčne osnove po prvem odstavku 42. člena Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), jo lahko znižuje do poteka obdobja 12 mesecev po 42. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo).

6. zmanjšanje osnovnega kapitala izplačevalca, če ima izplačevalec dobiček ali presežek, ki ni bil razdeljen;

76. člen

(obračunavanje zalog)

7. izplačana vrednost delnic ali deležev v primeru odsvojitve delnic ali deležev v okviru pridobivanja lastnih delnic oziroma deležev družbe, razen v primeru, ko družba pridobiva lastne delnice preko borze, zmanjšana za nominalno vrednost delnic;

(1) Zavezancu se v dobo iz drugega odstavka 24. člena tega Zakona všteta tudi čas obračunavanja zalog pred dnem začetka uporabe tega zakona po 14. členu zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), in sicer od zadnje spremembe izbrane metode.

8. dobiček, prenešen na podlagi podjetniške pogodbe v skladu z zakonom, ki ureja gospodarske družbe.

(2) Ne glede na določbo prvega odstavka tega člena, zavezanec, ki obračunava zaloge po 14. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), lahko z dnem začetka uporabe tega zakona izbere drugo metodo obračunavanja zalog, pri tem pa mora prikazati vrednostni učinek sprememb.

73. člen

77. člen

(sprememba amortizacijskih stopenj)

(vštevanje davčnega odtegljaja v davčno osnovo)

(1) Rezident, ki prejme dohodek, od katerega se odtegne davek v skladu z določbami tega poglavja, všteje dohodek v svojo davčno osnovo pred zmanjšanjem za odtegnjen davek.

(2) Nerezident, ki prejme dohodek, od katerega se odtegne davek po določbah tega poglavja v zvezi z aktivnostjo, ki jo opravlja v poslovni enoti v Sloveniji ali preko poslovne enote v Sloveniji, všteje dohodek v svojo davčno osnovo pred zmanjšanjem za odtegnjen davek.

(3) Za plačan znesek odtegnjenega davka se zmanjša obveznost zavezanca iz prvega in drugega odstavka tega člena za plačilo davka po davčnem obračunu za posamezno davčno obdobje na način, določen s tem zakonom oziroma zakonom, ki ureja davčni postopek.

Zavezancu, ki je pričel z amortizacijo opredmetenih osnovnih sredstev in neopredmetenih dolgoročnih sredstev pred dnem začetka uporabe tega zakona, se kot odhodek prizna amortizacija teh opredmetenih osnovnih sredstev in neopredmetenih dolgoročnih sredstev do dokončne amortizacije v višini v skladu s 15., 16. in 17. členom Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo).

## XII. PREHODNE DOLOČBE

74. člen



78. člen

(uporaba 25. člena tega zakona)

(1) Za obresti iz 25. člena tega zakona, ki se ne priznajo kot odhodek, se štejejo obresti na posojila, nastala po dnevu začetka uporabe tega zakona.

(2) Ne glede na določbo 25. člena tega zakona, se kot odhodek ne priznajo obresti od posojil, razen pri posojiljemalcih bankah in zavarovalnicah, ki so prejeta od družbenika, ki ima kadarkoli v davčnem obdobju neposredno ali posredno v lasti najmanj 25% delnic ali deležev v kapitalu ali glasovalnih pravic v zavezancu, če kadarkoli v davčnem obdobju ta posojila presegajo

1. v prvem, drugem in tretjem letu po dnevu začetka uporabe zakona osemkratnik,

2. v četrtem, petem in šestem letu šestkratnik,

3. v sedmem letu pa petkratnik

zneska deleža tega družbenika v kapitalu zavezanca, ugotovljene glede na znesek in obdobje trajanja presežka posojil v davčnem obdobju.

79. člen

(uporaba določb Zakona o davku od dobička pravnih oseb pri obdavčitvi

pri prenosu dejavnosti, obdavčitvi pri zamenjavi kapitalskih deležev

in obdavčitvi pri združitvah in delitvah)

(1) Pri obdavčitvi pri prenosu dejavnosti, obdavčitvi pri zamenjavi kapitalskih deležev in obdavčitvi pri združitvah in delitvah po 30. do 48. členu tega zakona, se prenos dejavnosti, zamenjava kapitalskih deležev in združitve in delitve ne štejejo za dogodke, ki po 40., 41. in 42. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo) povzročijo, da mora zavezanec v letu takšnega dogodka povečati davčno osnovo za izkoriščeno olajšavo po 39. do 42. členu zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo). Upoštevajo pa se olajšave in pogoji, ki bi veljali, če ne bi prišlo do prenosa dejavnosti, zamenjave kapitalskih deležev in združitve in delitve.

(2) Določbe Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), ki zapadejo pod prehodno ureditev, se pri obdavčitvi pri prenosu dejavnosti, obdavčitvi pri zamenjavi kapitalskih deležev in obdavčitvi pri združitvah in delitvah po 30. do 48. členu tega

zakona upoštevajo, kot bi veljalo, če ne bi prišlo do prenosa dejavnosti, zamenjave kapitalskih deležev in združitve in delitve.

80. člen

(uporaba 49. člena tega zakona)

(1) Ne glede na določbo prvega odstavka 49. člena tega zakona, lahko zavezanec za leto 2005 uveljavlja znižanje davčne osnove v višini 20% investiranega zneska v opredmetena osnovna sredstva, razen v osebna motorna vozila, in neopredmetena dolgoročna sredstva, vendar največ v višini davčne osnove, če gre za investicije v opredmetena osnovna sredstva in neopredmetena dolgoročna sredstva v Sloveniji, in dodatno zmanjšanje davčne osnove v višini 20% investiranega zneska v opremo, razen v osebna motorna vozila ter razen v pohištvo in pisarniško opremo brez računalniške opreme, in neopredmetena dolgoročna sredstva, vendar največ v višini davčne osnove, če gre za investicije v opremo in neopredmetena dolgoročna sredstva v Sloveniji.

(2) Sedmi odstavek 49. člena tega zakona se ne uporablja za priznavanje davčne olajšave po prvem odstavku tega člena.

81. člen

(uporaba 200. člena Zakona o davčnem postopku)

Zavezanci, ki ugotavljajo davek na podlagi skupinskega davčnega obračuna v skladu z 200. členom Zakona o davčnem postopku (Uradni list RS, št. 18/96, 87/97, 35/98-odločba US, 82/98, 91/98, 108/99, 37/01-odločba US, 97/01 in 105/03-odločba US) in je bila odobritev davčnega organa dana pred dnem začetka uporabe tega zakona lahko:

a) ugotavljajo davek v skladu s 200. členom Zakona o davčnem postopku (Uradni list RS, št. 18/96, 78/96, 87/97, 35/98, 76/98, 82/98, 91/98, 1/99, 108/99, 37/01, 97/01, 52/02 in 33/03) do poteka dobe iz petega odstavka navedenega člena, ali

b) ugotavljajo davčno obveznost v skladu s 63. do 67. členom tega zakona, pri tem pa se sprememba načina ugotavljanja ne šteje za opredelitev za posamično obdavčenje in člani ne ravnajo po šestem odstavku 200. člena Zakona o davčnem postopku (Uradni list RS, št. 18/96, 78/96, 87/97, 35/98, 76/98, 82/98, 91/98, 1/99, 108/99, 37/01, 97/01, 52/02 in 33/03).

82. člen

(uporaba 23. člena Zakona o davku od dobička pravnih oseb)

Določbe drugega odstavka 16. člena tega zakona se uporabljajo tudi za rezervacije po 23. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), oblikovane pred dnem začetka uporabe tega zakona.

83. člen

(pretekle izgube)

(1) Določbe petega odstavka 29. člena tega zakona se ne uporabljajo za izgube iz davčnih obdobj pred davčnim obdobjem, za katerega se že uporablja ta zakon.

(2) Izgube iz davčnih obdobj pred dnem začetka uporabe tega zakona se lahko pokrivajo v skladu s 34. do 36. členom Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo).

84. člen

(uporaba 68. člena tega zakona)

Določbe 68. člena tega zakona se ne uporabljajo za plačila iz 2. do 5. točke prvega odstavka 68. člena tega zakona, ki so obračunana za obdobja pred 1. januarjem 2005.

85. člen

(uporaba 65.c člena Zakona o davku od dobička pravnih oseb)

Določba 65.c člena Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo), ki določa, da se davčna osnova zmanjšuje za obračunane obresti od dolgoročnih in kratkoročnih vrednostnih papirjev, ki so jih do 8. aprila 1995 izdale Slovenija, občine ali javna podjetja, ki so jih ustanovile Slovenija oziroma občine, vendar največ do višine davčne osnove, se uporablja tudi po dnevu začetka uporabe tega zakona.

86. člen

(prehod na izbrano davčno obdobje)

(1) Pri prehodu na davčno obdobje, ki se razlikuje od koledarskega leta, so obdavčeni dohodki zavezanca v davčnem obdobju, ki je obdobje od konca koledarskega leta do začetka naslednjega davčnega obdobja, ki se razlikuje od koledarskega leta, kot bi šlo za celotno davčno obdobje.

(2) Pri prehodu na davčno obdobje, ki se ne razlikuje od koledarskega leta, so obdavčeni dohodki zavezanca v davčnem obdobju, ki je obdobje od konca davčnega obdobja, ki se razlikuje od koledarskega leta, do začetka

naslednjega davčnega obdobja, ki se ne razlikuje od koledarskega leta, kot bi šlo za celotno davčno obdobje.

(3) Na način, kot je določeno v prvem in drugem odstavku tega člena, so obdavčeni tudi dohodki zavezanca v obdobju pri prehodu iz enega davčnega obdobja, ki se razlikuje od koledarskega leta, na drugo davčno obdobje, ki se tudi razlikuje od koledarskega leta.

87. člen

(uporaba določb 5. člena Zakona o davku od dobička pravnih oseb

v zvezi s stalno poslovno enoto)

Gradbišče ali kraj, kjer se opravljajo gradbena oziroma montažna dela, če je gradbišče bilo oblikovano oziroma so se dela začela opravljati pred dnevom začetka uporabe tega zakona, se šteje za poslovno enoto nerezidenta, če aktivnosti trajajo dlje od obdobja določenega v 5. členu Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo).

### XIII. KONČNI DOLOČBI

88. člen

(prenehanje veljavnosti)

(1) Zakon o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo) in predpisi, izdani na njegovi podlagi, prenehajo veljati z dnem uveljavitve tega zakona, uporabljajo pa se do 31. decembra 2004. Od 1. maja 2004 do 31. decembra 2004 pa se uporabljajo, če niso v nasprotju z določbami členov, naštetih v 89. členu tega zakona.

(2) Z dnem uveljavitve tega zakona preneha veljati Zakon o obdavčitvi tujih oseb (Uradni list SRS, št. 3/73, 15/83, 39/85, 16/86, 22/86-popr.).

(3) 3. člen Zakona o spremembah in dopolnitvah zakona o zavarovalništvu (Uradni list RS, št. 21/02) preneha veljati z dnem začetka uporabe tega zakona. Ne glede na določbe tega zakona o rezervacijah, pa se 3. člen Zakona o spremembah in dopolnitvah zakona o zavarovalništvu (Uradni list RS, št. 21/02) tudi po dnevu začetka uporabe tega zakona, uporablja za rezervacije, oblikovane pred dnem začetka uporabe tega zakona.

89. člen

(začetek veljavnosti in uporabe)

(1) Ta zakon začne veljati naslednji dan po objavi v Uradnem listu Republike Slovenije, uporablja pa se od 1. januarja 2005 dalje, razen določb 18.,

30. do 48., 51., 68., kolikor se nanaša na plačila iz 1. točke prvega odstavka 68. člena tega zakona, ter 69. do 71. člen tega zakona, ki se uporabljajo od 1. maja 2004 dalje.

(2) Ne glede na prvi odstavek tega člena, se 68. člen tega zakona, kolikor se nanaša na plačila

dividend iz 32. člena Zakona o davku od dobička pravnih oseb (Uradni list RS, št. 14/03-uradno prečiščeno besedilo) za prenos v tujino, uporablja tako, da se za ta plačila do 31. decembra 2004 davek odtegne, obračuna in plača po stopnji 15%.

European Commission

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Title: Analysis of the Non-Profit Sector in the EU10 for Monitoring and Control

Author(s): Arunas Rakauskas and Anjula Garg

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**Abstract**

The expansion of the European Union marks a changing and defining period for the non profit sector of the accession countries. The issues related to expansion were numerous and complex. This process has resulted in the governments and parliaments of the accession countries creating institutions and mechanisms to facilitate the integration process.

The work "Analysis of the EU10 Non-Profit Sector for Monitoring and Control" contributes to the main objective of supporting EU regulatory work for the non-profit sector and the transparency and traceability for aid funds. This report is complementary to the report "Analysis of the EU15 Non-profit Sector for Monitoring and Control" which sets out the context of the current work in detail and also contains information regarding the classification and definitions used for the non profit sector.

Primarily the aim of this work is to present an overview of the non-profit sector in EU10 with regard to the prevention of fraudulent use of funds in the non-profit sector. The basic purpose of this report is to support the EU regulatory work for the charitable/non-profit sector through a comparative analysis of information with a view to standardising terminology, comparing requirements for registration, accreditation, and monitoring. The report also includes an overview of the tax status of Non-Governmental Organisations, as well as short overview of the gambling sector in the EU10.

This work can be seen as an auxiliary means to support transparency and traceability for aid funds. The work presented pertains to the JRC research project "Transparent Aid – A System to Support Monitoring of Aid Funds" (TR-AID) to build automated IT-based tools to support monitoring and control tasks for activities financed through aid funds. TR-AID started in 2004 in the Unit "Support to External Security" of the Institute for the Protection and Security of the Citizen, at JRC-Ispra. The main objective of TR-AID is to contribute towards the effective use of aid funds by helping to avoid the misuse of such funds. The data collection effort that it entails is meant to complement official aid activity databases. Sources of information will include European Commission databases, OECD databases, open sources (e.g. web sites of both non-profit and donor organisations) and third-party databases, such as company directories.

It needs to be noted that due to the language difficulties, the diversity of the sector and the short time available to complete this work, the report may not contain complete information regarding the non profit sector in the EU10.

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