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# General Survey of Book 2

by

*Professor P. Sanders*

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## *General Survey of Book 2*

by

*Professor Pieter Sanders*

### **Introduction**



Book 2 of the Dutch Civil Code, already in force since 1976 and amended since then on several occasions is entitled Legal Persons. It contains after General Provisions which are applicable to all legal persons, Book 2 regulates in Parts 2-6: Associations (Verenigingen), Cooperatives and Mutual Insurance Societies (Coöperaties en onderlinge waarborgmaatschappijen), Companies limited by shares (Naamloze vennootschappen, abbreviated as NV), Private companies (Besloten vennootschappen, abbreviated as BV) and Foundations (Stichtingen).

In addition, Book 2 regulates in Part 7 Mergers (Fusies), in Part 8 the Regulation of Disputes (Geschillenregeling) and the Right of Inquiry (Recht van Enquête) and in Part 9 Annual Accounts (Jaarrekening).

In this introduction to Book 2, emphasis will be laid on company law to be found in Parts 4 and 5. The reason for this is that I expect this translation to be used mainly in connection with the incorporation and operations of Dutch companies.

As such operations cannot readily be understood without taking into account the Works Council, regulated outside Book 2 by the Works Councils Act, this General Survey will deal with works councils in Part 4.

This survey is meant to give some guidance to those who will use this translation. It may assist them to find their way in the wealth of material contained in Book 2. For this reason crossreferences are given which may help the users to understand the system of the law. Also

## GENERAL SURVEY

articles or by-laws in the commercial register does not constitute sufficient evidence of such knowledge, it is, in practice, difficult to invoke the nullity.

### Reasonableness and Fairness

In many instances, the new Netherlands Civil Code refers to the standards of reasonableness and fairness. These standards are to be found also in the general provision of *section 8* concerning the conduct of a legal person and its members and officers (in the case of an association) or shareholders and the managing directors or supervisory board members (in the case of a company). Such a provision is of general importance in the relationship between a company and its (minority) shareholders.

### Avoidance of Resolutions

*Sections 14-16* deal with the *avoidance of resolutions* of a general meeting and of other corporate bodies, such as the management or supervisory board. These resolutions may be declared null and void by a judgement of the Court on three grounds of which the third, that it is contrary to standards of reasonableness and fairness, is of special importance. Such proceedings should be brought within one year.

### Winding up and liquidation

The *winding up* of a legal person and its subsequent liquidation is dealt with in the General Provisions.

A prohibited legal person (see *section 20*) may be wound up on the requisition of the Public Prosecutor's Office (*section 20*, subsection 2), which may also require the winding up if a legal person acts in serious breach of its articles (*section 21*, sub- *section 3*).

In the case of a BV (*section 185*) or an NV (*section 74*), the Public Prosecutor's Office must order its winding up if the company, due to a lack of assets, cannot realise its object and may do so, if the company has ceased its activities for the realisation of its object.

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a brief explanation will be given of the distinct features of Dutch law. Where sections are quoted, only the general principles are summarised; users are advised to read the detailed section in its entirety.

This survey therefore only gives a synopsis of Book 2 and is far from being a commentary, which would require several volumes.

### Part 1 – General Provisions

#### Scope of the General Provisions

The General Provisions apply to all legal persons. Apart from the legal persons of public law mentioned in *section 1* and the religious bodies mentioned in *section 2*, these are the legal persons mentioned in *section 3*: associations, cooperatives, mutual insurance societies, companies and foundations, the so-called legal persons of private law. These are regulated in Parts 2 and 3 (Associations), Part 4 and Part 5 (Companies) and Part 6 (Foundations).

#### Closed system

Dutch law comprises a *closed system* of legal persons; no new types of legal persons can be created by the simple will of the parties. The legal persons of private law recognised as such in Book 2 must meet the characteristics prescribed in Book 2. In this connection see *section 21*, subsection 2, which provides that a legal person, not falling within the legal definition of its type, and for that reason liable to be wound up, may be given an opportunity to conform its articles to the statutory requirements.

#### Ultra vires

*Section 7* deals with legal acts of the legal person which are *ultra vires*. Only the legal person, in practice the company, may invoke the nullity of such an act. It must then prove that the other party knew or ought to have known of the transgression without being required to make inquiries or could not be unaware thereof. As the publication of the

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The *liquidation* of a legal person after its winding up is dealt with in section 23 of the General Provisions.

### Conversion of legal persons

Conversion of a legal person into another legal person is regulated in general in Section 18. Section 72 and Section 183 contain specific provisions for the conversion of a BV into an NV and of an NV into a BV, respectively.

### Mandatory character

Finally, I would like to draw attention to the last of the General Provisions (section 25) which provides that derogation from the provisions of Book 2 is not permitted except and insofar as the law allows. Accordingly, if no such exception appears from the text, the provisions thereof are mandatory.

## Part 2 – Associations

Cooperatives and mutual insurance societies are dealt with in a new Part 3. The following Parts were then renumbered 4-9.

Associations are not allowed to distribute profits amongst their members (section 26, subsection 3). Cooperatives and mutual insurance societies have the making of profits as their object (See Part 3).

### Associations

A *distinction* is made between an association formed by notarial deed (section 27) and one, the articles of which are not embodied in a notarial deed (section 30). The latter may be called an *informal association*.

An informal association has only limited legal capacity: it cannot acquire registered property (property for the transfer of which registration in a public register is required) nor can it inherit (section 30, subsection 1).

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Another aspect of the informal association is that the person who binds such an association by a legal act is jointly and severally liable with the association (section 30, subsection 2).

This liability is restricted if the association is registered in the register of associations kept by the Chamber of Commerce (section 30, subsection 3).

As a rule, associations are formed by *notarial deed* passed in the Dutch language and containing the articles of association (section 27). The officers of the association are obliged, contrary to those of the informal association who may but need not do so, to register the association in a public register kept by the Chamber of Commerce (see section 29).

The *division of powers* of the association is dealt with in sections 40 and 44. According to *section 40*, all powers of the association, not conferred on other constituent bodies, are vested in the general meeting.

According to *section 44*, the management is charged with the management and administration of the association and is excluded from entering into certain agreements unless the articles otherwise provide (section 44, subsection 2).

The members of the management are *appointed* by the general meeting from the members; the articles may provide that non-members may also be appointed (section 37, subsection 1). The appointment may also be made by persons other than members, but the majority must be appointed by members (section 37, subsection 3). A member of the management may be removed or suspended at any time by the body which appointed him (section 37, subsection 6).

Annually, the management must submit its annual report to the general meeting and, with the submission of the necessary records, account for the management conducted during the past financial year (section 48).

In principle, the association is *represented* by the management (section 45). *Section 45* is similar to sections 130 (NV), 240 (BV) and 292 (Foundations), all of which are based on the First Directive on Company Law of the Council of the European Communities. Sections 45 and 292 vest the authority to represent the association or foundation

similar to the regulation of large NVs and BVs dealt with in more detail below (in Part 4). This applies both as to when a cooperative or a mutual insurance society is deemed to be large and as to the composition of the supervisory board. There are some differences. Due to the more personal relationships of members of an association, as compared with shareholders of a company, Section 63h states that the articles may provide that up to two-thirds of the supervisory board members shall be appointed from the members of the association. There are other minor differences for which sections 63a-63j should be compared with the provisions applicable to large NVs (and BVs).

The distinction between the two types of large companies is dealt with below. Only the *mitigated regime* applies to cooperatives and mutual insurance societies. This means that approval of the supervisory board is required for important management resolutions (section 63j). The general meeting of the members of a cooperative or mutual insurance society remains entitled to appoint officers and adopt the annual accounts. These powers have not been transferred to the supervisory board.

For *cooperatives* this is expressed by stating that their object is to provide for certain material needs of the members by the conclusion of agreements with the members in the business it conducts for the benefit of the members other than insurance agreements (section 53, subsection 1). The articles of a cooperative may permit the conclusion of similar agreements with outsiders provided these agreements are of "subordinate importance" compared with the agreements concluded with its members.

The object of a *mutual insurance society* is to enter into insurance contracts with its members in the insurance business it conducts for the benefit of its members (section 53, subsection 2). The articles of a mutual insurance society may permit the conclusion of similar insurance contracts with third parties provided that they are of "subordinate importance" compared with the insurance agreements with its members. This is subject to an exclusion in the articles of all liability of the members or former members to contribute to any deficit. The "mutual" has all the characteristics of a cooperative and may be qualified as a cooperative with an insurance business.

in its management or its board. For companies the law provides that also each managing director may represent the company. Apart from this difference the other elements of sections 45 and 292 are also to be found in sections 130 and 240 (company law). These elements will be considered when dealing in Part 4 with section 130 (NV).

### Part 3 - Cooperatives and Mutual Insurance Societies

This Part, in effect since 1st January 1989, deals separately with cooperatives and mutual insurance societies. They may distribute profits amongst their members (Section 26, sub-section 3 does not apply). Apart from this, Part 2 applies to cooperatives and mutual insurance societies.

Part 3 is divided into two chapters: Chapter 1, general provisions and Chapter 2, on large cooperatives and the large mutual insurance societies.

Section 53 gives a definition of each type. Both definitions provide that the object of a cooperative or a mutual insurance society shall be to make profits for the benefit of its members.

A cooperative and a mutual insurance society must be established as such by a *notarial deed* and must be *registered* in the commercial register at the Chamber of Commerce.

The *liability* of the persons who were members on a winding up or who ceased to be members less than one year prior thereto is provided for in section 55. A cooperative and mutual insurance society may exclude or limit to a maximum any liability of its members or former members to contribute to a deficit (see section 56).

The articles of a cooperative and a mutual insurance society may provide for a supervisory board (see sections 57 and 57a).

#### The "Large" Cooperatives and the "Large" Mutual Insurance Societies

The introduction of a new type of "large" cooperative and mutual insurance society is the main reason for dealing with cooperatives and mutual insurance societies in a separate Part 3. These *must* have a supervisory board (section 63f) and their regulation is to a great extent

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The cooperatives and the mutual insurance societies are also included in the legal persons to which Part 8 (*Right of Inquiry*) and Part 9 (*Annual Accounts*) apply. According to section 347 an inquiry into the policy and conduct of business of cooperatives and mutual insurance societies may be ordered upon an application from 300 members or one-tenth of the total number of members or such number of members as jointly has the right to one-tenth of the votes at a general meeting. For the annual accounts, no such special provision is needed as any interested person may institute court proceedings concerning the annual accounts and the annual report (section 909, Code of Civil Procedure). Even one member could therefore start proceedings for rectification of the annual accounts.

### Part 4 – Companies Limited by Shares (NV's)

#### *Introduction*

This Part (sections 64-166) deals with the *naamloze vennootschap* (company limited by shares) for which I will use throughout the usual abbreviation NV. Until 1971 this was the only type of company. However, in 1971 the *besloten vennootschap* (private company with limited liability; abbreviation BV) was introduced (sections 175-276). This brought The Netherlands more in line with other countries of the European Communities (compare GmbH with AG in Germany and Sarl with SA in France).

The BV has been largely modelled along the lines of the NV. When comparing an NV-section with a BV-section number as a rule the 110-key may be used for finding the corresponding BV- section (BV 110 more).

Since the introduction of the BV into Dutch company law many NV's have been converted into BV's. Also, when forming a new company, the BV is usually preferred. The reasons for this, explained further in Part 5, are principally a lower minimum capital and a greater scope for the purchase by the company of its own shares (50% instead of 10% of the issued capital).

Today there are about 3,400 NV's and 245,000 BV's.



## Netherlands Civil Code Book 2 Legal Persons

### PART 1

#### General Provisions

**Section 1.** — 1. The State, the provinces, the municipalities, the other control corporations and all bodies which under the Constitution possess the power to issue regulations possess legal personality.

— 2. Other bodies charged with part of the duties of government possess legal personality, only if this follows from provisions of, or is provided pursuant to, the law.

— 3. The following sections of this Part, except section 5, shall not apply to the legal persons referred to in the preceding subsections.

**Section 2.** — 1. Religious bodies, their independent subdivisions and bodies in which they are united possess legal personality.

— 2. They are governed by their own constitutions, insofar as this is not contrary to the law. With the exception of section 5, the following provisions shall not apply to them; the same may be applied to them, *mutatis mutandis*, to the extent consistent with their constitutions and the nature of their mutual relations.

**Section 3.** Associations, cooperatives, mutual insurance societies, companies limited by shares, private companies with limited liability and foundations possess legal personality.

**Section 4.** — 1. A legal person is not created in the absence of a deed signed by a civil law notary or of a certificate of no objection to the extent required by law for its formation. A deed signed by a civil law notary but without legal effect shall only prevent the creation of

a legal person if such legal person was to be created by a last will made in such a deed.

— 2. Avoidance of the legal act by which a legal person is created shall not invalidate its existence. The invalidity of the participation of one or more founders of a legal person shall not, of itself, affect the legal validity of the participations of the remaining founders.

— 3. If there are assets and liabilities in the name of a non-existing legal person, the Court shall appoint one or more liquidators on the application of any interested party or upon the requisition of the Public Prosecutor's Office. Section 22 shall apply, *mutatis mutandis*.

— 4. The liquidation of the assets and liabilities shall take place in the manner applicable to the winding up of the professed type of legal person. Persons who have acted as officers or managing directors<sup>1)</sup> shall be jointly and severally liable for any liabilities which form part of the assets and liabilities and which became due and payable in the period in which they so acted. They shall, in addition, be liable for any obligations arising from legal acts performed for such assets and liabilities during such period to the extent that no-one is liable therefor pursuant to the preceding sentence. In the absence of persons who are liable pursuant to the preceding two sentences, the persons who have acted shall be jointly and severally liable.

— 5. If a legal person is subsequently incorporated for the purpose of taking title to the assets and liabilities the Court may, upon application, permit that the assets and liabilities shall not be liquidated but contributed to such legal person.

#### **Section 4a. Repealed.**

**Section 5.** As regards the laws of property, contract, tort and succession, a legal person is equivalent to a physical person, unless the contrary follows from the law.

**Section 6.** — 1. Amendments to the articles and by-laws and the winding up of the legal person, which must be published pursuant to this book, may not be invoked against the other party and third parties

1. The term "bestuurder" is translated as "managing director" in relation to companies and as "officer" in relation to other legal persons.

not cognisant thereof prior to such publication and, in the case of an amendment to articles, before the prescribed publication of the amended articles has taken place.

— 2. The lack of authority of the management or of an officer or managing director under the articles to represent the legal person in the performance of a legal act, though otherwise permitted by law, may not be invoked against the other party who was not cognisant thereof if the restriction or exclusion of the authority of such officer or managing director was not published in the manner prescribed by law at the time the legal act was performed. The same applies to the invocation of a restriction on the representative authority of persons other than officers or managing directors, upon whom such authority is conferred by the articles.

— 3. A legal person may not invoke the incorrectness or incompleteness of any particulars in the register against the other party who was not cognisant thereof. A correct and complete registration elsewhere or publication of the articles shall not, of itself, be sufficient evidence that such other party was not unaware of such incorrectness or incompleteness.

— 4. Save as otherwise provided by law, the other party may not invoke against a legal person any lack of knowledge of a fact published in a manner prescribed by law, unless such publication was not made in every respect in the manner required by law or the prescribed notice thereof was not given.

— 5. Both aforementioned subsections shall not apply to judicial decisions recorded in the register of bankruptcies or in the register of moratoria of payments.

**Section 7.** A legal act performed by a legal person may be avoided if, as a result, its object was transgressed and the other party was aware thereof or, without personal investigation, should have been so aware; only the legal person can claim avoidance on this ground.

**Section 8.** — 1. A legal person and the persons who by virtue of the law and its articles are concerned with its organisation must, in such capacity, conduct themselves in relation to each other in accordance with the dictates of reasonableness and fairness.

— 2. A rule which binds them by virtue of the law, usage, the articles, by-laws or a resolution shall be inapplicable to the extent that, in the circumstances, it is unacceptable according to criteria of reasonableness and fairness.

**Section 9.** Each officer or managing director shall be responsible to the legal person for the proper performance of the duties assigned to him. If a matter falls within the scope of responsibility of two or more officers or managing directors, each shall be jointly and severally liable for any shortcoming, unless he proves that it is not attributable to him and that he was not negligent in acting to prevent the consequences.

**Section 10.** — 1. The management<sup>1</sup> shall keep such notes in respect of the financial position of the legal person as enable its rights and obligations to be ascertained at any time.

— 2. Without prejudice to the provisions in the following Parts of this Book, the management shall annually within six months from the end of its financial year prepare a balance sheet and a statement of revenues and expenditures of the legal person.

— 3. The management shall keep the records referred to in both preceding subsections for ten years.

**Section 10a.** The financial year of a legal person shall be the calendar year, unless another financial year has been designated in its articles.

**Section 11.** The liability of a legal person as an officer or managing director of another legal person shall attach, jointly and severally, to each person who, at the time such liability of the legal person arose, was an officer or managing director thereof.

**Section 12.** The articles of a legal person may disqualify certain persons, their spouses and blood relatives in the direct line, from voting on resolutions in which the legal person grants rights to or waives the obligations of such persons, other than in their capacity as members, shareholders or members of a constituent body.

**Section 13.** — 1. A vote is null and void in the instances in which

1. In this Part the term "*bestuur*" is translated as "*management*", which, for the purpose of this Part, includes the board of a foundation.

a unilateral legal act is null and void; a vote cannot be annulled.

— 2. A person who lacks legal capacity and who is a member of an association may himself exercise his voting right therein to the extent that its articles do not so prohibit him; in all other cases the exercise of the voting right shall vest in his legal representative.

— 3. Save as otherwise provided in the articles, the ruling pronounced by the chairman at a meeting of a constituent body of a legal person in respect of the outcome of a vote shall be decisive. The same shall apply to the contents of a resolution passed, to the extent that the vote related to a proposal not made in writing.

— 4. If, immediately after the ruling pronounced by the chairman, its correctness is contested, another vote shall be taken if so desired by the majority at the meeting or, if the original vote was not taken per capita or on a poll, by someone present who was entitled to vote. As a result of such new vote the legal consequences of the original vote shall lapse.

**Section 14.** — 1. A resolution of a constituent body of a legal person that is contrary to the law or the articles is null and void, unless another consequence follows from the law.

— 2. A resolution which is null and void due to the failure on its adoption to do some prior act required by law or the articles or to notify a person or body other than the constituent body which adopted such resolution, may be ratified by such other person or body. If any condition is imposed for the act which is the subject of the failure, such condition shall also apply to the ratification.

— 3. Ratification shall no longer be possible after expiration of a reasonable period imposed upon the other person or body by the constituent body which adopted the resolution or by the other party which is the subject of the resolution.

**Section 14a. Repealed.**

**Section 15.** — 1. Without prejudice to any other statutory provision entitling avoidance, a resolution of a constituent body of a legal person may be declared null and void:

a. on the ground that it is contrary to statutory provisions or provisions in the articles regulating the passing of resolutions;

b. on the ground that it is contrary to the principles of reasonableness and fairness required under section 8;

c. on the ground that it is contrary to any by-laws.

— 2. The provisions referred to in paragraph a of the preceding subsection shall not include those containing the conditions referred to in section 14, subsection 2.

— 3. Avoidance is effected by a decision of the Court of the legal person's registered office:

a. upon application against the legal person by a person who has a reasonable interest in the due performance of the obligation which has not been performed, or

b. in proceedings instituted pursuant to a resolution of its management by the legal person itself against the person designated by the President of the Court upon an application made for such purpose by the legal person; in that case the costs of the proceedings shall be borne by the legal person.

— 4. If an officer or managing director makes the application in his own name, the legal person shall apply to the President of the Court to designate a person who shall act on behalf of the management in such proceedings.

— 5. The right to demand avoidance of the resolution shall lapse one year from the end of the day on which sufficient publicity of the resolution was given or on which the interested party became cognisant of the resolution or was notified thereof.

— 6. A resolution which may be the subject of a claim for avoidance under paragraph a of subsection 1 may be ratified by a resolution to that effect; for such a resolution the same conditions shall apply as those applicable to the resolution to be ratified. The ratification shall not take effect as long as proceedings instituted for the avoidance are pending. If the claim is allowed, the avoided resolution shall be deemed to have been passed anew as a result of a later resolution, unless the contrary follows from the purport of the resolution.

**Section 16.** — 1. An irrevocable decision establishing the nullity

1. "Request-Civil" is a procedure for the review of a final and binding judgement in certain instances specified in the Code of Civil Procedure, e.g.: fraud or forgery.

of a resolution of a legal person or whereby such resolution is avoided shall, if the legal person was party to the proceedings, be universally binding, without prejudice to the right to petition for judicial review<sup>1</sup> or to opposition proceedings by third parties. Any member or shareholder is entitled to file such petition for judicial review.

— 2. If the resolution is a legal act of the legal person directed at the other party or if it constitutes a condition for the validity of such legal act, the nullity or avoidance of the resolution cannot be raised as a defence against such other party if the latter was neither aware nor ought to have been aware of the defect in the resolution. Notwithstanding the foregoing, the nullity or avoidance of a resolution to appoint a managing director or officer or supervisory board member may be invoked as against the appointed person, provided the legal person indemnifies him against any loss if he was neither aware nor ought to have been aware of the defect in the resolution.

**Section 17.** — 1. If a legal person is established for a certain period which has expired and no action has been taken for its liquidation, Our Minister of Justice may, upon application, extend such period. The application must be made by persons authorised by a resolution of the persons who, had such period not expired, would have been entitled to amend the articles.

— 2. The Ministerial order shall have retrospective effect to the date on which such period ended pursuant to the articles.

— 3. If a legal person has been registered in one or more public registers, notice of the Ministerial Order shall be given to such registers.

**Section 18.** — 1. Subject to compliance with the following subsections a legal person may convert itself into another legal form.

— 2. The following is required for conversion:

a. a resolution to convert, passed in accordance with the requirements for a resolution for an amendment of the articles and, save in the case of the conversion of a foundation, adopted with the votes of at least nine-tenths of the votes cast;

1. The term "bestuurder" is translated as "managing director" in relation to companies and as "officer" in relation to other legal persons.

b. a resolution to amend the articles;

c. a notarial deed of conversion embodying the new articles.

— 3. The majority mentioned in paragraph a of the preceding subsection is not required for the conversion of a company limited by shares into a private company or *vice versa*.

— 4. For the conversion of or into a foundation and of a company limited by shares or private company into an association authorisation by the Court shall also be required.

— 5. An application to the Court for authorisation to convert can be made only by the legal person ~~on~~ submission of a draft notarial deed. This shall be rejected in any event if any required resolution is null and void or if proceedings for the avoidance thereof are pending. It shall be rejected if the interests of persons with voting rights who did not exercise such rights or of any other persons at least one of whom sought the assistance of the Court, have been insufficiently respected. If authorisation by the Court is required for the conversion, the notary shall state in the conversion deed that such authorisation has been granted to the draft of the deed.

— 6. After conversion of a foundation it must appear from its articles that its net assets at the conversion and any proceeds therefrom may only with the consent of the Court be applied differently from the manner prescribed prior to its conversion. The same shall apply to the articles of a legal person to the extent that such net assets and proceeds were vested in it as a result of a merger.

— 7. The legal person shall file notice of its conversion for entry in the public registers in which it was obliged to be and now must be registered or in which, if it is an association, it was registered voluntarily.

— 8. Conversion shall not terminate the legal existence of a legal person.

**Section 19.** — 1. A legal person shall be wound up: <sup>or liquidated</sup>

a. on the date set in its articles;

b. by a resolution of its general meeting or, if the legal person is a foundation and it is so provided in its articles, by a board resolution;

- c. on the occurrence of an event which, pursuant to its articles, results in its winding up and which does not constitute a resolution or an act whose purpose is liquidation;
- d. after it has been put into involuntary liquidation, either upon termination of its involuntary liquidation because of the condition of its assets, or by its insolvency;
- e. if, in the case of an association, a cooperative or a mutual insurance society, there are no longer any members;
- f. by the Court in the instances provided by law.

— 2. Upon application of the management or of any interested party, or upon the requisition of the Public Prosecutor's Office, the Court shall declare whether a legal person has been wound up and the effective date of the winding up of the legal person in one of the instances referred to in paragraph c or e of subsection 1. The order shall be universally binding. If the legal person has been registered in a public register, it shall be the responsibility of the Clerk of the Court to ensure registration in such public register of the decision giving such declaratory order when it becomes final and binding.

— 3. The liquidator in a voluntary or involuntary liquidation shall file a notice of the liquidation for entry in the registers where the legal person is registered; if there is no liquidator in the voluntary or involuntary liquidation, the filing of such notice shall be the responsibility of the Clerk of the Court at which the winding up proceedings were last pending.

— 4. A legal person shall continue to exist after its winding up to the extent required for the purpose of the liquidation of its assets and liabilities. In documents and announcements issued by it, the words "*in liquidatie*" shall be added to its name.

— 5. In the case of a winding up the existence of a legal person shall end on the date on which it or the liquidator in the voluntary or involuntary liquidation are not aware of the existence of any more assets. If a legal person ceases to exist the management or the liquidator in the voluntary or involuntary liquidation shall file a notice thereof for entry in the registers in which the legal person has been registered.

be wound up by the Court. Before ordering the winding up the Court may, within a period to be set by it, grant the legal person an opportunity to amend its object in such a manner that it is no longer contrary to public policy.

**Section 16.** Repealed.

**Section 17.** A legal person, acting in serious breach of its articles, may be wound up by the Court on the requisition of the Public Prosecutor's Office.

**Section 18.** Sections 10–17 of this Book shall not apply to religious bodies and their independent subdivisions and to other associations with a spiritual basis.

**Section 19.** – 1. If an entity, established as a certain type of legal person, does not fall within the legal definition of such type, the establishment shall not, for that reason, be null and void but the legal person may be wound up by the Court on the requisition of the Public Prosecutor's Office.

– 2. A Court shall not order the winding up without first having given the legal person an opportunity, within a period set by the Court, either to conform its articles to the relevant legal definition or to be converted into a legal person of another type if it falls within the definition of such type.

**Section 20.** – 1. If the management of a legal person considers that there is a possibility that the legal person may be wound up on the ground stated in subsection 1 of the preceding section, it may apply to the Court for authorisation to convert the legal person, within a period to be set by the Court, into the type of legal person within the legal definition of which it falls. If the application is granted, no winding up of the legal person on the ground submitted shall be permitted within the period set by the Court nor, in the case of conversion, thereafter.

– 2. A conversion by virtue of this or of the preceding section must be effected pursuant to the provisions applicable to the formation of a new legal person. This results in the devolution of the rights and obligations of the original legal person to the newly-formed legal person by universal succession of title. If the original

legal person is registered in a public register, its officers or managing directors shall file a notice of such conversion for entry in such register.

— 3. For a period of ten years after the conversion, a resolution for winding up the legal person shall be valid only if the allocation of the liquidation surplus has been approved by Our Minister of Justice.

**Section 20a.** — 1. An association, cooperative or mutual insurance society can convert itself into a foundation and *vice versa* at any time with due observance of the following subsections.

— 2. After the conversion of a foundation into an association, cooperative or mutual insurance society, it must appear from its articles that its net assets at the time of its conversion and the proceeds thereof may be applied, otherwise than as prescribed prior to its conversion, only with the consent of the Court.

— 3. The following is required for conversion:

a. a resolution to convert, adopted with due observance of the requirements of a resolution for the amendment of its articles and, save in the case of the conversion of a foundation, adopted with the votes of at least nine-tenths of the votes cast;

b. a resolution to amend its articles;

c. authorisation of the Court;

d. a notarial deed of conversion embodying the new articles.

— 4. An application to the Court for authorisation to convert can be made only by the legal person on submission of a draft notarial deed. The same shall be rejected in any event if any required resolution is null and void or if a suit for the nullification thereof is pending. In the deed of conversion the civil law notary shall certify that the authorisation has been granted on the draft deed.

— 5. The legal person shall file a notice of its conversion for entry in the public registers in which it must have been and must be registered or in which, as an association, it has been voluntarily registered.

— 6. Conversion shall not determine the legal existence of the legal person.

— 7. This section shall only apply to the conversion of a foundation

— 6. The particulars registered in respect of a legal person in the registers on the date on which it ceases to exist shall be kept there for ten years after such date.

**Section 20.** — 1. Upon the requisition of the Public Prosecutor's Office the Court shall declare that a legal person the activity of which is contrary to public policy shall be prohibited and wound up.

— 2. A legal person the object of which is contrary to public policy shall, be wound up by the Court upon the requisition of the Public Prosecutor's Office. Prior to ordering the winding up the Court may give the legal person an opportunity to amend its object within a period to be set by it in such a manner that it will no longer be contrary to public policy.

**Section 20a. Repealed.**

**Section 21.** — 1. The Court shall wind up a legal person, if:

a. there are defects in its formation;

b. its articles do not comply with the statutory requirements;

c. it does not fall within the statutory description of its legal form.

— 2. The Court shall not wind up a legal person if it has allowed it a given period of time upon expiration of which it is a legal person which complies with the statutory requirements.

— 3. The Court may wind up a legal person, if it transgresses the prohibitions set in this Book for its legal form or acts to a serious degree contrary to its articles.

— 4. The winding up may be ordered upon request of any interested party or upon the requisition of the Public Prosecutor's Office.

**Section 22.** — 1. The Court before which an application or requisition for the winding up of a legal person is pending may place the assets of such legal person, if so demanded, under administration; the order shall set its effective date.

— 2. In its order the Court shall appoint one or more administrators and provide for their powers and remuneration.

— 3. To the extent that the Court does not otherwise determine, the constituent bodies of a legal person may not adopt any resolutions without prior approval of the administrator and representatives of the legal person may not perform any legal acts without his cooperation.

particulars in respect of himself required for a managing director or officer.

— 5. The Court may dismiss a liquidator from the date set by it, either upon his request or for important reasons, upon the request of a co-liquidator, upon the requisition of the Public Prosecutor's Office or *ex officio*.

— 6. A liquidator who is succeeded by another liquidator shall render account to his successor. If his successor is appointed by the Court he shall render account to the Court.

**Section 23a.** — 1. Unless the articles otherwise provide, a liquidator shall have the same powers, duties and liabilities as a managing director or officer, to the extent that these are consistent with his duties as liquidator.

— 2. If there are two or more liquidators each may carry out all activities unless otherwise determined. If there is a difference of opinion between the liquidators the Court involved in the liquidation shall decide the issue upon the request of either of them and otherwise the Magistrate shall so decide. The Court referred to in the preceding sentence may also determine the manner in which remuneration shall be divided.

— 3. Both the Court and the judge delegated by it in respect of the liquidation may give orders required for the liquidation which orders may, but need not be, given in a form immediately enforceable for execution. The liquidator must act in accordance with their directions. There shall be no appeal from such orders and directions.

— 4. If the liquidator establishes that the liabilities will probably exceed the assets he shall file for an order of involuntary liquidation unless all creditors when so requested concur to a continuation of the liquidation without involuntary liquidation.

— 5. The preceding provisions in this section and sections 23b – 23c shall not apply in the case of an involuntary liquidation.

**Section 23b.** — 1. After payment of the creditors the liquidator shall transfer any surplus assets of the legal person subject to the winding up to the parties entitled thereto in proportion to their respective rights under the articles or otherwise to the members or shareholders. If no other person is entitled to such surplus he shall distribute

— 4. The order can be amended or withdrawn by the Court at any time; the administration ends in any event as soon as the decision on the requisition or petition for the winding up has become final and binding.

— 5. The administrator shall file at the register where the legal person has been registered a notice of the order and of such particulars in respect of himself required for a managing director or officer.

— 6. A legal act performed by a legal person prior to the registration, notwithstanding its incapacity on account of such administration, shall nevertheless be valid if the other party was neither aware nor ought to have been aware of the administration.

**Section 23.** — 1. To the extent that the Court has not appointed other liquidators, the managing directors or officers of the legal person shall act as liquidators of the assets and liabilities of a legal person subject to a winding up. The provisions in respect of the appointment, suspension, dismissal or supervision of managing directors or officers shall apply insofar as the articles do not otherwise provide.

— 2. The assets and liabilities of a legal person subject to a winding up by the Court shall be liquidated by one or more liquidators appointed by it. Upon dismissal by the Court of a liquidator, it can appoint one or more other liquidators. If there are no liquidators the Court shall appoint one or more liquidators upon an application of any interested party or upon the requisition of the Public Prosecutor's Office. A liquidator appointed by the Court shall be entitled to a remuneration to be set by it.

— 3. A Court appointment as liquidator shall take effect on the day after the Clerk of the Court has informed the liquidator of the appointment; the Clerk of the Court shall so inform him at once, if the order for such appointment is enforceable notwithstanding appeal or opposition and, otherwise, as soon as it has become final and binding.

— 4. Every liquidator shall file a notice at the registers where the legal person is registered of his acting in that capacity and of the

manner in which notice of the opposition was given. If the decision alters the plan of distribution, notice of the altered plan of distribution shall also be given in such manner.

— 8. The liquidator shall place any cash funds not disposed of within six months after the last set date on which the same became due and payable in a deposit for judicial consignments.

**Section 23c.** — 1. The liquidation ends on the date on which there are no more assets known to the liquidator.

— 2. Thereafter the Court at the legal person's registered office shall only remain competent in matters relating to the liquidation.

— 3. After expiration of one month from the termination of the liquidation the liquidator shall, if it was involved in the liquidation, render account in respect of his administration to the Court.

— 4. If, subsequently, a further creditor or party entitled to the surplus comes forward or the existence of an asset is ascertained, the Court may, on the application of any interested party, reopen the liquidation and, if necessary, appoint a liquidator. In that event the legal person revives but exclusively for the purpose of the settlement of the reopened liquidation. The liquidator shall have the power to demand repayment from the persons so entitled of whatever amount they received in excess of the amount of their entitlement out of the surplus.

**Section 24.** — 1. The books and records of a legal person which has been wound up shall be kept for ten years after termination of the liquidation. The custodian thereof shall be the person designated as such in or pursuant to the articles or by the general meeting or, if the legal person was a foundation, by its board.

— 2. If there is no custodian and if the last liquidator is not prepared to keep the same, a custodian, if possible from amongst the persons who were involved with the legal person, shall be appointed upon the application of any interested party by the Magistrate within whose district the legal person had its registered office. There shall be no appeal.

— 3. Within eight days after his custody obligation takes effect, the custodian must notify the registers in which the legal person which has been wound up was registered of his name and address.

the same to the State which will apply the same to the extent possible in accordance with the legal person's object.

— 2. The liquidator shall prepare liquidation accounts showing the amount and composition of the surplus. If there are two or more persons entitled to such surplus the liquidator shall prepare a plan of distribution, stating the bases for the apportionment.

— 3. Insofar as the surplus consists of items other than cash and the articles or the Court order do not provide for any direction the following methods may be applied for such apportionment:

- a. apportionment of part of the surplus to each entitled party;
- b. over-apportionment to one of the entitled parties against payment of the excess value;
- c. distribution of the net proceeds after sale.

— 4. The liquidator shall deposit the accounts rendered and the plan of distribution at the office of the registers where the legal person is registered and, in any event, at the office of the legal person, if there is one, or at any other place in the district where the legal person has its registered office. The documents shall be available for public inspection for two months. The liquidator shall publish a notice in a newspaper stating where and until which date the same shall be available for inspection. The Court can order publication in the Netherlands State Gazette.

— 5. Within two months after deposit of the accounts rendered and the plan and after such deposit has been published and announced in accordance with subsection 4, each creditor or party so entitled may institute opposition thereto by an application to the Court. The liquidator shall publish notice of such instituted opposition in the same manner as that in which notice was given of the deposit of the accounts rendered and the plan of distribution.

— 6. Whenever the condition of the assets and liabilities justifies the same, the liquidator may make an advance distribution to the parties entitled thereto. After the commencement of the period within which opposition may be made, he shall not so proceed without Court authorisation.

— 7. As soon as the withdrawal of, or a decision on, any opposition has become irrevocable, the liquidator shall give notice thereof in the



— 4. The Magistrate mentioned in subsection 2 may, upon application, give authorisation for inspection of the books and records to any interested party, if the legal person was a foundation, and to any further person who shows he has a reasonable interest in such inspection as a former member or shareholder of the legal person or as holder of depositary receipts issued for its shares or as an assignee of such a person.

**Section 24a.** — 1. A subsidiary of a legal person is:

- a. a legal person in which the legal person or one or more of its subsidiaries, pursuant to an agreement with other persons entitled to vote or otherwise, can exercise, solely or jointly, more than one-half of the voting rights at a general meeting;
- b. a legal person of which the legal person or one or more of its subsidiaries is a member or shareholder and, pursuant to an agreement with other persons entitled to vote or otherwise, can appoint or dismiss, solely or jointly, more than one-half of the officers\* or of the supervisory board members, if all persons entitled to vote were to cast their vote.

— 2. A partnership acting in its own name, for the liabilities of which the legal person or one or more subsidiaries is, as a partner, fully liable to creditors, shall be treated as a subsidiary.

— 3. For the application of subsection 1, rights attached to shares shall not be imputed to a person who holds the shares for the account of others. Rights attached to shares shall be imputed to a person for whose account the shares are held if such person has the power to determine how the rights are exercised or to obtain the shares for himself.

— 4. For the application of subsection 1, voting rights attached to pledged shares shall be imputed to the pledgor if he may determine how the rights are exercised, provided that, where shares have been pledged for a loan given by the pledgor in the ordinary course of his business, the voting rights shall be imputed to him if he has exercised the same in his own interest.

\* The term "officers" includes the managing directors of a company.

— 4. For the application of subsection 1, voting rights attached to pledged shares shall be imputed to the pledgor if he may determine how the rights are exercised, provided that, where shares have been pledged for a loan given by the pledgor in the ordinary course of his business, the voting rights shall be imputed to him if he has exercised the same in his own interest.

**Section 24b.** A group is an economic unit in which legal persons and partnerships are united in one organisation. Group companies are legal persons and partnerships which are united in one group.

**Section 24c.** — 1. A legal person or partnership has a participation in a legal person if it or one or more of its subsidiaries, solely or jointly and for its own account, contributes, or causes the contribution of, capital with the object of a long-term relationship with such legal person for the furtherance of its own activities. If one-fifth or more of the issued capital is contributed, the existence of a participation shall be presumed.

— 2. A legal person has a participation in a partnership if it or its subsidiary:

- a. is, as a partner, fully liable to its creditors for all liabilities; or
- b. is otherwise a partner therein with the object of a long-term relationship with such legal person for the furtherance of its own activities.

**Section 24d.** When determining the extent to which the members or shareholders vote, are present or represented or to which the share capital is contributed or represented, no account shall be taken of memberships or shares in respect of which the law provides that no vote may be cast.

**Section 25.** — 1. If a legal person has been formed for a fixed period and this period has expired without the commencement of its liquidation, Our Minister of Justice may, upon application, extend this period. The application must be made by the persons authorised to do so pursuant to a resolution of the persons who would have had the power to alter the articles, if such period had not expired.

— 2. A Ministerial order shall have retrospective effect to the

date on which the period expired under the articles.

– 3. The Ministerial order shall be published in the Netherlands State Gazette. If a legal person is registered in one or more public registers, such registers shall be notified of the order.

**Section 25a.** No deviations from the provisions in this Book shall be permitted, except and insofar as otherwise appears from the law.

**Section 24b.** A group is an economic unit in which legal persons and partnerships are united in one organisation. Group companies are legal persons and partnerships which are united in one group.

**Section 24c.** — 1. A legal person or partnership has a participation in a legal person if it or one or more of its subsidiaries, solely or jointly and for its own account, contributes, or causes the contribution of, capital with the object of a long-term relationship with such legal person for the furtherance of its own activities. If one-fifth or more of the issued capital is contributed, the existence of a participation shall be presumed.

— 2. A legal person has a participation in a partnership if it or its subsidiary:

- a. is, as a partner, fully liable to its creditors for all liabilities; or
- b. is otherwise a partner therein with the object of a long-term relationship with such legal person for the furtherance of its own activities.

**Section 24d.** When determining the extent to which the members or shareholders vote, are present or represented or to which the share capital is contributed or represented, no account shall be taken of membership or shares in respect of which the law provides that no vote may be cast.

**Section 25.** No deviations from the provisions in this Book shall be permitted, except and insofar as otherwise appears from the law.

**Section 25a.** *Repealed.*

2-4. If he fails to do so, he shall be personally liable to the persons who sustained any loss as a result thereof.

**Section 287.** If the articles do not specify a registered office, the foundation shall have its registered office in the municipality where the civil law notary before whom the deed is executed officiated at the time of the execution of the deed.

**Section 288.** — 1. If a testator has made a disposition by will in favour of a foundation which he created by his last will made by notarial deed, the foundation shall be a residual or specific beneficiary depending on whether the disposition constitutes the appointment of a residual or specific beneficiary.

— 2. If a foundation is created by a declaration of the testator in his last will made in any other form, the joint residual beneficiaries shall, by virtue of such disposition, be considered to have been charged to establish such foundation.

— 3. A person charged with the establishment of a foundation may, upon the requisition of the Public Prosecutor's Office, be ordered to implement its establishment by the Court in the district where the deceased last resided or, if the testator did not have his last place of residence in The Netherlands, by the District Court in The Hague. The Court may order that the judgement shall have the same legal force as a deed executed in statutory form by the person obliged to perform such legal act or that such act shall be performed by a representative to be designated by the Court.

**Section 289.** — 1. The officers shall have the foundation and the surname, forename(s) and address or last address of the founder or founders registered in a public register kept by the Chamber of Commerce and Industry for the district where the foundation has its registered office and shall deposit at the office of such register an officially certified copy or officially certified extract of the deed of establishment embodying the articles.

— 2. The officers shall ensure that there shall at all times be recorded in the register:

- a. the surname, forename(s) and address of all officers, if the board has representative authority;
- b. the surname, forename(s) and address of the officers in whom

## PART 6

## Foundations

**Section 285.** — 1. A foundation is a legal person created by a legal act which has no members and whose purpose is to realise an object stated in its articles using capital allocated to such purpose.

— 2. If the authority to fill vacancies in constituent bodies of the foundation is vested in one or more persons by the articles, the foundation shall not, on that ground alone, be considered as having members.

— 3. The object of the foundation may not include the making of distributions to any founder or to those participating in its constituent bodies or to other parties, unless, as regards the latter, the distributions have an idealistic or social purpose.

**Section 286.** — 1. A foundation must be established by notarial deed.

— 2. The deed shall be executed in the Dutch language. A power of attorney to enter into such deed must be in writing. The foundation may be established by a public will executed in a foreign language. In such case also, the articles of the foundation must be in the Dutch language.

— 3. The deed shall contain the articles of the foundation.

— 4. The articles must include:

- a. the name of the foundation, with the word "stichting" as part of its name;
- b. the object of the foundation;
- c. the manner of appointment and dismissal of the officers;
- d. the municipality in The Netherlands where it has its registered office;
- e. the application of the surplus after liquidation of the foundation on a winding up or the manner in which such application shall be determined.

— 5. The civil law notary before whom the deed is executed shall ensure that the articles contain the provisions stated in subsections

— 8. Opposition may not be founded on the allegation that the amount due in respect of the registration was charged without justification or was determined incorrectly.

— 9. All other matters concerning the register, the filing and custody of the deposited articles and the other documents lodged with the Chamber of Commerce and Industry, the access thereto and the issue of copies and extracts thereof, and the charges to be made therefor, shall be regulated by General Order in Council. Such Order may provide that photographic copies may be filed and kept, instead of the deposited articles and other documents lodged with the Chamber. Chamber.

**Section 290. Repealed.**

**Section 291.** — 1. Subject to any restrictions under the articles, the board<sup>1</sup> shall be charged with the management of the foundation.

— 2. Only if this follows from the articles, the board has the authority to resolve to enter into agreements to purchase, dispose of or encumber registered property or to enter into agreements by which the foundation commits itself as guarantor or joint and several debtor, warrants performance by a third party or undertakes to provide security for a debt of a third party. The articles may impose restrictions and conditions on such authority of the board. The exclusion, restrictions and conditions shall also apply to the authority to represent the foundation in respect of such acts unless the articles otherwise provide.

**Section 292.** — 1. The board shall represent the foundation to the extent that the contrary does not follow from the law.

— 2. The articles may also vest representative authority in one or more officers and may provide that an officer may represent the foundation only with the cooperation of one or more other persons.

— 3. Representative authority vested in the board or in an officer shall be unrestricted and unconditional to the extent that the contrary does not follow from the law. A restriction or condition on the rep-

1. In this Part the term "*bestuur*" is translated as "the board", whereas elsewhere it is translated as "the management".

representative authority is vested by the articles, stating whether they have authority to represent the foundation severally, jointly or jointly with one or more other persons;

c. the surname, forename(s) and address of any person other than officers in whom representative authority is vested by the articles and the provisions in respect of such authority.

— 3. The officers may submit for registration in the register, the surname, forename(s) and address of any persons having a power of attorney to represent the foundation, stating the contents of such power.

— 4. Each officer shall be jointly and severally liable with the foundation for any legal act by which he binds the foundation until the filing for deposit of the initial registration.

— 5. Any person, in respect of whom incomplete or incorrect information has been registered in the register, the Public Prosecutor's Office and the Chamber of Commerce and Industry, may apply to the Court within whose jurisdiction such register is kept with a request or requisition, as the case may be, for an order deleting, supplementing or amending the entry.

— 6. For each year that the foundation is registered in the register an amount to be set by General Order in Council shall be due to the Chamber of Commerce and Industry. If an amount due has not been paid on time in full or in part, the Chamber shall summon the foundation in writing to pay the Chamber within a further eight days after receipt of the summons the amount mentioned therein. If, after such summons, payment is not made within the set period, the Chamber shall issue an order which shall be declared enforceable for execution by the President of the Court within the district in which the Chamber has its registered office, which shall constitute an order entitling execution enforceable under the provisions of the Code of Civil Procedure. The summons and collection shall be at the expense of the debtor.

— 7. Within thirty days after service opposition may be made against the order entitling summary execution by writ issued against the Chamber concerned before the Magistrate within whose jurisdiction the Chamber is established. Opposition suspends the execution.

representative authority permitted or prescribed by statute may only be invoked by the foundation.

— 4. The articles may also vest representative authority in persons other than officers.

**Section 293.** The articles of a foundation may be amended by its constituent bodies only if the articles provide for such a possibility. Such an amendment shall be null and void if not made by notarial deed. The officers must deposit an officially certified copy of such amendment and the amended articles at the office of the register referred to in section 289 of this Book.

**Section 294.** — 1. If the maintenance of the articles in an un-amended form would have consequences which, on the establishment, could not reasonably have been envisaged and if the articles do not provide for the possibility of amendment or the persons having the power to amend the same fail to do so, the Court may amend the articles on the application of a founder or of the board or upon the requisition of the Public Prosecutor's Office.

— 2. In so doing, the Court shall derogate from the existing articles as little as possible and if amendment of the object is necessary it shall designate an object which is related to the existing object. With due observance of the foregoing, the Court is empowered, where necessary, to amend the articles otherwise than as applied for or requisitioned.

— 3. In order to avoid the winding up of the foundation on a ground referred to in section 21 or in paragraph *a* of section 301, subsection 1, or in section 19 of this Book, the Court may amend the articles duly applying both preceding subsections *mutatis mutandis*.

**Section 295.** A resolution to amend the articles may be avoided by the Court at any time upon the application of the foundation, an interested party or upon the requisition of the Public Prosecutor's Office, if such an amendment could result in the winding up of the foundation on the grounds contemplated in sections 21 or 301, subsection 1 and such amendment does not lead to conversion. Moreover, section 15, subsections 3 and 4 and section 16 shall apply.

**Section 296.** In proceedings in which an order for the winding up of a foundation is applied for or requisitioned on a ground referred to in section 21 or in paragraph *a* of section 301, subsection 1, the Court may exercise the powers referred to in both preceding sections *ex officio*.

**Section 297.** — 1. If there is serious doubt as to whether the law or the articles are observed in good faith or whether the management is properly conducted, the Public Prosecutor's Office at the Court is empowered to request the board for information.

— 2. If such request is not, or is improperly, complied with, the President of the Court may, upon requisition, order that the Public Prosecutor's Office be given access to inspect the books and records of the foundation and that the assets of the foundation be shown to it. There shall be no right of appeal or appeal to the Supreme Court against the order of the President.

**Section 298.** — 1. An officer who:

*a.* in breach of the provisions of the law or the articles, acts or fails to act, or is guilty of mismanagement, or

*b.* does not, or does not properly, comply with an order made by the President of the Court under the preceding section, may be removed by the Court. This may take place upon the requisition of the Public Prosecutor's Office or on the application of any interested party.

— 2. Pending the examination of the matter, the Court may make provisional arrangements for the management and suspend the officer.

— 3. An officer removed by the Court may not become an officer of the foundation for five years after such removal.

**Section 299.** Whenever there is no officer on the board or the number of officers falls below that required under the articles and the vacancy is not filled in accordance with the articles, the Court may fill the vacancy upon the application of any interested party or upon the requisition of the Public Prosecutor's Office and, in so doing, the Court shall observe the articles as far as possible.

**Section 300.** *Repealed.*

**Section 300a.** Sections 131, 138, 139, 149 and 150 shall apply, *mutatis mutandis*, in respect of an involuntary liquidation of a foundation which is subject to the levy of corporate income tax.

**Section 301.** — 1. The Court shall order the winding up of a foundation upon the application of an interested party or upon the requisition of the Public Prosecutor's Office:

*a.* if the capital of the foundation is wholly insufficient for the realisation of its object and the possibility of obtaining sufficient capital within the foreseeable future by means of contributions or otherwise is unlikely;

*b.* if the object of the foundation has been achieved or can no longer be achieved and amendment of the object cannot be considered.

— 2. The Court may also order the winding up of the foundation *ex officio*, simultaneously with the rejection of an application or requisition as referred to in section 294.

**Section 302.** Any Court decision which has become final and binding and which embodies:

the cancellation, supplementation or amendment of the information in the register,  
the amendment of the articles of the foundation,  
the change of, or the filling of vacancies on, the board, or  
the avoidance of a resolution for the amendment of the articles  
shall be entered in the register referred to in section 289 of this Book at the instance of the Clerk of the Court before which the case was last pending.

**Section 303.** On the involuntary liquidation of, or moratorium of payments by, a foundation, the notices which are published in the Netherlands State Gazette pursuant to the Bankruptcy Act shall be submitted for registration in the register referred to in section 289 of this Book by the person charged with such publication.

**Section 304.** — 1. The participants in a pension fund, or a fund referred to in paragraph c of section 1637s, subsection 2 of this Code shall, for the purposes of the application of section 285 of this Book, not be considered members of a foundation which operates as such a fund.

— 2. For the purposes of the application of section 285, subsection 3 of this Book any pension-right distributions or payments arising from an employment contract in which a stipulation as referred to in paragraph

raph c of section 1637s, subsection 2 of this Code has been included shall not be considered to be distributions to founders of such a foundation or to persons who form part of its constituent bodies.

**Section 305-307.** *Repealed.*