

Art. 79

II. Deletion from
the commercial
register

Where the association is registered, the committee or the court shall inform the commercial registrar of the dissolution so that the entry may be deleted.

Chapter Three: Foundations**Art. 80**

A. Formation
I. In general

A foundation is established by the endowment of assets for a particular purpose.

Art. 81

II. Form of
establishment

¹ A foundation may be created by public deed or by testamentary disposition.⁸³

² The foundation is entered in the commercial register based on its charter and, as the case may be, in accordance with any directions issued by the supervisory authority, and the entry must indicate the members of the board of trustees.

³ The probate authority shall inform the commercial registrar of the creation of the foundation by testamentary disposition.⁸⁴

Art. 82

III. Challenge

A foundation may be challenged by the founder's heirs or creditors in the same manner as a gift.

Art. 83⁸⁵

B. Organisation
I. In general

The foundation charter shall stipulate the foundation's governing bodies and the manner in which it is to be administered.

⁸³ Amended by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS **2005** 4545; BBl **2003** 8153 8191).

⁸⁴ Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS **2005** 4545; BBl **2003** 8153 8191).

⁸⁵ Amended by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBl **2002** 3148, **2004** 3969).

Art. 83a⁸⁶

- II. Bookkeeping 1 The supreme governing body of the foundation shall maintain its business ledgers. The provisions of the Code of Obligations⁸⁷ on commercial bookkeeping and accounting apply *mutatis mutandis*.

Art. 83b⁸⁸

- III. Auditors
1. Duty of audit and applicable law
- 1 The board of trustees shall appoint external auditors.
- 2 The supervisory authority may exempt a foundation from the duty to appoint external auditors. The Federal Council determines the conditions for such exemption.
- 3 Where there are no special provisions for foundations, the provisions of the Code of Obligations⁸⁹ on external auditors for public limited companies apply *mutatis mutandis*.
- 4 If the foundation has a duty to carry out a limited audit, the supervisory authority may require a full audit where necessary for a reliable assessment of the foundation's financial situation.

Art. 83c⁹⁰

2. Supervisory authority
- The external auditors must provide the supervisory authority with a copy of the audit report and all important communications with the foundation.

Art. 83d⁹¹

- IV. Organisational defects
- 1 If the planned system of organisation proves inadequate or if the foundation lacks one of the prescribed governing bodies or one such body is not lawfully constituted, the supervisory authority must take the necessary measures. In particular it may:

⁸⁶ Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations; AS **2005** 4545; BBI **2003** 8153 8191). Amended by Annex No. 1 of the FA of 23 Dec. 2011 (Accounting Law), in force since 1 Jan. 2013 (AS **2012** 6679; BBI **2008** 1589).

⁸⁷ SR **220**

⁸⁸ Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations; AS **2005** 4545; BBI **2003** 8153 8191). Amended by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBI **2002** 3148, **2004** 3969).

⁸⁹ SR **220**

⁹⁰ Inserted by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBI **2002** 3148, **2004** 3969).

⁹¹ Inserted by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), in force since 1 Jan. 2008 (AS **2007** 4791; BBI **2002** 3148, **2004** 3969).

1. set a time limit within which the foundation must restore the legally required situation; or
2. appoint the body which is lacking or an administrator.

² In the event that the foundation is unable to organise itself effectively, the supervisory authority shall transfer its assets to another foundation with as similar objects as possible.

³ The foundation bears the cost of such measures. The supervisory authority may require the foundation to make an advance payment to the persons appointed.

⁴ For good cause, the foundation may request the supervisory authority to remove persons whom it has appointed.

Art. 84

C. Supervision

¹ Foundations are supervised by the state authority (Confederation, canton, commune) to which they are assigned.

^{1bis} The cantons may subject foundations at communal level to supervision at cantonal level.⁹²

² The supervisory authority must ensure that the foundation's assets are used for their declared purpose.

Art. 84a⁹³

^{Cbis} Measures in the event of overindebtedness and insolvency

¹ Where there are grounds for concern that the foundation is overindebted or will no longer be able to meet its obligations in the longer term, its board of trustees must draw up an interim balance sheet at liquidation values and submit it to the external auditors. If the foundation has no external auditors, the board of trustees must submit the interim balance sheet to the supervisory authority.

² If the external auditors establish that the foundation is overindebted or will no longer be able to meet its obligations in the longer term, it must submit the interim balance sheet to the supervisory authority.

³ The supervisory authority shall direct the board of trustees to take the necessary measures. If it fails to do so, the supervisory authority takes such measures itself.

⁴ If necessary, the supervisory authority shall take legal enforcement measures; the provisions of company law on commencement or deferral of compulsory dissolution apply *mutatis mutandis*.

⁹² Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

⁹³ Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

Art. 84b⁹⁴**Art. 85⁹⁵**

D. Modification
of the foundation
I. Reorganisation

At the request of the supervisory authority and having heard the board of trustees, the competent federal or cantonal authority may modify the foundation's organisation where such a step is urgently required in order to preserve the foundation's assets or safeguard the pursuit of its objects.

Art. 86

II. Amendment
of objects
1. Request by the
supervisory
authority or the
board of
trustees⁹⁶

¹ At the request of the supervisory authority or the board of trustees, the competent federal or cantonal authority may amend the objects of the foundation where the original objects have altered in significance or effect to such an extent that the foundation has plainly become estranged from the founder's intentions.⁹⁷

² Subject to the same requirements, conditions that are detrimental to the objects of the foundation may be revoked or amended.

Art. 86a⁹⁸

2. At the
founder's request
or in accordance
with his
testamentary
disposition

¹ The competent federal or cantonal authority shall amend the objects of the foundation at the founder's request or in accordance with his or her testamentary disposition, provided that the charter reserves the right to amend the objects and that at least ten years have elapsed since the foundation was established or since the last amendment requested by the founder.

² Where the foundation pursues public or charitable objects within the meaning of Art. 56 lit. g of the Federal Act of 14 December 1990 on Direct Federal Taxation⁹⁹, such new objects must likewise be public or charitable.

⁹⁴ Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations; AS **2005** 4545; BBI **2003** 8153 8191). Repealed by Annex No 1 of the FA of 16 Dec. 2005 (Law on limited liability companies and modifications to the law on companies limited by shares, cooperatives, the commercial register and company names), with effect from 1 Jan. 2008 (AS **2007** 4791; BBI **2002** 3148, **2004** 3969).

⁹⁵ Amended by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS **2005** 4545; BBI **2003** 8153 8191).

⁹⁶ Amended by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS **2005** 4545; BBI **2003** 8153 8191).

⁹⁷ Amended by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS **2005** 4545; BBI **2003** 8153 8191).

⁹⁸ Inserted by No I of the FA of 8 Oct. 2004 (Law on Foundations), in force since 1 Jan. 2006 (AS **2005** 4545; BBI **2003** 8153 8191).

⁹⁹ SR **642.11**

³ The right to amend a foundation's objects is neither transferable nor heritable. If the founder is a legal entity, the right extinguishes at the latest 20 years after the establishment of the foundation.

⁴ Joint founders may only jointly request an amendment of the foundation's objects.

⁵ The probate authority shall inform the competent authority of any testamentary disposition concerning the amendment of the foundation's objects.

Art. 86^b¹⁰⁰

III. Minor amendments to the charter

Having heard the board of trustees, the supervisory authority may make minor amendments to the foundation charter provided these are objectively justified and do not impair the rights of any third party.

Art. 87

E. Family and ecclesiastical foundations

¹ Family and ecclesiastical foundations are not subject to supervision, unless otherwise provided by public law.

^{1bis} They are exempt from the duty to appoint external auditors.¹⁰¹

² Private law disputes are decided by the courts.

Art. 88¹⁰²

F. Dissolution and deletion from the register

I. Dissolution by the competent authority

¹ The competent federal or cantonal authority shall dissolve the foundation on application or of its own accord if:

1. its objects have become unattainable and the foundation cannot be maintained by modifying its charter; or
2. its objects have become unlawful or immoral.

² Family and ecclesiastical foundations shall be dissolved by court order.

Art. 89¹⁰³

II. Right to apply for dissolution, deletion from the register

¹ Any interested party may file an application or bring an action for the dissolution of a foundation.

¹⁰⁰ Inserted by No I of the FA of 8 Oct. 2004 (Law of Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

¹⁰¹ Inserted by No I of the FA of 8 Oct. 2004 (Law of Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

¹⁰² Amended by No I of the FA of 8 Oct. 2004 (Law of Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

¹⁰³ Amended by No I of the FA of 8 Oct. 2004 (Law of Foundations), in force since 1 Jan. 2006 (AS 2005 4545; BBl 2003 8153 8191).

² Dissolution must be reported to the commercial registrar so that the entry may be deleted.

Art. 89a¹⁰⁴

G. Employee benefits schemes¹⁰⁵

¹ The following additional provisions apply to employee benefits schemes established in accordance with Art. 331 of the Code of Obligations¹⁰⁶ in the form of a foundation.¹⁰⁷

² The foundation's governing bodies must furnish the beneficiaries with the necessary information concerning the foundation's organisation, activities and assets.

³ If employees pay contributions into the benefits scheme, they are entitled to participate in its administration at least in proportion to their contributions; wherever possible, the employees must elect their representative from among their employer's personnel.¹⁰⁸

⁴ ...¹⁰⁹

⁵ The beneficiaries may sue the foundation for the distribution of benefits if they have paid contributions into it or if according to the foundation's regulations they have a legal entitlement to such benefits.

⁶ For employee benefits schemes providing old age, survivors' and invalidity pensions which are subject to the Vested Benefits Act of 17 December 1993¹¹⁰ (VBA), the provisions of the Federal Act of 25 June 1982 on Occupational Old Age, Survivors' and Invalidity Pension Provision (OPA)¹¹¹ on the following matters apply:¹¹²

1.¹¹³ the definition and principles of occupational pension arrangements and the insurable salary or income (Art. 1, 33a and 33b),

¹⁰⁴ Inserted by No II of the FA of 21 March 1958, in force since 1 July 1958 (AS 1958 379; BBl 1956 II 825). Originally Art. 89^{bis}, until the entry into force of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

¹⁰⁵ Amended by No II Art. 2 No 1 of the FA of 25 June 1971, in force since 1 Jan. 1972 (AS 1971 1465; BBl 1967 II 241).

¹⁰⁶ SR 220

¹⁰⁷ Amended by No II Art. 2 No 1 of the FA of 25 June 1971, in force since 1 Jan. 1972 (AS 1971 1465; BBl 1967 II 241).

¹⁰⁸ Amended by No II Art. 2 No 1 of the FA of 25 June 1971, in force since 1 Jan. 1972 (AS 1971 1465; BBl 1967 II 241).

¹⁰⁹ Repealed by No III of the FA of 21 June 1996, with effect from 1 Jan. 1997 (AS 1996 3067; BBl 1996 I 564 580).

¹¹⁰ SR 831.42

¹¹¹ SR 831.40

¹¹² Amended by No I of the FA of 25 Sept. 2015 (Employee Benefits Schemes), in force since 1 April 2016 (AS 2016 935; BBl 2014 6143 6649).

¹¹³ Amended by No II 1 of the FA of 11 Dec. 2009 (Measures to Facilitate the Employment of Older Persons), in force since 1 Jan. 2011 (AS 2010 4427; BBl 2007 5669).

- 2.¹¹⁴ the requirement of being subject to OASI (Art. 5 para. 1),
3. the beneficiaries in the case of survivors' benefits (Art. 20a),
- 3a.¹¹⁵ the adjustment of the invalidity pension following the equitable division of occupational pensions (Art. 24 para. 5),
- 3b.¹¹⁶ the provisional continuation of insurance and of the entitlement to benefits on the reduction or termination of the invalidity pension (Art. 26a),
- 4.¹¹⁷ the adjustment of plan benefits to inflation (Art. 36 para. 2–4),
- 4a.¹¹⁸ the agreement on a lump sum payment (Art. 37a),
5. the limitation period for entitlements and the safekeeping of insurance documents (Art. 41),
- 5a.¹¹⁹ the use, processing and disclosure of the OASI number for the Old Age and Survivors' Insurance (Art. 48 para. 4, Art. 85a lit. f and Art. 86a para. 2 lit. b^{bis}),
6. liability (Art. 52),
- 7.¹²⁰ the licensing and duties of the supervisory bodies (Art. 52a–52e),
- 8.¹²¹ the integrity and loyalty of the persons responsible, transactions with close associates and conflicts of interest (Art. 51b, 51c and 53a),
9. partial or total liquidation (Art. 53b–53d),
- 10.¹²² termination of contracts (Art. 53e),
11. the guarantee fund (Art. 56 para. 1 lit. c and para. 2–5, Art. 56a, 57 and 59),
- 12.¹²³ supervision and oversight (Art. 61–62a and 64–64c),

¹¹⁴ Amended by No I of the FA of 25 Sept. 2015 (Employee Benefits Schemes), in force since 1 April 2016 (AS **2016** 935; BBl **2014** 6143 6649).

¹¹⁵ Inserted by Annex No 2 of the FA of 18 March 2011 (6th InvI Revision, first set of measures (AS **2011** 5659; BBl **2010** 1817). Amended by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

¹¹⁶ Inserted by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

¹¹⁷ Amended by Annex No 1 of the FA of 18 June 2004, in force since 1 Jan. 2005 (AS **2004** 4635; BBl **2003** 6399).

¹¹⁸ Inserted by No I of the FA of 19 June 2015 (Equitable Division of Pensions on Divorce), in force since 1 Jan. 2017 (AS **2016** 2313; BBl **2013** 4887).

¹¹⁹ Inserted by Annex No 1 of the FA of 23 June 2006 (New OASI Insurance Number), in force since 1 Dec. 2007 (AS **2007** 5259; BBl **2006** 501).

¹²⁰ Amended by No II 1 of the FA of 19 March 2010 (OPA Structural Reform), in force since 1 Jan. 2012 (AS **2011** 3393; BBl **2007** 5669).

¹²¹ Amended by No II 1 of the FA of 19 March 2010 (OPA Structural Reform), in force since 1 Jan. 2012 (AS **2011** 3393; BBl **2007** 5669).

¹²² Amended by No II of the FA of 20 Dec. 2006 (Change of Employee Benefits Scheme), in force since 1 May 2007 (AS **2007** 1803 1805; BBl **2005** 5941 5953).

- 13.¹²⁴ ...
- 14.¹²⁵ financial security (Art. 65 para. 1, 3 and 4, Art. 66 para. 4, Art. 67 and Art. 72a–72g),
15. transparency (Art. 65a),
16. reserves (Art. 65b),
17. insurance contracts between occupational benefits schemes and insurance institutions (Art. 68 para. 3 and 4),
18. asset management (Art. 71),
19. legal recourse (Art. 73 and 74),
20. criminal provisions (Art. 75–79),
21. buy-in (Art. 79b),
22. insurable salary and income (Art. 79c),
23. provision of information to insured persons (Art. 86b).¹²⁶

⁷ For employee benefits schemes providing old age, survivors' and invalidity pensions but which are not subject to the VBA, such as employer-sponsored welfare funds with discretionary benefits and financing foundations, only the following provisions of the OPA apply:

1. the requirement of being subject to OASI (Art. 5 para. 1);
2. the use, processing and disclosure of the OASI number (Art. 48 para. 4, 85a let. f and 86a para. 2 let. b^{bis});
3. liability (Art. 52);
4. the licensing and duties of the auditors (Art. 52a, 52b and 52c para. 1 let. a–d and g, 2 and 3);
5. the integrity and loyalty of the persons responsible, transactions with close associates and conflicts of interest (Art. 51b, 51c and 53a);
6. total liquidation (Art. 53c);
7. supervision and oversight (Art. 61–62a and 64–64b);

¹²³ Amended by No II 1 of the FA of 19 March 2010 (OPA Structural Reform), in force since 1 Jan. 2012 (AS **2011** 3393; BBl **2007** 5669).

¹²⁴ Repealed by No. II 1 of the FA of 19 March 2010 (OPA Structural Reform), with effect from 1 Jan. 2012 (AS **2011** 3393; BBl **2007** 5669).

¹²⁵ Amended by No II 1 of the FA of 17 Dec. 2010 (Funding of benefits schemes for public corporations), in force since 1 Jan. 2012 (AS **2011** 3385; BBl **2008** 8411).

¹²⁶ Inserted by Annex No 1 of the FA of 25 June 1982 on Old Age, Survivors' and Disability Insurance (AS **1983** 797; BBl **1976** I 149). Amended by Annex No 1 of the FA of 3 Oct. 2003 (1st revision of OPA), No. 6, 7, 10–12, 14 (with the exception of Art. 66 para. 4), 15, 17–20 and 23 in force since 1 April 2004, No. 3–5, 8, 9, 13, 14 (Art. 66 para. 4) and 16 in force since 1 Jan. 2005, No. 1, 21 and 22 in force since 1 Jan. 2006 (AS **2004** 1677; BBl **2000** 2637).

8. legal recourse (Art. 73 and 74);
9. criminal provisions (Art. 75–79);
10. tax treatment (Art. 80, 81 para. 1 and 83).¹²⁷

⁸ For employee benefits schemes under paragraph 7, the following provisions also apply:

1. they manage their assets so that security, an adequate yield on investments and the required liquidity for their tasks are guaranteed.
2. the supervisory authority shall rule on partial liquidation matters related to employer-sponsored welfare funds with discretionary benefits at the request of the foundation board.
3. they shall respect the principles of equal treatment and fairness *mutatis mutandis*.¹²⁸

Title Two^{bis};^{129 130} **Collective Assets**

Art. 89b

A. No management

¹ In the case of a public collection for charitable purposes, if no arrangements have been made for the management or use of the collective assets, the competent authority shall take the required measures.

² It may appoint an administrator for the collective assets or allocate the assets to an association or a foundation with objects that are as similar as possible.

³ The administrator is subject, *mutatis mutandis*, to the regulations on deputyships in context of adult protection.

Art. 89c

B. Jurisdiction

¹ The canton in which the main part of the collective is managed has jurisdiction.

² Unless the canton provides otherwise, the authority that supervises the foundations has jurisdiction.

¹²⁷ Inserted by No I of the FA of 25 Sept. 2015 (Employee Benefits Schemes), in force since 1 April 2016 (AS **2016** 935; BBl **2014** 6143 6649).

¹²⁸ Inserted by No I of the FA of 25 Sept. 2015 (Employee Benefits Schemes), in force since 1 April 2016 (AS **2016** 935; BBl **2014** 6143 6649).

¹²⁹ Corrected by the Federal Assembly Drafting Committee (Art. 58 Abs. 1 ParlA; SR **171.10**).

¹³⁰ Inserted by No I 2 of the FA of 19 Dec. 2008 (Adult Protection Law, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS **2011** 725; BBl **2006** 7001).