

**The Law on the Contergan Foundation for Disabled People
(Contergan Foundation Act – ContStifG)
as amended by the Fourth Amendment 2017**

**Section 1
General Provisions**

§ 1

Name of the Foundation

The “Disabled Children’s Relief Foundation”, established by the law dated 17th December 1971 (Federal Law Gazette - BGBl. I p. 2018; 1972 I p. 2045) (hereinafter: Establishment Act), last amended by article 19 of the act dated 27th December 2003 (Federal Law Gazette – BGBl. I p. 3022) shall be renamed to “Contergan Foundation for Disabled People”.

§ 2

Purpose of the Foundation

The purpose of the foundation is to aid disabled people whose deformities can be linked to their mothers taking medications containing thalidomide by Grünenthal GmbH, Aachen (previously Chemie Grünenthal GmbH in Stolberg) during pregnancy,

1. providing benefits and
2. assistance by funding or conducting research and trial projects to support their participation in community life and to alleviate the impairments caused by long term effects.

§ 3

Tax Concessions

The foundation exclusively and directly pursues tax deductible objectives in accordance with §§ 51 to 68 of the German Fiscal Code.

§ 4

Endowment Fund

- (1) The endowment fund consist of
1. the funds made available to the foundation by the federal government to cover financial compensation and Contergan pensions pursuant to § 13 sec. 1, as well as essential administrative expenses;
 2. the funds amounting up to 30 million Euro annually provided by the federal government to cover specific needs; this also includes other expenses related to these services such as administrative expenses;
 3. a benefit in the amount of 50 million Euro provided by Grünenthal GmbH;

4. funds in the amount of 51,129,000 Euro provided by the federal government pursuant to § 4 sec. 1 no. 1 of the Establishment Act;
5. the contributions specified in section 2 and the capital generated from these.

(2) The foundation is entitled to accept donations from third parties. The foundation raises additional funds from third parties.

§ 5

Bodies within the Foundation, Liability

(1) Bodies within the foundation include

1. the foundation board,
2. the foundation's Management Board.

(2) Volunteer board members are only liable to the foundation for damages due to intent or gross negligence in performing their duties. The foundation indemnifies volunteer board members from any claims asserted by third parties for damages caused performing their duties unless the damage results from intent or gross negligence. Sentences 1 and 2 apply to former volunteer board members accordingly.

§ 6

Foundation Board

- (1) The foundation board consists of a minimum of five and a maximum of seven members. Representation is admissible. Three members are appointed by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth in consultation with the Federal Ministry of Finance and the Federal Ministry of Labour and Social Affairs. An additional two members are appointed by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth nominated by the individuals specified under § 2. The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth may appoint two more members from the scientific community. Sentences 3 to 5 also apply to representatives.
- (2) The foundation board elects the chairperson and the deputy chairperson from the members appointed by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, acting by simple majority. Repeated election is admissible.
- (3) The term of office for the foundation board members and their representatives is five years. If a member or their deputy resigns prior to the end of their term, a replacement is appointed for the remaining term of office. Repeated appointment is admissible.
- (4) The members of the foundation board are volunteers; they are entitled to be compensated for necessary expenses. The members of the foundation board entitled

to benefits under this law, are entitled to be compensated for their necessary costs for assistance.

- (5) The foundation board operates on the basis of its charter; amendments are determined by simple majority. Meetings and proceedings of the foundation board are public. Negotiations are only closed when necessary for the greater public good or legitimate interests of individuals; negotiations on topics which meet these requirements must also be held in closed sessions. Decisions made in closed sessions as defined by sentence 3 must be subsequently announced to the public or, if unsuitable, in the next public meeting, provided this does not conflict with the greater public good or the legitimate interests of individuals.
- (6) The foundation board makes decisions regarding all fundamental issues within the foundation's scope of duties. It oversees the activities of the foundation's board of management. Details are defined in the charter.
- (7) The foundation board constitutes a quorum if half of the members are present. If an issue is postponed due to absence of a quorum and the foundation board is convened to deliberate on said issue, the board constitutes a quorum regardless of the number of members present. The chairperson must explicitly point out this provision when the board convenes for the second time.

§ 7

The foundation's Management Board

- (1) The foundation's Management Board consists of the chairperson and a maximum of two additional members. A member of the foundation's Management Board must qualify as a beneficiary under this law.
- (2) The members of the foundation's Management Board are appointed by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth in consultation with the Federal Ministry of Finance and the Federal Ministry of Labour and Social Affairs upon approval by the foundation board.
- (3) The term of office for the foundation's Management Board is five years. If a member resigns prior to the end of their term, a replacement will be appointed for the remaining term of office. Repeated appointment is admissible.
- (4) The members of the foundation's Management Board are volunteers; they are entitled to be compensated for their necessary expenses. The members of the foundation's Management Board qualifying as a beneficiary under this law are entitled to be compensated for their necessary costs for assistance.
- (5) The foundation's Management Board carries out the decisions of the foundation board and conducts the foundation's business. In particular, these business transactions include allocating the foundation's funds and overseeing the appropriate

and economic use by the foundation. It represents the foundation, both judicially and extra-judicially.

- (6) The management board may employ two full-time managing directors in agreement with the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth and the Federal Ministry of Finance to assist with carrying out its duties.
- (7) Details are defined in the charter.

§ 8
Charter

The foundation board may amend the charter with the approval of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth in agreement with the Federal Ministry of Finance.

§ 9
Appropriation of Funds

The foundation's funds may only be used for the purposes of the foundation.

§ 10
Supervision, Budgeting, Audit

- (1) The foundation is under supervision of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth.
- (2) The foundation must punctually prepare a budget prior to the start of each fiscal year. The budget and the annual financial statement require the approval of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Details are defined in the charter.
- (3) The auditing authority is the Bundesrechnungshof.

Section 2
Contergan Benefit Claims

§ 11
Allocation of Endowment Fund

Actions outlined in this section must be paid from the endowment fund. To be used:

- 1. for annual special payments awarded to beneficiaries pursuant to §§ 12 and 13,

- a) the funds specified in § 4 sec. 1 no. 3 and the earnings generated from these assets as well as
- b) the funds specified in § 4 sec. 1 no. 4 in the amount of 50 million Euro and the earnings generated from these assets since 1st January 2009;
2. the funds specified in § 4 section 1 number 2 for benefits to cover specific needs including other costs as well as administrative expenses related to services to cover specific needs;
3. the funds in accordance with § 4 sec. 1 no. 1 excluding funds for necessary administrative expenses for the remaining services.

§ 12

Beneficiaries

- (1) Benefits for those with deformities which can be linked to their mothers taking medications containing thalidomide by Grünenthal GmbH, Aachen, during pregnancy are granted to persons considered disabled who were alive at the time when the Establishment Act came into force and, pursuant to § 13 sec. 5 sentence 2, their legal heirs.
- (2) Benefits pursuant to § 13 of the Establishment Act were not claimed during the time specified under said, Contergan pensions and financial compensation may be applied for from 1st July 2009 on.

§ 13

Type and scope of services available to disabled people

- (1) The beneficiaries stated in § 12 are entitled to the following benefits:
 1. one-time financial compensation,
 2. life Contergan pension subject to section 2 sentence 3,
 3. annual benefits to cover specific needs and
 4. an annual special payment, which is first granted for 2009.
 Annual benefits covering specific needs and special annual payments are only made as long as funds according to § 11 sentence 2 number 1 and 2 are available in the endowment fund.
- (2) The amount of financial compensation stated in section 1 is determined by the severity of the bodily injuries and the resulting dysfunctions and is
 1. between 1,278 Euro to 12,782 Euro for the one-time financial compensation,
 2. between 662 Euro and 7,480 Euro for the monthly Contergan pension and
 3. between 876 Euro and 9,900 Euro for the annual benefits to cover specific needs.
 Furthermore, every beneficiary receives an annual basic allowance in the amount of 4,800 Euro.

In mild cases, the benefits must be limited to financial compensation. The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth adjusts the amount of the Contergan pension at the same percentage the statutory pension insurance is

changed. This adjustment specified in sentence 4 always occurs at the same time pensions from statutory pension insurance are adjusted.

- (3) Contergan pension must be capitalised upon application if the amount is used for the acquisition or economic strengthening their own property for the individual's residential purposes. §§ 72, 73, 74 sec. 3 sentence 1, §§ 75, 76 and 77 sec. 1 sentence 3 and sec. 3 of the Federal War Victim's Relief Act apply accordingly. § 75 sec. 1 sentence 2 of the Federal War Victim's Relief Act applies, with the proviso that a sale of or liability against the property, leasehold, condominium or the building lease acquired or economically strengthened with the financial settlement within the period the Contergan pension was capitalised for requires the approval of the foundation. The beneficiary must bear the costs for recording restricted cash in the land register pursuant to § 75 sec. 1 sentence 2 to 4 of the Federal War Victim's Relief Act. Furthermore, the Contergan pension must be capitalised upon application if this is in the legitimate economic interest of the disabled person. In addition, the Contergan pension may be partially capitalised upon application if this is in the interest of the disabled person. Capitalisation is limited to a period of up to ten years of the Contergan pension. Eligibility for the Contergan pension, which is replaced by the financial settlement, lapses during the period for which the financial settlement is granted, at the end of the month which follows the month the settlement was paid.
- (4) Contergan pension payments begin no sooner than the month of application. If the application is filed within three months after the Establishment Act comes into effect, the Contergan pension is granted from the time it came into effect. Pursuant to section 1 sentence 1, annual special payments begin the year the application for Contergan pension was filed. Annual benefits to cover specific needs pursuant to section 1 sentence 1 number 3 are paid beginning 1st January 2017.
- (5) Entitlement to benefits stated in section 1 cannot be transferred, pledged or seized. Only entitlement to financial compensation, to the Contergan pension and to the annual special payments due at the time of death may be bequeathed, and only to the spouse, domestic partner, children or parents.
- (6) Further details are outlined in the charter and guidelines. The charter particularly includes provisions on the requirements and the extent of the capitalisation of the Contergan pension pursuant to section 3 sentence 5 and 6 as well as the mode of calculating the capital sum. The guidelines must particularly stipulate the criteria for determining the basis for allocating available funds under this section and how to formulate allocating special need benefits; these guidelines are issued by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth.
- (7) The Contergan pension is also increased for beneficiaries whose Contergan pension was capitalised pursuant to section 3.

- (8) The provisions of the Federal Administrative Procedures Act apply to the repayment of overpayments accordingly. § 118 sec. 3 and 4 of Book VI of the Social Security Code apply accordingly.

§ 14

Interest

Pursuant to § 247 of the German Civil Code, financial compensation pursuant to § 13 section 2 is subject to an annual interest rate in the amount of 2 per cent above the base rate from the date of application.

§ 15

Waiver, Imputation of Third Party Payments

- (1) If the beneficiary's or their legal representative's place of residence or permanent dwelling is located outside the territory to which this law applies, they will only receive benefits according to the provisions of this act after first waiving the right to potential claims related to medications containing thalidomide against Grünenthal GmbH, its shareholders, managing directors and employees.
- (2) Previous payments from other potentially responsible parties related to taking medication containing thalidomide must be imputed for benefits according under this law. Payments from third parties, particularly from foreign countries related to taking medication containing thalidomide are imputed to financial compensation and the Contergan pension.

§ 16

Proceedings

- (1) Benefits are granted upon application. Recipients of the Contergan pension will also receive annual special payments and the annual benefits to cover specific needs without separate application.
- (2) A commission consisting of at least five members, which must be established within the foundation's Management Board, determines eligibility under this section and assesses the claim according to the guidelines.
- (3) The chairperson of the commission must be qualified as a judge; furthermore, the commission consists of medical specialists from various fields of expertise. If necessary, several commissions may be established.
- (4) The members of the commissions are appointed by the foundation's Management Board.
- (5) When in doubt, the commission must obtain an expert opinion before deciding the existence of a deformity pursuant to § 12.

- (6) The foundation's Management Board determines benefits based on this decision and the assessment of the commission pursuant to section 2 in accordance with the guidelines pursuant to § 13 section 6 by means of written administrative decision.

§ 17

Treatment of benefits under this law when applying other laws

Benefits according to this section are tax-exempt. Claims to such benefits do not qualify as other assets as defined by the Valuation Tax Act.

§ 18

Other benefits

- (1) Benefits under this act are not taken into account when calculating or imputing income, miscellaneous receipts and assets under other laws, particularly Book II, III, V, IX and XII of the Social Security Code and the German Civil Code.
- (2) Obligations of other parties, particularly those responsible for support and the welfare or other social benefits authorities are not affected by this act. Assigning the beneficiary's claims for maintenance to the beneficiary's spouse, life partner, children or parents in accordance with § 94 of Book XII of the Social Security Code represents an undue hardship under § 94 section 3 sentence 1 number 2 of Book XII of the Social Security Code. With respect to support under Chapter Five to Nine of Book XII of the Social Security Code, the beneficiary and the beneficiary's spouse or life partner, from whom the beneficiary is not separated, cannot be expected to procure financial means from income pursuant to § 19 section 3, § 87 section 1 and § 88 of Book XII of the Social Security Code. Pursuant to § 19 section 3, § 90 section 3 sentence 1 of Book XII of the Social Security Code, assessing the assets of the beneficiary and the beneficiary's spouse or life partner from whom the beneficiary is not separated, represents a hardship. Pursuant to Part 2 of Book IX of the Social Security Code, integration assistance under § 92 Book IX of the Social Security Code is not subject to fees. Pursuant to this law this also applies to beneficiaries receiving benefits under § 103 Book IX of the Social Security Code after the Federal Participation Act comes into effect. Benefits from other agencies based on legal provisions the individual does not qualify for may not be refused due to benefits received under this act.

Section 3 **Project Funding**

§ 19

Financial Resources

Applicable to provisions under this section:

1. proceeds from the funding under § 4 sec. 1 no. 3, which do not fall under § 11 sentence 2 no. 1;
2. benefits under § 4 sec. 2, unless otherwise stipulated by the benefactor(s).

§ 20
Funding

- (1) The foundation may fund or carry out individual projects for scientific research, development and testing of specific treatment methods and other measures to achieve the objectives outlined in § 2 no. 2.
- (2) The funding approved prior to this act coming into effect must be followed through.
- (3) There is no entitlement to aid from foundation funds.

§ 21
Spending
Plan

The foundation board prepares a spending plan for two fiscal years upon approval by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth which defines the financial framework for funding. The Management Board determines the execution of the plan for specific cases.

Section 4
Final and Transitional Provisions

§ 22
Proceedings

Unless otherwise stipulated under this act, the Federal Administrative Procedure Act applies.

§ 23
Legal Recourse

Disputes on benefits under this law are subject to public law remedy.

§ 24
Transitional Provision

Any benefits approved by the Contergan Foundation to cover specific needs under the amendment in effect until 31st December 2016

1. to be paid after 1st January 2017, and

2. intended to cover specific needs as of 1st January 2017,
are offset against benefits under § 13 section 1 sentence 1 number 3.

§ 25
Report

For the first time in two years, the Federal Government is submitting a report to the German Federal Parliament on the effects of this act and the potential need to further revise these provisions, where possible including documentation how beneficiaries are using funds. The report is particularly also intended to include an evaluation of the structure of the foundation. Reports will then be submitted every four years. This report must not contain personal information.