

Section 6

Merger, division, liquidation and bankruptcy of enterprises

Article 18. 1. The merger and division of a state-owned enterprise established under the procedure laid down in Article 7 shall be managed by the founding body on its own initiative, with the approval of the works council or at the request of the works council of the enterprise, or at the request of the manager of a multi-site enterprise supported by the factory's works council or no less than 50% of the staff of an establishment in which there is no works council.

2. In order to make better use of the means of production and to improve the efficiency of the economy, the relevant minister may decide on the division of a state-owned enterprise:

- 1) on his own initiative,
- 2) at the request of the founding body or the company's works council,
- 3) at the request of the works council and the manager of a facility that draws up the balance-sheet or the manager of such a facility, where there is no works council,

after consultation with the founding body and the governing bodies of the company. These decisions are subject to opposition pursuant to Article 63.

Article 19. 1. Liquidation of a state-owned enterprise can take place if:

- 1) the enterprise has been trading at a loss for six successive months;
 - 1a) (repealed);
- 2) the enterprise has been banned by a final court decision or a final administrative decision from operating in all areas of its current business activity, and the enterprise has not started trading in another area of business;
- 3) a request to that effect is made by the official receiver;
- 4) over half of the total assets of the enterprise:
 - a) are made up of shares, other forms of participation in companies, or bonds,
 - b) have been handed over for use by other persons under civil law contracts.

2. A liquidation decision shall be taken by the founding body acting on its own initiative or at the request of the works council of the enterprise, unless the minister responsible for State Treasury matters submits an objection, providing grounds, within two weeks.

Article 20. The works council and the director of the enterprise shall have the right to object to decisions of the founding body referred to in Article 19 section 2 under the procedure specified in Article 63.

Article 21. As soon as a state-owned enterprise is placed into liquidation:

- 1) the founding body shall release the director of the enterprise from his duties and appoint a liquidator;
- 2) the employees' self-governing bodies are dissolved by law;
- 3) the powers of the works council to approve the annual financial statements of the state-owned enterprise that has been placed into liquidation pass to the founding body.

Article 22. 1. The intention as well as the reasons for carrying out a merger, division or liquidation of a state-owned enterprise shall be presented in writing to a general meeting of the employees or the works council of the enterprise, as well as to the trade unions acting in the enterprise for the purpose of obtaining their opinion.

2. In the case of an application for the liquidation of an enterprise, the opinion may include proposals aimed at extricating the enterprise from a difficult economic situation.

Article 27. 1. The organisational regulations of a state-owned enterprise shall specify in detail the scope of activities, the division of labour and the responsibilities of the persons performing managerial and specialist functions in the enterprise.

2. The director of the enterprise shall create the organisational regulations of the enterprise after consultation with the works council.

Section 8

The organs of a state-owned enterprise

Article 30. The following shall be the organs of a state-owned enterprise: general meeting of the employees (delegates), the works council and the director of the enterprise.

Article 31. The powers of the general meeting of employees (delegates) and the works council are specified in the Act on self-government of employees in state-owned enterprises.

Article 32. 1. The director of a state-owned enterprise manages the enterprise and represents it to outside bodies.

2. The director of a state-owned enterprise shall, acting in accordance with legal regulations, take decisions independently and shall be responsible for them.

Article 33. 1. The works council shall appoint the director of a state-owned enterprise.

2. In newly created enterprises, the founding body shall appoint the first director of the enterprise. Using the same procedure, the founding body can appoint a director if the works council of the enterprise has not used the rights specified in point 1 within a period of 6 months.

3. In newly created enterprises, until a director is appointed, the founding body can appoint a temporary manager for the enterprise for a period not exceeding 6 months. This provision does not affect the rights referred to in the first sentence of point 2.

Article 34. 1. The founding body shall appoint and dismiss the director of a public benefit enterprise.

1a. In a public benefit enterprise whose founding body is the regional director and whose activities extend beyond the boundaries of the region, the regional director, acting in agreement with the minister responsible for the enterprise's area of business, shall appoint and dismiss the director of the enterprise.

2. The works council shall have a right to object to the decision of the founding body referred to in points 1 and 1a under the procedure specified in Article 63.

Article 35. 1. The director of an enterprise shall be appointed from candidates selected by way of a competition. Appointing a director without a competition shall not be valid.

2. The competition committee shall comprise three persons proposed by the founding body and two proposed by the works council.

3. The Council of Ministers shall specify, by way of a Regulation, the organisation of and procedure for competitions.

Article 37. 1. The works council can, with the agreement of the founding body, dismiss the director of the enterprise. The founding body shall present its standpoint within one month of the works council stating its position on the matter.

2. Dismissal of the director without the agreement of the founding body shall not be valid.

3. (repealed).

4. If a director should not be dismissed by the works council for the reasons referred to in Article 42, the founding body shall dismiss the director of the enterprise.

5. The works council shall have the right to object to the decision referred to in point 4, under the procedure specified in Article 63.

Article 37a. 1. The founding body can dismiss the director if:

- 1) when fulfilling his functions, the director commits a flagrant breach of the law;
- 2) the conditions specified in Article 52(1) or Article 53 (1) of the Labour Code are apparent;
- 3) for a period of at least 3 successive months the state-owned enterprise fails to comply with its tax obligations to the State Treasury;
- 4) (repealed).

2. The works council shall not have the right to use the procedure specified in Article 63 to object to the dismissal of a director for the reasons specified in point 1.

3. (repealed).

Article 41. 1. A works council that has the right to appoint a director can suspend the director from performing his duties for a period not exceeding 6 months if continuation of such performance is endangering the fundamental interests of the enterprise. The works council shall appoint a temporary manager for the period of suspension.

2. The director of the enterprise and the founding body shall have the right to object to a suspension decision using the procedure specified in Article 63. The objection shall not stop the decision from taking effect.

3. During the period of suspension, the director of the enterprise shall keep his right to the salary he has been receiving and to other rights under the employment contract.

Article 42. 1. The director of a state-owned enterprise, his deputy, the chief accountant, persons employed in equivalent positions as well as members of the works council may not hold stocks or shares in enterprises created by that enterprise or be employed by them, or be employed by them under another legal title. This ban does not apply to membership of supervisory boards.

2. A breach of the provision in point 1 shall constitute grounds for dismissal from the position held or termination of employment. The provisions of Article 6(1) of the Act of 25 September 1981 on the

self-government of employees of state-owned enterprises (Journal of Laws No 24, item 123, as amended) shall not apply.

3. The provision in point 1 does not affect provisions on the specific obligations of persons performing managerial functions in enterprises.

Article 44. The director of the enterprise, acting with the agreement of the works council, shall appoint and dismiss the deputy director and the chief accountant.

Article 45a. 1. The founding body can entrust the management of a state-owned enterprise to a physical or legal person.

1a. Entrusting the management of an enterprise can take place:

- 1) on the initiative of the founding body, acting with the agreement of the works council and a general meeting of the enterprise's employees (delegates);
- 2) at the request of the works council of the enterprise, with the agreement of the general meeting of the employees (delegates).

Article 45b. 1. As soon as an administrator takes up his duties:

- 1) the organs of the employees' self-governing body shall be dissolved by virtue of law;
- 2) the founding body shall dismiss the director of the enterprise;
- 3) the administrator shall take over the powers of the director of the enterprise and the organs of the employees' self-governing body, except for:
 - a) the right to submit an objection against a decision of the founding body,
 - b) receiving and approving financial statements,
 - c) dividing any profit made by the enterprise into funds and setting the rules for using these funds.

2. In a state-owned enterprise in which the administrator has taken up his duties, the founding body shall establish a supervisory board in accordance with Article 59 and shall entrust continuous monitoring over the activities of the enterprise to this body.

3. The employees of the enterprise shall select one-third of the members of the supervisory board. Provisions concerning the selection of members of the works council shall apply, as appropriate.

4. The founding body shall assume the powers referred to in paragraph 1 points 3b and 3c. The founding body may transfer these powers to the supervisory board.

Article 45c.

2. Immediately following the expiry of a contract concerning management of the enterprise, the supervisory board of the enterprise shall manage and conduct elections to the self-governing organs of the enterprise's employees, unless a contract has been concluded for an additional period.

Article 56. 1. The director of an enterprise must provide written notification to the enterprise's works council, the financing bank and the founding body that the enterprise is operating at a loss.

2. In the situation described in point 1, the founding body shall, at the request of the enterprise's works council or acting on its own initiative, appoint a committee to examine and assess the economic situation of the enterprise and to present its conclusions.

Article 63. 1. The director of an enterprise as well as the works council shall have the right to submit an objection against a decision taken regarding the enterprise by a supervisory authority.

2. The objection and its justification should be submitted to the organ that issued the decision within seven days from its delivery. The submission of an objection shall suspend the implementation of the decision.

3. If the authority should uphold a decision that was subject to objection, the director of the enterprise and the works council shall have the right to take the matter to court within seven days. The court shall give a date for the hearing within fourteen days.

Article 64. 1. If the enterprise should suffer damage as a result of the implementation of a decision issued by a supervisory authority, the enterprise shall have the right to seek compensation from that authority.

2. Any disputes arising in relation to the provision in point 1 shall be decided by a court.

3. Either the director of the enterprise or the enterprise's works council can demand compensation.