



NEW RECOMMENDATIONS ON FOUNDATION GOVERNANCE (COMMERCIAL FOUNDATIONS)

The Committee on Foundation Governance has published a series of adjusted recommendations on governance of Danish Commercial Foundations that will take effect for financial years beginning on or after 1 January 2025. These new recommendations are the result of a thorough process in which the committee has gathered experiences since the last adjustments in 2020 and considered the increasing demands from the public for openness and transparency in the affairs of Commercial Foundations and the work of their boards.

The adjusted recommendations now include a total of 19 points, two of which are new. Overall, the most important changes are:

- **Annual Report and Related Party Transactions:** The foundations' annual report must henceforth include information on any transactions with related companies (new recommendation 2.2.3).
- **Annual Election of Chairman and Vice-Chairman:** The board must annually elect the foundation's chairman and any vice-chairman for a period of one year at a time (new recommendation 2.3.6).
- **Independence Requirement:** The recommendation on independence (2.4.1) has been amended so that at least one-third of the board members must be independent (formerly “an appropriate proportion”).
- **Board Decisions for Special Tasks:** Additionally, the recommendation on board decisions for special tasks (2.2.2) has been expanded to include all board members (formerly, it only applied to the Chair).

Moreover, the Committee has clarified some of the existing recommendations and the comments on these to reduce uncertainty about their scope.

Link to the Danish version of the new recommendations (*Anbefalinger for god fondsledelse 2025*)¹. An English version of the Recommendations on Foundation Governance and the reporting scheme will be published as soon as it is ready.

Background

The Board of Directors of a Danish Commercial Foundation must, pursuant to Section 60 of the Commercial Foundation Act, prepare a report on foundation governance, in which the board addresses each recommendation in the *Recommendations on Foundation Governance*.

The report on foundation governance must be prepared using the "comply or explain" principle in relation to each recommendation. The "comply or explain" principle is a fundamental element of the recommendations. Any explanations must pertain to the specific recommendation and should enable the reader to understand the foundation's governance model. The principle means that the board of directors of the individual Commercial Foundation itself determines the extent to which the foundation wishes to follow the recommendations.

If the foundation follows one or more of the recommendations, it is sufficient for the board to state, in relation to each of these recommendations, that it follows them. The board may choose to provide supplementary information for the recommendation(s) that the foundation follows.

If the foundation does not follow one or more recommendations, the board must explain for each of these recommendations:

- Why the board has chosen not to organize itself differently, and
- How the board has chosen to organize itself instead.

It is not a violation of the rules if the foundation does not follow a recommendation, but rather an indication that the board has specifically, and for reasons it has explained, chosen to organize itself in a different manner than that set out in the recommendation.

Thus, the foundation complies with the recommendations by either following or explaining as described above.

Moalem Weitemeyer has extensive experience on Commercial Foundation regulation, including the *Recommendations on Foundation Governance*, and we are of course available for discussions and advice on the matter.

¹. https://godfondsledelse.dk/sites/default/files/2024-12/Anbefalinger-god-fondsledelse-2025-20122024_WA.pdf

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If you have any questions or require further information regarding any of the above, please do not hesitate to contact us.

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