

## **LAW FOR FOUNDATIONS**

(Official Gazette No. 3027, dated 13.06.1935)

Law No. 2762

Passed On: 5.6.1935

### **FIRST CHAPTER**

#### **Administrative Organs, Control Authorities Of The Foundations And Their Functions**

##### **FIRST SECTION**

###### **Administrative Organs And Control Authorities**

**ARTICLE 1-**The following foundations established before 4 October 1926 are administered by the General Directorate of Foundations:

- A- The foundations that are registered before this Law,
- B- The foundations of which the administration is registered before this Law.
- C- The foundations of which the trusteeship is delegated to an authority,
- D- The foundations lacking capacity to render charity services from the legal and physical aspects,
- E- The foundation of which the trusteeship is delegated to the parties other than the successors of the dedicators.

All of them are called (Registered Foundations).

The foundations of which the management is entrusted to the successors of the dedicators are called (Subsidiary Foundations). They are under the management of the trustees.

The trustees are under the control of the General Directorate of the Foundations, whereas the General Directorate is under the control of the Board of Directors.

The foundations organized by the communities and tradesmen are managed by the persons or boards elected by these groups. They are inspected and audited by the concerned authorities and the General Directorate of Foundations. The inspection and auditing procedures and principles are set out in a regulation to be published within the specified period.

The decision relating to covering of participation shares payable by the community foundations to the General Directorate of Foundations pursuant to article 78 of the Turkish Civil Code as contribution to inspection and auditing expenses from the general budget may

be taken by the Ministers' Council. This decision may not effect inspection and auditing of the said foundations.

The community foundations, regardless of the fact whether they have charitable trust or not, may acquire immovable properties to meet their requirements in respect of religious, charity, social, educational and health and cultural services and may establish right of disposition on these immovable properties.

The immovable properties acquired to meet their requirements in respect of religious, charity, social, educational and health and cultural services and determined to be in possession of these foundations as per tax certificates, lease contracts and other documents, are registered in the name of the foundation in case of application within six months as of the effective date of this Law. The immovable properties that are donated or dedicated in the name of the community foundations are subject to the provisions of this Law.

The procedures and principles relating to practice of this Law are set out in a regulation to be prepared by the Ministry of which the General Directorate Of Foundations is affiliated.

**SECOND SECTION**

**Board of Directors, General Directorate and Functions**

**ARTICLE 2-4** .....

**ARTICLE 5-** The General Directorate of Foundations is administered with supplementary budget.

**SECOND CHAPTER**

**Legal Capacity, Properties Of The Foundations And hange Of Foundations' Status**

**FIRST SECTION**

**Legal Entity**

**ARTICLE 6-**The subsidiary foundations are individually regarded as legal entity even if they are governed by regency by the General Directorate Foundations.

They are hold responsible from their debts only to the extent of their commitments. And, they pay their debts from their own properties.

The foundations represented by the General Directorate Of Foundations are regarded legal entity as a whole.

**ARTICLE 7-** The fact, whether or not the foundations are registered in the court records or foundation registration log may not cause prejudice to their individuality.

The registered or subsidiary foundations of which the registration is neglected until present should be registered in the foundations registration log within five years as of the enforcement of the provisions of this Law. Those still not registered during this period may not lose the

status of legal entity. However, the parties liable to realise registration transaction are kept responsible from such failure and the provisions of article 36 are applicable to the subsidiary foundations.

The procedure to be adopted during registration is indicated in the regulation.

Those who made the registration may not raise an assertion against such annotation.

No lien may be established upon the real-estate of the foundations acquired through direct endowments. Statute of limitation may not run for acquisition of right of ownership and servitude on these properties. Also, they may not be sold under circumstances other than those stated in the laws. The said real-estate is registered in the land registry, in name of the foundations, upon request of the General Directorate of Foundations. Such registration is exempted from duties and charges.

**ARTICLE 9-**The above-mentioned real-estate may benefit from the privileges granted for the State properties.

**ARTICLE 10-**The charity foundations of which the operations are determined to be contrary to the laws and public order, or become useless for performance of charity activities, may either be endowed to other charity organizations in the present form, or converted into cash or in kind, and the proceedings are allocated to the other charity organizations upon proposal of the Board of Directors and under the decision of the Ministers' Council.

The work of arts with architectural and historical value may not be sold.

**ARTICLE 11-** The funds and real-estate of the foundations are subject to the provisions of the private ownership.

**ARTICLE 12-** The General Directorate is authorised to sell or exchange the real-estate and land belonging to the registered and subsidiary foundations of which the existence is not found necessary due to their place or the benefits derived over them. The income of these sales is generally used for purchase or construction of real estate, preferably in their district, or renovation of those already in possession of the foundation.

In the subsidiary foundations, the Board of Directors obtains the opinion of the Trustees before passing resolution in this respect.

**ARTICLE 13-**The augmentation of the income (pecuniary gains) to be received from the sale of properties pursuant to the articles 10 and 12, until they are spent to the places indicated in these articles, is a mandatory condition.

**ARTICLE 14-**The real-estate to be acquired against payment of its sales value, or by way of exchange or subject to renovation, are given the name of the former foundations and entry of such acquisitions in the records of the General Directorate of the Foundations and the land registry is made accordingly.

If different foundations are concerned with the newly acquired real estate, then the name of the foundation contributing the highest share is given in the first place, the others to follow it.

**ARTICLE 15-**The Board of Directors should reserve, each year, a fund not less than twenty thousand lira from the budget of the General Directorate until it reaches to one million lira and should try to increase this amount. This fund should be kept only for recovery of the damages that may be caused by fires. The decrease in the fund bound to such expenditure is covered in the same manner.

The monies to be collected by this way may also be used by the General Directorate to insure the properties of the subsidiary foundations until they reach to an amount sufficient for this purpose. This amount is determined by the Board of Directors. The subsidiary foundations to be designated by the Board of Directors are liable to insure their properties to a company until that time and to notify this service, each year, to the local foundations' administration.

## **SECOND SECTION**

### **Change Of Obligations and Conditions**

**ARTICLE 16-**If the income of a foundation gained from the endowments is not sufficient for its administration, then the Board of Directors may decide for the survival of the foundation under the administration of the General Directorate. In such case, The General Directorate is authorised to make the necessary arrangements for its survival by allocating funds from the revenues of the dissolved foundations or those lack of capacity to perform charity services, or from the income of the employee foundations.

**ARTICLE 17-** If the foundations are physically unable to fulfil their obligations or happen to be in difficulty to comply with the stipulated conditions, then the General Directorate may be authorised to make changes in the obligations and conditions under the resolution of the Board of Directors.

In the subsidiary foundations, the opinion of the Trustees is obtained before the resolution of the Board of Directors.

## **THIRD CHAPTER**

### **Trustees And Their Duties**

#### **FIRST SECTION**

##### **Capacity and Designation**

**ARTICLE 18-**The trusteeship of the subsidiary foundations mentioned in the first article is designated by the General Directorate within the frame of the provisions of this Law.

The trusteeship of the foundations outside the territorial borders is designated according to their dedications.

**ARTICLE 19-** The Trustees may not establish control on the foundation unless the necessary designation is made by the General Directorate.

Where the nominees are not found eligible for trusteeship due to lack of legal capacity and qualifications, the activities of the foundation are carried out by the General Directorate of

Foundations until they re-possess the mentioned legal capacity and qualifications, and the minors or those subject to interdiction acquire personal competency.

The rights and monthly compensations of such persons are reserved.

**ARTICLE 20-**The new appointments are made among the eligible persons to replace the dismissed trustees according to the conditions set forth by the dedicator and the provisions of this Law.

**ARTICLE 21-**The General Directorate performs the services of the foundation until new trustees are appointed to the vacant positions.

If there is no person alive among the persons to be designated as trustee, then the said foundation is included among the registered foundations.

**ARTICLE 22-**No person may be appointed to the foundations under the title of clerk and superintended, or any other name whatsoever, after the effective date of this Law. However, clerks and pay collectors may be used by the large-scale foundations under the permission of the General Directorate. The office period of the previously appointed superintendents is terminated.

**SECOND SECTION**

**Duties Of The Trustees**

**ARTICLE 23-**The trustees are the representatives of the foundations. With this capacity, they undertake the following duties:

- A-Superintendence of endowments and real-estate of the foundation,
- B-Collection of income of which they are in charge,
- C-Realisation of expenditure within the limits of their authorisation,
- D-Presentation of the next year’s annual budget to the foundations’ administration one month before the each fiscal year, and the final accounts of the previous year within six months.
- E-Performance of other duties under their authorisation.

The trustees may borrow monies only for use in real-estate. This is also subject to the permission of the Board of Directors. The principles applicable during performance of the afore-enumerated duties are set out in a regulation.

**ARTICLE 24-**.....

**ARTICLE 25-**The Trustees are criminally and legally responsible from their transactions.

**FOURTH CHAPTER**

## **Leased And Rented Foundation Properties**

### **FIRST SECTION**

#### **Liquidation**

**ARTICLE 26-**The properties of the foundation may neither be leased nor rented after the publication of this Law.

**ARTICLE 27-**The ownership of the existing immovable properties of the foundation, leased or rented, and subject to annotation indicating state of concession on these properties irrespective of type of the foundation, is transferred to the possessors against payment of a concession value at the rate of twenty percent of the current value of the immovable property belonging to the Treasury. The current value to be taken as base is determined by a commission authorised by the financial office in the province, and by the highest fiscal office in the counties to realise biddings for sales purposes. In termination of partnership without payment of concession and in the forced sales, the sales value is considered in the calculation of the concession values of the immovable properties.

### **SECOND SECTION**

#### **Payment Of Concession Values, Interest, And Liquidation Period**

**ARTICLE 28-**In case of payment of total concession value mentioned in the above article, the ownership of the real-estate is registered in the name of the possessor in the land registry. The half of the concession value may be paid in advance, whereas the remaining amount may be paid in three equal instalments distributed to three years. In such case, although the ownership of the real-estate can be registered in the name of the possessor, an ordinary first degree and first order mortgage is established for the remaining instalments and an annotation is put in the land registry records indicating this fact. In case of failure to pay the instalments within the specified period, the remaining instalments become due immediately. The property may neither be leased nor rented after it is registered in the name of the possessor.

**ARTICLE 29-**The ownership of the real-estate of which the lease or rent records in the land registry are not subject to write off within ten years bound to given concession, is transferred spontaneously to the possessor upon expiry of the said ten years period, and the right of the foundation is also considered in this engagement, and the whole of real-estate becomes subject to first degree and first order mortgage. The General Directorate is authorised to collect the concession values to be calculated over the lease values or rentals assessed during that year, as well as the unpaid portion of the instalments by applying to other properties of the possessor, according to the Law Relating To The Procedure For Collection Of Public Receivable.

In case of decease of the owners holding possession of the real-estate in the manner described herein above, without leaving a heir behind other than the Treasury, the ownership is devolved to the foundation considering it as lapsed device. The real-estate which is devolved to the Treasury as the substitute heir upon death of the possessors and not registered in the land registry until the publication date of this Law, are subject to the provisions of afore subsection.

**ARTICLE 30-**The transactions relating to transfer of title of the properties may not be registered by the land registry offices unless the concessions of the leased or rented properties are fully given to the foundation after the provisions of this Law become into force.

**ARTICLE 31-**The mortgage transactions and registrations executed for the real-estate according to articles 28 and 29 are exempted from all duties and charges.

**ARTICLE 32-**The concession values to be received by the foundations' administration according to the provisions of this Chapter are retained in a fund and augmented in the most useful manner.

These concession values may be used in the construction or purchase of real-estate under the resolution of the Board Of Directors.

## **FIFTH CHAPTER**

### **Sanctions and Miscellaneous Provisions**

#### **FIRST SECTION**

##### **Sanctions**

**ARTICLE 33-**The Trustees are dismissed under the following conditions:

A-Non-affirmation of his assertion of ownership in the foundation by the court;

B-Making assertions and acting in a manner that may cause physical damage for the foundation;

C-Spending of foundation's income contrary to the conditions set out in the deed of foundation or beyond the limits of authorisation;

D-Failure to present the budget and accounts during the specified period without a legitimate excuse;

E-Failure to register the foundation in the log according to the provisions of this Law;>

F-Having been convicted of an infamous crime or sentenced to heavy imprisonment or imprisonment more than six months;

G-Negligence of duty causing injury to the foundation.

The trustee who is dismissed may present an objection to the Board of Directors within 15 days as of the notification date of the decision.

**ARTICLE 34-**If the trustee whose dismissal is approved happens to be the trustee of another foundation, then he is considered as dismissed from that position too and may not be admitted to trusteeship any more.

**ARTICLE 35-**Dismissal of the trustee does not avoid execution of prosecution against him.

In practice of Criminal Code, the trustee is regarded as public officer in respect of offences that are regarded as abuse of official authority.

**ARTICLE 36-**The foundations that are not registered, wholly or partially in the log within the specified period, are considered among the registered foundations.

**ARTICLE 37-**Those that retain monies mentioned in article 13 and 32 without augmentation, and spend or let others to spend the interests and these monies to places other than those indicated in this Law, are kept liable to indemnify the losses plus the incurred interest until the said losses are fully recovered.

**SECOND SECTION**

**Miscellaneous Provision**

**ARTICLE 38-**.....

**ARTICLE 39-**No change is made in the status of the foundations under administration of the General Directorate as mentioned in the first article of this Law and registered until the publication of this Law. The appointment of trustees may not be considered in the foundations of which the trusteeship is not delegated to any person since ten years.

However, the usufruct of the concerned parties pursuant to the deed of foundation is hereby reserved.

**ARTICLE 40-**In the subsidiary foundations, the trustees and the foundations’ administration should both be considered as opposite parties in the actions commenced against the assertions for usufruct and proprietorship.

**ARTICLE 41-**The provisions of Turkish Civil Code relating to statute of limitation are also applicable to the estate of the foundation. However, the previous statute of limitation for 36 years, relating to proprietorship of the foundation and which has not expired until now, is not considered completed unless a period of five years is elapsed as of the date of enforcement of the provisions of this Law. However, the total period imposed may not exceed 36 years.

**ARTICLE 42-**The judgements relating to the events occurred before the effectiveness of this Law, are passed in consideration of the laws prevailing at that time. This Law should be referred to in the events occurring after enforcement of provisions of this Law; in cases where there is no explicitness, the provisions of the prevailing laws are applicable.

**ARTICLE 43-**The assistances in the nature of expenditure, and rendered by a foundation to another, or to other charity groups within its body before the publication date of this Law, are regarded as appropriation and continued to be spent as before.

**ARTICLE 44-**The places of which the proprietorship is evidenced with the books and account records and similar documents presented to the land registry office before the publication of the Law dated 13<sup>th</sup> February 1328, and known as in possession of the foundation for the last fifteen years (minimum) prior to the publication of this Law, are

registered in the log as it is. This registration is announced, upon request of the foundations' administration by any means appropriate for declaration and disclosure of the state of the real estate. If no action is filed to object such statement within two years as of the date of announcement, final registration of the said properties are made in the name of the foundation and the title deeds are issued accordingly. The Foundations' Administrations and the trustees, if there are any, are both considered as the opposite parties in the actions relating to the real estate annotated in the land registry records.

Furthermore, the right of the foundations' administration to benefit from the provisions of the Law Nr. 1515 is hereby reserved.

**SUPPLEMENTARY ARTICLE 1**-In lease of immovables belonging to the registered and subsidiary foundations by the General Directorate of Foundations against accomplishment of renovation or construction works, the lease period may be determined as at most twenty-nine years with the approval of the concerned Ministry, also taking into account the renovation and construction cost.

**TRANSITORY ARTICLE 1-A**- All the trustees or the board of trustees who failed to present accounts to the foundations' administration until present, are liable to prepare a statement indicating the status of the foundations under their control, the financial sources and the field of expenditure of these sources, allocations, the amount of income and expenditure recorded for the previous year (incl. details of distribution), the resolution indicating the date of designation of trusteeship and the body authorised to make such designation, and to submit the same to the competent foundations' administration within three months as of the enforcement of the provisions of this Law.

**B**-The trustees presenting their statements in the manner defined as above are issued a receipt in the form of scrip. The holders of such scrip continue to administer the foundation within the frame of this Law.

**C**-Those failing to give statement with the period specified in the above subsection may not hold possession of their foundations. Where the delay in presentation of such statement is not based on a justified reason, or the statement presented is determined to be inaccurate, the trustees responsible from such fault are immediately dismissed.

**Ç**-It is necessary to review and approve these statements to be presented to the competent foundations' administration within six months as of the date of delivery. If they are not approved during this period, only the regular expenses are considered as approved.

**D**-The contents of the statements should base on the documents and the principles existing and prevailing before the publication date of this Law.

**E**-The county governors (kaymakam) who are designated by the General Directorate to administer the foundation in case of absence of the trustees other than the successors present at the time of the enforcement of the provisions of this Law, or due to disability of those present (those lacking power to administer the foundation personally), continue to administer the foundation like they have done before. The provisions of this Law are applicable in case of dismissal or dissolution.

**TRANSITORY ARTICLE 2** -In the immovables belonging to the General Directorate of Foundations and registered foundations; those whose tenancy relation is continued in dispute, on the date of which this article becomes into force, or those in the status of occupant before 31.12.2002, may apply to conclude a contract within four months as of the effective date of this article. In such case, a contract may be concluded between the applicants and the General Directorate of Foundations within one months as of the notification dated, provided that the cost of usufruct to be determined for a period of five years by the commissions to be formed by the regional managements is paid in advance or equal instalments latest within six months, together with the incurred interest, and the previously effected payments (if any) to be set off from this amount; that the buildings constructed on such immovables without permission is vacated and donated; and if it is renounced from the actions already proceeded. However, no lease contract may be concluded for the immovables subject to appraisal by the General Directorate of Foundations, or delivered or vacated thereof.

In case of signing of a contract according to the provisions of the first subsection, the parties using the immovable are evacuated upon request of the General Directorate of Foundations, by the competent local administrative authorities, within thirty days, without need to obtain judgement or to serve a notice.

The General Directorate of Foundations are authorised to determine the procedures and principles relating to practice of this article.

**TRANSITORY ARTICLE 2** -The community foundations may apply for registration within eighteen months as of the effective date of this Law, pursuant to the seventh subsection of article 1.

**ARTICLE 45** -The provisions of this Law becomes into force as of the date of publication.

**ARTICLE 46** -The provisions of this Law are enforced by the Ministers' Council.

#### **THE AMENDED ARTICLES OF THIS LAW**

1-TRANSITORY ARTICLE of the Law Nr. 5404, dated 31.5.1949;

Transitory Article-The entries relating to right of control and assessed for the subsidiary foundations and others organized to serve for the interests of a community and tradesmen are deleted from the records. And, those already collected may not be refunded.

2- TRANSITORY ARTICLE of the Law Nr. 5982, dated 20.6.1952;

Transitory Article –The rents and lease costs covering the period between

29 March 1952 and the publication date of this Law are assessed according to the first article.

3- TRANSITORY ARTICLE of the Law Nr. 2437, dated 24.3.1981;

Transitory Article – Pursuant to the subsection added to first article of the Foundations Law Nr. 2762, the debts of the foundations subject to the decision of the Ministers' Council in respect of participation shares in inspection and control expenses and determined as unpaid

until the effective date of this Law, may not be collected. And, those already collected may not be refunded.

#### THE LAWS AMENDING THIS LAW

<b>Amending Law Nr. Article</b>	<b>Date and Nr. Of Official Gazette</b>	<b>Effective Date</b>	<b>Amended</b>
3513 38	14.7.1938-3959	14.7.1938	Art.1,18,
3668	11.7.1939-4255	11.7.1939	Art.32
5404	4.6.1949-7224	4.6.1949	Art.1, 24
5982	28.6.1952-8144	28.6.1952	Art. 27
2437	26.3.1981-17291	26.3.1981	Art.1
2888	24.9.1983-18171	24.9.1983	Art. 27, 29
KHK/227	18.6.1984-18435 (Duplicate)	18.6.1984	Art. 2-4
4103	18.4. 1995-22262	18.4.1995	Art. 27,28
4690	3.7.2001-24451	3.7.2001	Art.27
4771	9.8.2002-24841	9.8.2002	Art.1
4778	11.1.2003-24990	11.1.2003	Art.1
4916 Trans.Article 2	19.7.2003-25173	19.7.2003	Suppl.Art.1,
4928	19.7.2003-25173	19.7.2003	Trans.Art.2