

control by means of an external audit. Private foundations with assets of more than EUR 25,000 must deposit their financial statements at the Belgian national bank.

Dissolution of a foundation is conducted under the control of the court; this rule intends to prevent the misuse of private foundations for personal interests. Dissolution of a foundation occurs by court decision and as a result of an application filed by the founder, its successor, the managing director or the public prosecutor's office pursuant to Article 39 of the Association and Foundation Act, irregardless of whether the termination was originally set forth to take place upon the expiration of a specified period of time or upon occurrence of specified circumstances (e.g. fulfilment of the purpose)⁹.

Belgian law does not explicitly use the term of the "foundation", but the corresponding public constructions fulfil the characteristics of a foundation. A foundation is an institutionalised, private (even if it is in public ownership) and self-organised entity with legal personality that pursues non-profit purposes; it can distribute funds for specific purposes to the benefit of the public.

Prior to the establishment of the foundation, the government verifies whether requirements concerning the purpose of the foundation are met. A capital paid in of EUR 1 million is not a statutory requirement but is required by the Ministry of Justice. Usually, the registration of the foundation and the preparation and deposit of the foundation documents are made by a notary. The costs for publication amounted to EUR 139.03 in 2007; moreover, a one-time fee in the amount of EUR 25 has to be paid for the registration. For every foundation, a file which is forwarded to the Company Registry is opened at the Commercial Court. If real estate is entered into the foundation, this transaction must be entered in the Mortgage Registry; for this proceeding, a fee is charged. When these steps have been completed, the creation is published in the Belgian Official and Law Gazette.

Since the amendment of the applicable laws on 1 July 2003 the Belgian legislation recognises private foundations. Previously, only what was called the "institution for public utility" (now "public utility foundation") existed. Pursuant to Article 27 Association and Foundation Act, a public utility foundation is characterised by philanthropic, philosophical, religious, scientific, artistic, educational or cultural goals. A foundation is not permitted to make profit for itself although engagement in economic activity is not prohibited if the profits largely serve the non-profit goal of the original foundation purpose. The main motive for allowing the establishment of private foundations was, on the one hand, to achieve certification of securities (analogous to the Dutch "administrative office")¹⁰, and, on the other hand, to facilitate provision for families with disabled children. When the foundation is set up, the principle according to which the foundation assets must not serve the interests of the founder is to be observed.

⁹ Cf. Theisinger (2006), p. 5.

¹⁰ Cf. *ibid*, p. 13.