

LEGAL UPDATE

Who can intervene in the organisation of a foundation?

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An interested party can ask the court for far-reaching remedies to intervene in the organisation of a foundation. For example, at the request of an interested party, directors of a foundation may be dismissed and new directors may be appointed. A foundation may also be dissolved at the request of an interested party. An interested party can therefore have a major influence on (the governance of) a foundation. On Friday 12 October 2018, the [Dutch Supreme Court](#) ruled on who qualifies as an interested party.

The law¹ does not specify who is to be included in the stakeholder group. The [Supreme Court](#) previously ruled that in answering the question as to whether someone is an interested party, it matters whether a party's own interest is affected or whether the party is (or was) closely involved in the subject being dealt with in the proceedings.

In the case on which the Supreme Court has now ruled, the Court of Appeal had previously ruled that the applicant was inadmissible because it was not an interested party. In considering this matter, the Court of Appeal had taken into account, among other things, the fact that the applicant is not (and had not been) a director of the foundation and that the requested remedies would have had an extremely severe impact on (the governance of) the foundation.

The Supreme Court has held that no decisive importance is to be attached to the fact that someone is not (or was not) a director of the foundation. According to the Supreme Court, the fact that the requested remedies would constitute a severe intervention must be taken into account in the *substantive* assessment of the request. This should therefore not play a role in the preliminary question as to whether the applicant's application is admissible.

The case has been referred to another Court of Appeal to rule on whether the applicant's circumstances are sufficient for the applicant to be considered an interested party.

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¹ Section 2:298 paragraph 1, Section 299 and Section 21 paragraph 4 of the Dutch Civil Code