

## EFC COUNTRY PROFILE JANUARY 2011: CZECH REPUBLIC

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### I. Legal framework for foundations

- **Does the jurisdiction have a basic legal definition of a foundation (Description where applicable)? What different legal types of foundation exist (autonomous, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations)?**

The present legal framework in the Czech Republic, as established in 1998, is favourable to the creation and operation of foundations, endowment funds and public benefit institutions, which are the counterpart to the English term “foundations” (private foundations).

The Act No 227/1997 Coll., as subsequently amended, on Foundations and Endowment funds, (Law on Foundations) is a complex legal regulation containing both private law and public law features. This act regulates the establishment, operation and winding up of foundation subjects, corporate governance, and also other questions.

Foundations operate with income generated from a registered endowment, as well as from donations and other resources. They are expected to provide financial or other grants to third persons exclusively for public benefit purposes. Endowment funds are a “more simple” form; they do not have to have a registered endowment, but may raise funds for public benefit purposes and use them only for such a purpose.

This relatively extensive law is a reaction to the very liberal approach to the regulation of foundations in the Civil Code, which was one of the main causes of the discreditation of the institute of the foundation in the Czech Republic at the beginning of the 1990s.

In addition to lay foundations established under the Foundations Act, there are also foundations existing under canon law. These are Roman Catholic religious and pious foundations – “independent pious foundations” (*piae foundationes autonomae*), which are established as independent organisation units of the church and endowed with a legal subjectivity under the universal canon law (Canon Law Code CIC/1993 - *Codex iuris canonici*), which was effective even prior to the adoption of the Act No. 227/1997 Coll.

The Act No. 248/1995 Coll. on Public Benefit Institutions constituted a new type of a legal person in the Czech legal system, whose statutory purpose was strictly limited to the provision of services beneficial to the public. It is a legal entity rendering generally beneficial services to the general public and to all clients under identical terms and conditions, whose profit may not be used for the benefit of its founders, members of its bodies or employees and must serve for the rendering of the generally beneficial services for which the organisation was established (comparable to “operating foundations”). However, on account of historical reasons, it is not possible to state that ‘public benefit institutions’ make up a third type of foundation, this legal form will be left aside.

In Czech Republic there also exist public foundations (funds, which are based on separate laws).

➤ **What purposes can foundations pursue?**

A foundation and an endowment fund can pursue only public benefit purposes. A public benefit purpose is, in particular: The development of spiritual values; the protection of human rights and other humanitarian values; the protection of the environment, cultural monuments and traditions; developments in science; education; and physical education and sports.<sup>1</sup>

There is no unified legal definition of public benefit purpose in the Czech Republic. Public benefit purpose is thus defined differently in each of the various laws (e.g. Act on Foundations, Act on Income Tax, Act on Gifts, Inheritance and Real Estate Tax, Act on Public Benefit Corporations).

Currently there is a discussion about implementation of “public benefit status” (drafting of paragraph version of the Act on public benefit status), which would be very important for the relationship between NGOs and the government, There is also a reform of tax regulation currently going on, which will have a great influence on the NGO sector.

➤ **What are the requirements for the setting up of a foundation (procedure, registration, approval)? What application documents are required? Are there any other specific criteria for registration?**

Foundations and endowment funds are established by an agreement in writing concluded between the founders or by a founding charter, if there is only one founder, or by a testament<sup>2</sup>. If a foundation/an endowment fund is established by an agreement, the authenticity of the founders' signatures in the agreement has to be officially verified; if a foundation/an endowment fund is established by a foundation charter or a testament, the foundation charter has to be executed in the form of a notarial deed.

The foundation charter and founders' agreement (referred to hereafter as a 'foundation charter'), if not a testament, has to include the name and location of the organisation, information about the founder(s), and the delimitation of the purpose for which the organisation is being set up. The purpose for which the organisation is being set up has to conform to a publicly beneficial goal. Furthermore, the foundation charter must contain the amount or value of asset deposit which each founder pledges and the number of members of its management board including their identification, with a statement of the manner of their acting on behalf of the foundation/endowment fund. Such (number of members and their identification) information also needs to be included in the charter about the supervisory board. The charter must also determine a rule to limit the administrative expenses of the organisation (pursuant to Art. 22) and identify the person who manages the asset deposits of the founder (s) up to the time of the establishment of the foundation. The act provides some specific conditions in case the organisation is established by a testament.

The foundation charter has to include (Art. 3/2 Law on foundations):

- The name and location of the foundation

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<sup>1</sup> § 1 article 1 Law on Foundations

<sup>2</sup> However, this kind has not been used in practice yet. This is related to some unclear points which the law does not deal with in connection with the establishment of foundations *mortis causa*.

- The name or business name, location and identification number of the founder (s), or a document on the legal status of the foreign founder, if a legal entity; or first name, last name or business name, personal identification number, date of birth, and permanent residence of the founder, if an individual ( natural person)
- The purpose for which the foundation is being set up(the purpose has to conform to a publicly beneficial goal)
- The amount or value of assets which each founder pledges to deposit in the foundation; if it is a non-financial deposit, the subject of the deposit has to be defined and valued by an expert
- The number of members of the management board, first and last names, personal identification numbers, dates of birth, and permanent residence of the members of the first management board, with a statement on the manner of their acting on behalf of the foundation
- The number of members of the supervisory board, first and last names, personal identification numbers, dates of birth, and permanent residence of the members of the first supervisory board, or first and last names, personal identification number, date of birth, and permanent residence of the first comptroller, if the competence of the supervisory board is carried out by a comptroller
- A rule limiting the foundation costs pursuant or a statement that such rule is to be set out by the statute of the foundation
- Identification of a person who manages asset deposits of the founder up to the time of the establishment of the foundation

The founding document must be submitted to a regional court (registration principle) which decides on incorporating the legal entity and entering information about it into the 'Registry of Foundations', and which also assigns a corresponding unique identification number to the entity. A foundation/endowment fund is considered established on the date of its entry in the Registry of Foundations. The motion to have the organisation registered has to be accompanied by its foundation charter and other documents required by the law.

A proposal to register the foundation in the register is submitted by the founder or the executor of the testament, or a person authorised by these in writing.

The proposal to register the foundation has to be accompanied by its foundation charter, a voucher confirming payment of the deposit, or a voucher confirming the receipt of a non-monetary deposit, and copies of the police record of the management board and the supervisory board, or the comptroller. These police-record copies may not be older than 6 months. Those members of the management board and the supervisory board, or the comptroller, whose permanent residence is not in the Czech Republic, must submit a relevant voucher from the country of their permanent residence ascertaining they have not been lawfully sentenced for a wilful act punishable by law. This voucher may not be older than 6 months.<sup>3</sup>

The founders may appeal to a higher court in the event that the regional court declines their motion to have the legal entity incorporated. The establishment procedure is based on Rules of Civil Procedure<sup>4</sup>, unless otherwise provided for in the Law on Foundations.

<sup>3</sup> §5 article 3 Law on Foundations

<sup>4</sup> Act No. 99/1963 Coll. – Rules on Civil Procedure.

➤ **Is State approval required? (approval by a State Supervisory Authority with/without discretion? Registration with a state authority or court? Notarisation by a Notary public? )**

No, pure registration principle, no state approval required. A foundation is an independent legal person at the moment of its entry into the Foundation Register.<sup>5</sup>

➤ **Do foundations have to register? If yes, in what register?**

A foundation/endowment fund exists independently from the date of its entry in the foundation register.

The register is a public list; the statutes of the foundation/endowment fund and the annual report constitute parts of the register.<sup>6</sup>

If foundations are registered, what information is kept in the register?

The following data is entered in the Register:

- The name, location and identification number of the foundation
- The name or business name, location and identification number of the founder if it is a legal entity; or first and last names, or business name, personal identification number, date of birth, and permanent residence of the founder, if an individual (natural person)
- The purpose of the foundation
- The amount of foundation equity or the amount of property deposited in the endowment fund
- The first and last names, personal identification numbers, dates of birth, and permanent residences of the members of the management board and the manner of their acting on behalf of the foundation
- The first and last names, personal identification numbers, dates of birth, and permanent residence of the members of the supervisory board, or the comptroller if no supervisory board has been set up
- The list of assets comprising the non-financial deposit or foundation gift to the foundation equity, stating its description and value<sup>7</sup>

The proposal to register the foundation/endowment fund is accompanied by its foundation charter, a voucher confirming payment of the financial deposit, or a voucher confirming receipt of a non-monetary deposit issued by the person responsible for deposits, and copies of the police records of the management board, the supervisory board, or the comptroller (these police record copies may not be more than 6 months old). Those members of the management board, the supervisory board, or the comptroller, whose permanent residence is not in the Czech Republic, have to submit a relevant voucher from the state of their permanent residence ascertaining they have not been sentenced for a willful act punishable by law. This voucher may not be older than 6 months.

The foundation register is public evidence, open and accessible for anyone. Any person is entitled to see data entered in the register and to make copies and excerpts.

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<sup>5</sup> K. Ronovská *Soukromoprávní aspekty nadačního a spolkového práva v Česku, Švýcarsku a v Nizozemí*. Masaryková univerzita, Brno (2004) Page 83.

<sup>6</sup> § 5 Article 1 Law on Foundations

<sup>7</sup> §5 article 4 Law on Foundations

➤ **Is a minimum capital required?**

Yes, to establish a foundation, 500,000 CZK (approx. €18,000) is required as a minimum capital and this amount should not decrease throughout the period of the foundation's existence.<sup>8</sup> For an endowment fund a minimum capital is not required.

➤ **What governance requirements are set out in the law<sup>9</sup>?**

Is it mandatory to have a supervisory board?

The Act on Foundations provides for the management board and a supervisory board or comptroller as the main governance bodies of a foundation. The founders (in the founding charter) or the management board (in the statutes) can establish additional bodies, e.g. executive director, grant committees etc.

The management board is the main governing board of a foundation. The management board manages the equity (assets) of the foundation, directs its activities and makes decisions in all the matters concerning the foundation, and constitutes the statutory body of the foundation.<sup>10</sup> The management board has to have a minimum of 3 members. The total number of the members of the management board has to be divisible by 3, unless stated otherwise by the foundation charter.<sup>11</sup> The term of office is three years unless stated otherwise by the Act on Foundations or the foundation charter. Repeated terms of office are allowed, unless otherwise stated in the foundation charter.<sup>12</sup>

The supervisory board is the body that oversees the foundation.<sup>13</sup>

The supervisory board has to be instituted whenever the foundation equity assets exceed 5 million CZK (approx. €178,000) or when the foundation charter so mandates.<sup>14</sup> Otherwise (if no supervisory board is set up), the responsibilities of the supervisory board are exercised by the comptroller.<sup>15</sup>

What are the requirements concerning board members? Is a minimum/maximum number of board members specified? What are the rules concerning appointment of board members? And their resignation/removal?

Only individuals of integrity, capable of legal acts, who are not in employment or a similar relationship with the foundation, may be members of the management board.<sup>16</sup>

An individual who receives funds granted in pursuit of the purpose of the foundation may not serve as a member of the management board; nor can he be a member of a statutory or controlling body at a legal entity, if this entity receives funds granted in pursuit of the purpose of the foundation.<sup>17</sup>

The first members of the management board are appointed by the founder, or the executor of the testament, unless they are mentioned by name in the testament.<sup>18</sup> Unless stated otherwise by the foundation charter, upon the appointment of the first members of the management board, one-third of the members' names for a one-year term of office and one-third of the members' names for a two-year term of office from the date of their

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<sup>8</sup> § 3 article 4 Law on Foundations

<sup>9</sup> See also K.Ronovská, Nonprofit organisations in the Czech Republic in: Hopt, J.K., von Hippel, T.: Comparative Corporate Governance of Non-Profit Organisations, Cambridge, 2010, p. 379 as.

<sup>10</sup> § 10 article 1 Law on Foundations

<sup>11</sup> § 11 article 1 Law on Foundations

<sup>12</sup> § 12 article 1 Law on Foundations

<sup>13</sup> § 17 article 1 Law on Foundations

<sup>14</sup> § 17 article 2 Law on Foundations

<sup>15</sup> § 20 article 1 Law on Foundations

<sup>16</sup> § 11 article 2 Law on Foundations

<sup>17</sup> § 11 article 4 Law on Foundations

<sup>18</sup> § 13 article 1 Law on Foundations

appointment will be drawn by a lottery. New members whose term of office will be a full three years will be elected subsequently to all vacated positions.<sup>19</sup>

The foundation charter may state that a certain number of the members of the management board be elected upon their nomination by certain legal entities, or an individual, as specified by the founder, or the testator.<sup>20</sup>

Membership on the management board expires:

- Upon the expiration of the term of office
- Upon one's death
- By recall, if the member fails to meet the conditions for membership, or if he violates in a serious manner, or repeatedly, the Act on Foundations, the foundation charter or statutes of the foundation, or due to other reasons if so stated by the foundation charter
- By resignation<sup>21</sup>

The management board will rule on the recall of one of its members due to the reasons stipulated by the Act on Foundations within one month from the date it learned the reason for the recall and no later than six months from the date the cause for the recall had occurred. Failure of the management board to rule on the recall within this prescribed deadline will result in the recall of the member of the management board by the Court upon the motion of a member of the management board, the supervisory board, the founder, the executor of the testament through which the foundation were set up, or by a person who asserts his lawful interest.<sup>22</sup>

Composition of the Supervisory Board/Comptroller:

For the composition, expulsion, resignation and term of office of the supervisory board, the same rule applies as for the management board.<sup>23</sup>

The discharge of duties as a member of the supervisory board is incompatible with membership on the management board, or with the duties of a person who is authorised to act on behalf of the foundation as a representative.<sup>24</sup>

If no supervisory board is set up, its responsibilities will be carried out by the comptroller. The same regulation of the Law on Foundations that applies to the supervisory board would apply to the comptroller.<sup>25</sup>

#### What are the duties and what are the rights of board members, as specified by national legislation?

Rights and duties of board members (Management board):

The following constitutes the exclusive competence of the management board:

- To issue the foundation's statutes and decide on any amendments to them
- To approve the foundation's budget and any changes to this
- To approve the annual financial statements and the annual report on activities and performance (hereinafter referred to as "the annual report")
- To decide on mergers unless mergers are excluded by the foundation charter
- To elect new members of the management board and of all members of the supervisory board, unless stated otherwise by the foundation charter, and to

<sup>19</sup> § 13 article 2 Law on Foundations

<sup>20</sup> § 13 article 3 Law on Foundations

<sup>21</sup> § 15 article 1 Law on Foundations

<sup>22</sup> § 15 article 2 Law on Foundations

<sup>23</sup> § 19 article 2 Law on Foundations

<sup>24</sup> § 19 article 1 Law on Foundations

<sup>25</sup> § 20 article 1 Law on Foundations

decide on recalls of members of the management board, the supervisory board, or of the comptroller, if they fail to meet conditions for membership or office

- To determine the amount of remuneration for the discharge of duties for members of the management board, the supervisory board or for the comptroller
- To rule on any increase in the foundation's equity<sup>26</sup>

Rights and duties of the Supervisory Board or Comptroller:

The supervisory board of a foundation<sup>27</sup> in particular:

- Oversees the observance of conditions for the provision of foundation disbursements (contributions) and the accuracy of the accounting system maintained by the foundation
- Reviews the annual financial statements and the report
- Supervises whether the activities of the foundation comply with the legal regulations, the foundation charter and the statute of the foundation
- Points out any deficiencies noted to the management board and submits proposals on how to remove these deficiencies
- At least once a year, submits its oversight activity report to the management board<sup>28</sup>

If no supervisory board is set up, its responsibilities will be carried out by the comptroller.<sup>29</sup> The same regulation of the Law on Foundations that applies to the supervisory board would apply to the comptroller.<sup>30</sup>

What are the rights of founders? Can fundamental decisions, such as change of purpose, be made at the discretion of the founder? What are the legal requirements in such circumstances?

The will of the founder stated in the foundation charter determines the specific purpose of foundation and influences the governance of the foundation.

The founder appoints the first members of the management board.<sup>31</sup>

The founder may state in the foundation charter that a certain number of members of the management board will be elected upon nomination by certain legal entities or a certain individual, as specified by the founder or the testator.<sup>32</sup>

The founder may file a motion in the court to wind up a foundation if the foundation's equity yields no revenues on a permanent basis and the foundation has no other assets and thus cannot fulfil the purpose for which it was set up or for other reasons specified by the Law on Foundations.<sup>33</sup>

The founder may limit or forbid the merger of the foundation through a provision in the foundation charter.<sup>34</sup>

The founder may name another foundation in the foundation charter, to which assets remaining after liquidation should be transferred in case the foundation is liquidated.<sup>35</sup>

<sup>26</sup> §10 article 2 Law on Foundations

<sup>27</sup> § 17 article 1 Law on Foundations

<sup>28</sup> §17 article 3 Law on Foundations

<sup>29</sup> § 20 article 1 Law on Foundations

<sup>30</sup> § 20 article 2 Law on Foundations

<sup>31</sup> § 13 article 1 Law on Foundations

<sup>32</sup> § 13 article 3 Law on Foundations

<sup>33</sup> § 7 article 3 Law on Foundations

<sup>34</sup> § 8 article 4 Law on Foundations

The founder may, in the foundation charter, modify the rule that the management board elects the new members of the management board and all members of the supervisory board<sup>36</sup>.

The founder may, in the foundation charter, modify the rule that the total number of members of the management board has to be divisible by 3 and that the terms of office of board members are limited to three years, as well as the procedural rules of the management board.<sup>37</sup>

The founder can, in the foundation charter, extend the reasons for recall of board members.<sup>38</sup>

The founder may, in the foundation charter, provide for the setting up of a supervisory board except in the cases stated in the Law on Foundations.<sup>39</sup>

The founder specifies the purpose and conditions of the disposition of the foundation's assets in the foundation charter.<sup>40</sup>

The founder may include a provision in the foundation charter limiting administrative costs of the foundation.<sup>41</sup>

The founder may specify another method for publishing the foundation's annual report in the foundation charter.<sup>42</sup>

#### What are the rights of beneficiaries (e.g. right of information)?

Beneficiaries of contributions are delimited in the fundamental document (foundation charter, or statutes).

The law gives several rights to persons who assert a lawful interest. The most important rights of these parties (and also beneficiaries) include the right to request the winding up of the foundation, endowment fund, or public benefit institution by a court.

There is also public access to the foundation registry, which is kept by the relevant registry court.

The foundations registry is a public list containing foundations' charters the statutes of foundations (endowment funds), and their annual reports. Any foundation/endowment fund is required to make its statute available if so requested; everyone is also entitled to peruse the annual reports and make copies and excerpts.

The Law on Foundations specifies<sup>43</sup> some duties on the part of beneficiaries of foundation contributions: A foundation disbursement (contribution) has to be used by the recipient (beneficiary) in compliance with the conditions set forth by the foundation/endowment fund, otherwise this foundation disbursement has to be returned or refunded in money by the recipient within the deadline stipulated by the foundation/endowment fund. The recipient that was provided with a foundation disbursement by the foundation/endowment fund is required, if so asked, to demonstrate in what manner and towards what end this foundation disbursement has been used.

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<sup>35</sup> § 9 article 4 Law on Foundations

<sup>36</sup> § 10 article 2 e) Law on Foundations

<sup>37</sup> § 11 article 1 Law on Foundations

<sup>38</sup> § 15 article 1 c) Law on Foundations

<sup>39</sup> § 17 article 2 Law on Foundations

<sup>40</sup> § 21 article 1 Law on Foundations

<sup>41</sup> § 3 article 2 g) Law on Foundations

<sup>42</sup> § 26 article 3 Law on Foundations

<sup>43</sup> § 21 article 3 and 4 Law on Foundations.

What rules are in place to ensure against conflict of interest? What is the legal definition of a conflict of interest under your legislation? How is self-dealing prohibited?

The main duties of the management board of foundations and endowment funds are explicitly defined in the law<sup>44</sup>.

An individual who receives funds granted in pursuit of the purpose of the foundation may not serve as a member of the management board; nor can he be a member of a statutory or controlling body of a legal entity, if this entity receives funds granted in pursuit of the purpose of the foundation.<sup>45</sup>

Can staff (director and/or officers) participate in decision making? How and to what extent?

It is up to the foundation charter or statutes, since there are no provisions in the law.

➤ **Who can represent a foundation towards third parties? Is this specified in law or is it up to the statutes of the organisation?**

In principle, the management board of a foundation, or some of its members, is authorised to act externally. This power of representation is unconditional and unlimited, unless the law or the deed/statutes provides otherwise.

The Law on Foundations stipulates (§ 3 /2 (e))<sup>46</sup> the obligatory essential elements of a foundation deed, the identification of the members of the management board (their names, surnames, birth dates, permanent addresses), and the delimitation of the manner in which they may act in the name of the foundation. The regulation contained in § 20 of the Civil Code is also applicable in a subsidiary manner to govern external acts.

Do the director and officers have powers of representation?

Generally, the management board and its members have power of representation.

➤ **Liability of the foundation and its organs**

The management board is the representative body of the foundation. The representative authority of the management board and its members is unlimited unless otherwise stated in the Act on Foundations. The charter of the foundation has to specify the manner of their acting on behalf of the foundation. The foundation is liable towards third persons if a member of the management board acts on behalf of the foundation even if he exceeds his authority. The delictual responsibility of the members of a foundation body for damage is possible

The internal relationship between the foundation and the members of foundation bodies is usually regulated by a labour contract.

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<sup>44</sup> § 10 and following sections of the Law on Foundations

<sup>45</sup> § 11 article 4 Law on Foundations

<sup>46</sup> § 3 /1e) of the Law on Foundations: The foundation charter, if not a testament, must include: ...e) the number of members of the management board, first and last names, personal identification numbers, or dates of birth, and permanent residence of the members of the first management board, with a statement of the manner of their acting on behalf of the foundation/ endowment fund.

What is the general standard of diligence for board members? Does your country differentiate between voluntary (unpaid) and paid board members?

The Law on Foundations does not differentiate between voluntary and paid board members. The management board must make decisions on the foundation's equity in line with the foundation's objectives and with due diligence.

According to the Law on Foundations, the management board is convened to determine the amount of remuneration for the discharge of duties for members of the management board, the supervisory board, or for the controller. This right, however, is not unlimited due to the relatively strict statutory limitation of expenses connected with the administration of foundations (see below).

The foundation charter or the statute of the foundation/endowment fund must announce one of the rules set by law<sup>47</sup> intended to curb administrative costs of the foundation/endowment fund and such a rule may not be altered for at least five years.

The following are under the exclusive competence of the management board:

- To issue the statutes and decide on amendments to them
- To approve the budget and any changes to it
- To approve the annual financial statements and the annual report on the foundation's activities and performance ( "the annual report")
- To decide on mergers, unless mergers are excluded by the foundation charter
- To elect new members of the management board and of all members of the supervisory board, unless stated otherwise by the foundation charter, and to decide on recalls of members of the management board, the supervisory board or of the comptroller if they fail to meet conditions for membership or office
- To determine the amount of remuneration for the discharge of duties for members of the management board and supervisory board, or for the comptroller
- To decide on increases to the foundation's equity<sup>48</sup>

The supervisory board in particular:

- Oversees the observance of conditions for the making of foundation disbursements (contributions) and the accuracy of the accounting system maintained by the foundation/endowment fund
- Reviews the annual financial statements and the annual report
- Monitors whether the activities of the foundation/endowment fund comply with legal regulations, the foundation charter and the statutes of the foundation/endowment fund
- Points out any deficiencies to the management board and submits proposals on how to remove these deficiencies
- At least once a year, submits its oversight activity report to the management board<sup>49</sup>

Regarding its oversight activities, the supervisory board is entitled to examine accounting ledgers and other vouchers relevant to the foundation/endowment fund and to convene extraordinary sessions of the management board, if so necessitated by the interests of the foundation/endowment fund and unless convened by the chairman of the board.<sup>50</sup>

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<sup>47</sup> § 22/2 of the Law on Foundations

<sup>48</sup> § 10 Article 2 Law on Foundations

<sup>49</sup> § 17 Article 3 Law on Foundations

<sup>50</sup> § 18 Article 1 Law on Foundations

Is there a “business judgment rule”, giving a board member a “safe harbour”, if she/he (1) acts on an informed basis; (2) acts in good faith, (3) acts in the best interests of the corporation, (4) does not act out of self-interest (duty of loyalty concept plays a role here), and (5) is not wasteful?

The management board must make decisions on the foundation’s equity in line with the foundation’s objectives and with due diligence. The members of the management board are responsible for decisions about the foundations equity.<sup>51</sup> Members of the management board are jointly responsible and are therefore also collectively and equally responsible if damage is incurred by the foundation/endowment fund. A member of the management board can be acquitted of liability if he/she proves his/her innocence.

According to the Act on Insolvency No. 182/2006, the members of the management board are responsible (including individual liability of personal property) in the event damage is incurred as a result of board inactivity.

What is the liability the directors and officers?

The members of management boards of foundations and endowment funds are not personally liable for the activities of the entity (outside), unless otherwise stipulated by the laws regulating bankruptcy, but they may be held responsible by the body itself for damage caused to the entity due to their decisions or activities. Such cases are dealt with according to the civil law. When members of the management board do not fulfil their duties properly, they are liable for the damage caused to the legal person. The acting bodies usually have their relationship with a particular legal person (i.e. a foundation, an endowment fund) regulated on the basis of an authorisation agreement (a contract of mandate). The internal liability is thus covered mainly by the content of such agreements. Personal liability for damage caused by an employee to an organisation is regulated by Section 172 and subsequent sections of the Labour Code.<sup>52</sup> Criminal liability of an acting body, e.g. for embezzlement, fraud, etc. is not excluded either.

Can the founder modify the standard of diligence for board members in the foundation’s statutes?

No. Diligence for board members is built into the Law on Foundations. The founder cannot modify it. Liability is established directly by the Law and is binding on all members of the management board.

Can board members be held **civilly** and/or **criminally** liable in the following cases?

	Yes	Probably yes	Unclear	Probably no	No
The foundation distributes money for a purpose which is a public benefit purpose but not accepted in the foundation’s statutes.	X				
The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).					
The foundation loses money because a board member has acquired some				X	

<sup>51</sup> § 23 Article 3 Law on Foundations

<sup>52</sup> The Labour Code.

stocks in a company which unexpectedly went bankrupt.					
The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low.		X			
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.		X			

➤ **Are economic activities allowed (related/unrelated)?**

The essential difference between the Czech conception of foundation law and most regulations in Western Europe consists in the acceptability (or unacceptability) of possible business activities and other limitations concerning economic activities and the use of the assets of foundation subjects.

The aim of this strict legal regulation is to eliminate the possibility of any misuse of the institute of the foundation and, above all, the protection of property. This conception, however, causes many problems in real life and there are indications that it is likely to be dropped in the future.

This strict regulation reflects the legislators' effort to protect the foundation property for the performance of the foundation purpose and to minimise the risks related to its activities. Foundations and endowment funds may also engage in other gainful activities which, however, may not meet the criteria constituting entrepreneurial (business) activities.

The Czech Law on Foundations<sup>53</sup> includes a provision on the ban of business activities engaged in by foundations. However, there are several statutory exceptions to this prohibition.

The foundation/endowment fund is prohibited from doing business under its own name, save for real estate leases, organising lotteries, raffles, public collections, cultural, social, sports and educational events. Assets of the foundation/endowment fund may not be used as collateral nor subject to any other way of securing liabilities.

The foundation assets are inalienable if this is determined by the founder or the donor. In other cases, assets may be disposed of, including the change of the composition of the assets, but only in harmony with the purpose of the foundation and with all due care. The law provides a detailed regulation of the manner in which a foundation may invest its means, with the aim of maximum protection of foundation property for the publicly beneficial purpose.

Assets of the foundation/endowment fund may not be used for the participation in the property of any other legal entity, unless the law provides for an exception to this rule. Such an exception is the property participation of foundations (i.e. not endowment funds), limited by law, in joint stock companies. A foundation may also be the founder of a public benefit institution.

The foundation may participate in the business of joint-stock companies only. The entire involvement of assets by the foundation may not exceed 20% of the foundation's property after deducting the value of the foundation equity. Publicly negotiable securities issued by joint-stock companies may be purchased and sold by the foundation only in regulated markets. The foundation's stake in a joint-stock company's assets may not exceed 20%.

<sup>53</sup> Section 23 (1) of the Law on Foundations

By contrast, the law strictly provides that foundations and endowment funds may not become members of an unlimited liability company, general partners in a limited partnership company, silent partners or members of a cooperative whose members are obliged to cover the losses of the cooperative over their membership contributions, or members of other legal persons if such members are liable for the obligations of such persons.

➤ **Are there any rules/limitations regarding foundations' asset management?**

The Law on Foundations strictly regulates the manner in which the property of foundations and endowment funds may be used. This detailed mandatory regulation is a reaction to the misuse of the institution of the foundation in the 1990s, mentioned above, and is guided by the effort to preserve foundation assets for their publicly beneficial purpose to the greatest degree possible.

The property of a foundation/endowment fund may, generally, be used only in keeping with the purpose and conditions specified in the foundation charter or the statutes as a foundation contribution, and for the payment of costs related to the administration of a foundation. The costs pertaining to administration<sup>54</sup> of the organisation must be kept separately from its foundation disbursements (contributions). Members of the bodies of the foundation/endowment fund, or the comptroller, are not eligible for foundation disbursements. The foundation/endowment fund is prohibited from financing political parties or political movements. The foundation charter or the statutes must also announce one of the rules intended to curb administrative costs of the foundation/endowment fund. The rule may not be altered for at least five years<sup>55</sup>.

There is a limitation on economic activities and the prohibition of business for foundations and endowment funds (see above).

The property of a foundation/endowment fund may not be mortgaged, or used as any other form of security for its obligations. The foundation property is inalienable as long as this is provided for by the founder or the donor. In other cases, the property may be used but only in keeping with the goals of the foundation and with all due care. The law further strictly provides the manner in which a foundation may invest the financial means which form a part of the foundation property.<sup>56</sup>

Regarding the sale of the assets of an endowment fund or the lease of real estate constituting part of the property of the foundation/endowment fund, the buyer or leaseholder may not be a member of the management board, the supervisory board, or the comptroller, or any person close to them<sup>57</sup> or a legal entity of whose statutory body a member of the management board, the supervisory board, or the comptroller of the foundation/endowment fund happens to be a member.

The Law on Foundations determines the rules and limitations regarding foundations' asset management.

The Law on Foundation allows the following instruments of investment:

- Investment instruments emitted in an OECD state valued in CZK or any other currency
- Financial market instruments
- Bonds registered on capital markets in any OECD state

<sup>54</sup> Costs pertaining to administration of the foundation/endowment fund include particularly the costs to achieve and valorize assets of the foundation/endowment fund; costs to promote the purpose of the foundation/endowment fund; and operating costs of the foundation/endowment fund, including emoluments for the management board, the supervisory board, or the comptroller.

<sup>55</sup> The decisive period is a calendar year.

<sup>56</sup> § 23/3 to 10 of the Law on Foundations

<sup>57</sup> § 116 of the Civil Code.

- Shares of pooled investment funds (maximum 30% stocks in portfolio)
- Securities emitted by central banks or states
- Real estate<sup>58</sup>

The Law on Foundations also includes rules for safe investments. The total amount of the following instruments cannot exceed 30% of total endowment value:

- Investment instruments in foreign currency
- Shares of investment funds other than collective investment fund bonds with a lower rating than the rating of the Czech Republic with no state guarantee<sup>59</sup>

Alternative investments are not permitted.

➤ **Are foundations legally allowed to allocate grant funds towards furthering their public benefit purpose/programmes which (can) also generate income? (recoverable grants; low interest loans; equities)**

Foundations are not legally allowed to allocate grant funds towards furthering their public benefit purpose/programmes which (can) also generate income.

➤ **What are the requirements for an amendment of statutes/amendment of foundations purpose?**

Under current Czech law on Foundations it is very difficult to do any change of the foundation charter. If it is necessary, a court can do it, but it is complicated. The purpose is stated in the foundation charter, so it is almost impossible to make any changes. It is rare, but if this is undertaken, the court implements the changes with *cy-prés* approach.

The statutes of the foundation deal with the functioning of the foundation's bodies; conditions for the provision of foundation grants and the types of beneficiaries eligible to receive them; and the manner of the provision of these grants, as well as other issues.<sup>60</sup>

➤ **What are requirements with regard to reporting, accountability, auditing?**

Reporting requirements: Do annual reports and/or accounts of foundations need to be made publicly available?

A foundation/endowment fund must compile its annual report by the deadline set by law<sup>61</sup>: By the end of the next accounting period at the latest.

The foundation/endowment fund must file the annual report with the register court.<sup>62</sup> Everyone is entitled to peruse the annual report and make copies and excerpts.<sup>63</sup>

The Annual Report

The foundation has to prepare and publish an annual report in line with the Law on Foundations. The foundation compiles its annual report by the deadline determined by

<sup>58</sup> § 23 article 3 Law on Foundations

<sup>59</sup> § 23 article 4 Law on Foundations

<sup>60</sup> § 4 article 1 Law on Foundations

<sup>61</sup> 26 article 1 Law on Foundations

<sup>62</sup> § 26 Article 1 Law on Foundations

<sup>63</sup> § 26 article 1 Law on Foundations

its management board, or by the statutes of the foundation, but at the latest within 6 months of the completion of the period under review. The period under review is the past calendar year, or the time elapsed between the establishment of the foundation and the end of the calendar year in which the foundation was established, if it is the organisation's first annual report.<sup>64</sup>

The annual report outlines the activities of the foundation in their entirety during the period under review, as well as providing an assessment of these activities. In particular, it must to include:

- An outline of assets and liabilities of the foundation
- An outline of the use of the property of the foundation
- An outline regarding persons who were beneficiaries of the foundation
- An assessment of whether the foundation adheres to the administrative cost-curbing rule in its economic performance
- An assessment of basic disclosures contained in the annual financial statements and the auditor's opinion supplemented by significant findings from the audit report (the annual financial statements constitute an appendix to the annual report)<sup>65</sup>

#### Auditing

The foundation's annual financial statements have to be verified by an auditor. An endowment fund's annual financial statements have to be verified by an auditor for any calendar year in which the sum of total costs or revenues disclosed by the endowment fund exceeded 3 million CZK (approx. €107,000 ), or if the endowment fund's assets are in excess of 3 million CZK.<sup>66</sup>

#### What type(s) of report must be submitted (annual report including details of finances and activities, public benefit report, tax report/tax return, other reports e.g. on 1% schemes)?

Annual report including details of finances and activities must be submitted to the registration court and the tax report to tax authority.

#### Who checks (supervisory/tax authorities)?

The tax authority carries out checks in relation to tax issues. A court can check the annual report.

#### Where is the required information publicised?

The information can be accessed via the registry. This includes not only the basic data, but also the full collection of deeds with all necessary documents important for the life of an established legal person, i.e. the fundamental document, annual reports, information about mergers or termination of subjects, etc. The documents to be placed in this collection of deeds are specified by particular special acts. In this respect, the regulation contained in the Commercial Code and the Civil Procedure Code concerning matters of the commercial registry is applicable in a subsidiary way.

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<sup>64</sup> § 25 article 1 Act on Foundation

<sup>65</sup> § 25 article 2 Act on Foundation

<sup>66</sup> § 24 article 2 Law on Foundations

What are the legal requirements concerning external audit? Is external audit required by law for all foundations?

Yes, The Law of Foundations (§24, Art. 2) provides that a foundation's annual financial statements must be verified by an auditor. An endowment fund's annual financial statements must be verified by an auditor for any calendar year in which the sum of total costs or revenues disclosed by the endowment fund exceeds CZK 3 million, or if the endowment fund's assets are in excess of CZK 3 million.

By whom should audits be undertaken? Do requirements/guidelines exist regarding international and national auditing agencies and standards?

Private auditors.

➤ **Supervision (which authority – what measures / sanctions?)**

The Supervisory Board/Comptroller:

- Is the oversight body of the foundation
- Oversees the observance of conditions for the provision of foundation disbursements (contributions)
- Reviews the annual financial statements and the report
- Supervises whether the activities comply with the legal regulations, the foundation charter and the statutes of the foundation
- Points out any deficiencies noted to the management board and submits proposals on how to remove these deficiencies<sup>67</sup>

The Auditor:

The auditor verifies the foundation's annual financial statements.<sup>68</sup>

The Registration Court:

The Court, upon the motion of a member of the management board or supervisory board, the founder, the executor of the testament through which the foundation was set up, or a person who asserts his lawful interest, may recall a member of the management board if the management board does not act to recall the member for the reasons stipulated by the Act on Foundations within one month of the date on which it learned the reason for the recall.<sup>69</sup>

The Court will wind up a foundation (this applies just to foundations, not to endowment funds) whose equity yields no revenues on a permanent basis and which has no other assets and thus cannot fulfil the purpose for which it was set up, if so requested by the founder, the executor of the testament, the management board or a person who asserts a lawful interest.<sup>70</sup>

The Court will wind up an endowment fund whose endowment fund assets have been irrevocably used up (disbursed) and which can no longer fulfil the purpose for which it was set up, if so requested by the founder, the executor of the testament, the management board or a person who asserts a lawful interest.<sup>71</sup>

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<sup>67</sup> § 17 article 3 Law on Foundations

<sup>68</sup> § 24 article 2 Law on Foundations

<sup>69</sup> § 15 article 2 Law on Foundations

<sup>70</sup> § 3 article 3 Law on Foundations

<sup>71</sup> § 7 article 4 Law on Foundations

The Court will wind up a foundation if requested by the founder, the executor of the testament, or a person who asserts a lawful interest if:

- The foundation in its activities gravely or repeatedly violates the Act on Foundations, its foundation charter or statutes
- In the preceding year, not a single session of the management board was held or no members of the bodies of the foundation were elected, nor a comptroller appointed, to replace those members whose membership or office ceased to exist more than one year ago
- The foundation did not fulfil, during a period of at least two years, the purpose for which it was set up, and the foundation has not made efforts to rectify the matter by the deadline set by the court<sup>72</sup>. The court will appoint a liquidator for the foundation, if the management board does not appoint a liquidator without unnecessary delay in case of liquidation of the foundation<sup>73</sup>. The court will appoint a liquidator for the winding up of the foundation following a court judgement on winding up the foundation and a declaration of bankruptcy, or the rejection of a bankruptcy motion due to insufficient assets<sup>74</sup>

Does the supervisory authority comprise of a public administrative body, a public independent body, a combination of a governmental body and a court, or a public body and an independent body?

There is no special supervisory body. There is a combination of strict regulation, internal supervision, court supervision and tax authority supervision.

What is the extent of the supervision? Does the body review reports and make inquiries? Are public benefit organisations subject to inspection?

There is a combination of strict regulation, internal supervision, court supervision and tax authority supervision. We do not believe that enquiries are made or that public benefit organisations are subject to inspection.

Is approval from the authority required for certain decisions of the Management board?

No, generally not.

Is it mandatory to have a state supervisory official on the board?

No

What enforcement measures are in place (including compliance measures and sanctions for non-compliance) concerning registrations, governance, reporting, and public benefit status?

n/a

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<sup>72</sup> § 7 article 5 Law on Foundations

<sup>73</sup> § 9 article 2 Law on Foundations

<sup>74</sup> § 9 article 2 Law on Foundations

➤ **When and how does a foundation dissolve?**

The foundation ceases to exist from the date it was deleted from the register.<sup>75</sup>

The foundation will be wound up:

- By the resolution of the management board, when the purpose the foundation was achieved
- By merger with another foundation on the date of the merger agreement
- by a Court judgement on winding up the foundation on the date shown in this judgment, or on the legal effective date of such a judgment
- By a declaration of bankruptcy or rejection of a bankruptcy motion due to insufficient assets<sup>76</sup>

The Court will wind up a foundation if:

- The foundation in its activities gravely or repeatedly violates the Law on Foundations, its foundation charter, or statutes
- The foundation did not fulfil, during a period of at least two years, the purpose for which it was set up and did not make efforts to rectify the matter by the deadline set by the court
- The foundation equity has fallen below 500,000 CZK (approx. €18,000)
- In the preceding year, not a single session of the management board was held or no members of the bodies of the foundation fund were elected, nor a comptroller appointed, to replace those members whose membership or office expired more than one year before<sup>77</sup>

A revision of the Law on Foundations enacted 1 July 2010 allows the winding up of the management board of an endowment fund (but not of a foundation), for practical reasons, such as in a cases, where the endowment fund no longer has any assets and cannot fulfil the purpose for which it was established. This must, however, be allowed and approved by the founder.

➤ **Under what conditions does the civil law in your country recognise a foreign foundation?**

Foreign foundations (based in their own countries) are recognised as legal persons in the Czech Republic. Foundations are governed (have a legal status) by the law of the state in which the NGO had its registered office at the time of its establishment (the incorporation theory).

A legal entity with its registered office outside the territory of the Czech Republic which is a foundation or an endowment fund under the law of the country in whose territory it has its registered office (hereinafter only "a foreign foundation"), may perform its activities in the territory of the Czech Republic under identical conditions and in an identical scope as foundations or endowment funds established under the Czech law. The right of the foreign foundation to operate in the territory of the Czech Republic commences on the date of the registration of its branch (*organizační složka*) established in the territory of the Czech Republic in the register, and ceases to exist on the date of the branch's deletion from the register. The register court will register the branch of a foreign foundation that has been established in the territory of the Czech Republic, provided that the foundation serves a public benefit purpose<sup>78</sup>.

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<sup>75</sup> § 7 article 1 Law on Foundations

<sup>76</sup> § 7 article 2 Law on Foundations

<sup>77</sup> § 7 article 3 Law on Foundations

<sup>78</sup> § 27 Law on Foundations

The Czech Republic has not ratified the European Convention on the recognition of the legal personality of international non-governmental organisations (1986) yet, and it does not seem as though that it will be in force in the future.

- **Does the civil law in your country allow a foundation to conduct (some or all) activities (grant-making, operating, asset administration, fundraising) abroad? Is there any limitation?**

The Law on Foundations does not place restrictions on conducting grant-making, operating, or carrying out fundraising activities abroad.

According to the Law on Foundations, a foundation must deposit the money that is part of the foundation equity at a special account in a bank or in a branch of a foreign bank operating in the Czech Republic, or can use the money to purchase investment instruments issued in an OECD membership state (such financial instruments may be in Czech or foreign currency).

## **II. Tax treatment of the foundation**

- **What are the requirements to receive tax exemptions (pursuing public benefit purposes, non-distribution constraint, being resident in the country?)**

Tax exemption for a foundation registered in the Czech Republic is applied automatically on the basis of the law. Tax exemption is based on the legal form of the foundation (endowment fund).<sup>79</sup>

- **What are reporting/proof requirements to claim tax exemptions?**

n/a

- **Is specific reporting required for the use of state funds?**

n/a

- **Is there an obligation to report on donors and beneficiaries?**

This obligation is generally not stated in the law, but a contract between a donor and grantee can contain such an obligation.

- **Are there any specific accounting rules for foundations?**

Foundation should account separately for administrative costs and costs incurred in pursuit of statutory purposes.

- **Is there a statutory definition in the civil law (foundation law, trust law) of your country of what a public benefit purpose (charitable purpose) is? If yes, please give us the definition.**

There is no special public benefit status. The discussions on the meaning of the term 'public benefit', the establishment of the status of 'public benefit' in the Czech legal

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<sup>79</sup> The Income Tax Law No 586/1997 (Income Tax Law)

system and other related issues have been going on at various levels for some time and will certainly continue in the future

➤ **Is there a statutory definition in the tax law of your country of what a public benefit purpose is? If yes, please give us the definition.**

From the point of view of taxes, the Czech legal system does not really distinguish between public and non-public benefit NGOs, thereby providing public advantages also (but not always) to private activities or, to put it another way, legal persons which carry out solely private activities. Tax advantages are conditioned mostly by the legal form, not the purpose of establishment of, or activities undertaken by a given legal person. At the same time, individual tax laws are not uniform and are sometimes even chaotic in setting up groups of subjects which enjoy tax advantages. Another paradox is that a certain type of activities, more specifically “sports” (even professional sport, i.e. performed on a commercial basis), is declared by a special law<sup>80</sup> to fall within the scope of ‘public benefit’ even without there being a systematic or any other reason for this, in relation to other types of activities which are, in their character, indisputably within the scope of public benefit purpose.

I. Act on Income Tax:

Exemption may be applied to donations given to charities located in the Czech Republic which finance one of the following qualifying purposes:

- Science and learning
- Research and development
- Culture and education
- Police
- Fire departments
- Support and protection of youth
- Protection of animals
- Social and health care
- Ecology
- Humanitarian and charitable purposes
- Religious purposes for registered churches and religious communities
- Sports

In addition, donations to natural persons living in the Czech Republic who use the donations to run schools and healthcare establishments and care for abandoned animals or endangered species are also tax-exempt. The same pertains to donations to handicapped persons with permanent residency in the Czech Republic, as well as donations to remedy the damage caused by natural disasters occurring in the territory of the Czech Republic.

II. Act on Gifts, Inheritance and Real property Tax:

Exemptions from gift taxes are available for transfers of property in the following cases:

- Transfers to the state, regions, and municipalities in the Czech Republic
- Transfers to legal entities (public and private) with their seats in the Czech Republic established to conduct activities in the fields of: Science and learning, research and development, culture and education, police, fire brigades, support and protection of young people, protection of animals, social and health care, ecology, humanitarian and charitable purposes

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<sup>80</sup> See The Act No. 115/2001 Coll. on the Support of Sport.

- Transfers to registered churches and religious societies or congregations
- Transfers to public benefit corporations, if the property serves their main activity
- Transfers to foundations and funds

➤ **Support of “the public at large”**

Do the activities of a **tax-exempt** foundation generally have to benefit “the public at large”?

Yes. Foundations and Endowment Funds are public benefit by definition directly in the Law on Foundations. Thus, they have to serve the public at large.

If yes, can a tax-exempt foundation support a small number of disadvantaged/ underprivileged individuals?

Donations to natural persons living in the Czech Republic who use the donations to run schools and healthcare establishments and care for abandoned animals or endangered species are tax-exempt. The same pertains to donations to handicapped persons with permanent residency in the Czech Republic as well as donations to remedy the damage caused by natural disasters occurring in the territory of the Czech Republic.

Examples: Do the following purposes promote the public at large?

	Yes	Probably yes	Unclear	Probably no	No
For benefit of the inhabitants of a city with 1,000,000 inhabitants					X
For benefit of the inhabitants of a village with 10,000 inhabitants					X
For benefit of the employees of a company					X
For benefit of the members of a family					X
For benefit of the students of a university	X				
Award for the best student of a university					

➤ **Non-Distribution Constraint**

Does a **tax-exempt** foundation generally have to follow a “non-distribution constraint” which forbids any financial support of the foundation board, staff, etc?

A member of the Management board or controlling body of a foundation or endowment fund cannot receive foundation contributions.

“An individual who is disbursed means that constitute fulfilment of the purpose of the foundation/endowment fund may not serve as a member of the management board; nor can he be a member of a statutory or controlling body at a legal entity if the means that constitute fulfilment of the purpose of the foundation/endowment fund are disbursed to this legal entity”.<sup>81</sup>

#### What happens with the foundation’s assets in case of dissolution?

The founder can state in the foundation charter that any liquidation balance in case of dissolution of the foundation/endowment fund has to be transferred to another foundation/endowment fund pursuing the same purpose. If the foundation charter does not state this, the liquidator will offer this liquidation balance to a foundation/endowment fund with an identical, or similar, purpose. If no such foundation/endowment fund is identified by the liquidator, or if this balance is refused by the liquidator-identified foundation/endowment fund, the liquidator will offer this balance to the municipality where the foundation/endowment fund is located. If the municipality does not accept the offer within 60 days from the offer date, this balance will go to the state treasury upon the expiration of the 60 day deadline. The state is required to use this liquidation balance for publicly beneficial goals.<sup>82</sup>

#### ➤ **“Altruistic” Element**

##### Is remuneration of board members allowed in **civil law** and in **tax law**? If remuneration is allowed, are there any limits in **civil law** and/or in **tax law**?

Administration costs of the foundation/endowment fund include particularly the costs to achieve and valorise assets of the fund; costs to promote the purpose of the fund; and operating costs of the fund, including emoluments for the management board, the supervisory board, or the comptroller.<sup>83</sup>

The regulation limiting administrative expenses is incorporated in the Law on Foundations. The administrative and operational expenditures of a foundation or endowment fund are limited by a rule, which cannot be changed for at least five years. In the case of a foundation, this rule may be expressed as a percentage of the yield from the endowment, a percentage of the total endowment value or a percentage of the total yearly value of the grants made by the foundation to third persons. In the case of an endowment fund, the rule may be expressed as a percentage of the yield from the property of the fund, a percentage of the total assets of the fund or a percentage of the total yearly value of the grants made by the fund to third persons.<sup>84</sup>

##### Does **tax law** allow a donor/funder to receive some type of benefit in return for a donation? (e.g. postcards, free tickets for a concert)

Receipt of some type of benefit in return for a donation (postcards, free tickets) is not exempt from income tax. A donor or founder should declare any such benefit as income for income tax purposes.

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<sup>81</sup> § 11 Article 4 Law on Foundations

<sup>82</sup> § 9 Article 4 Law on Foundations

<sup>83</sup> § 21 Article 2 Law on Foundations

<sup>84</sup> § 22 Law on Foundations

Is there a maximum amount that can be spent on office/administration costs in **civil law** and in **tax law**? If yes, how are “administration costs” defined?

The foundation charter or the statutes of the foundation/endowment fund must announce one of the following rules intended to curb administrative costs of the foundation/endowment fund:

- Total annual cost of the foundation/endowment fund pertaining to administration of the fund may not exceed a certain percentage of total annual revenues from foundation equity or assets of the endowment fund
- Total annual costs of the foundation/endowment fund pertaining to administration of the fund may not exceed a certain percentage of the value of the foundation disbursements of that year
- Total annual costs of the foundation/endowment fund pertaining to administration of the fund may not exceed a certain percentage of foundation equity or assets of the endowment fund depending on their disclosure for the year ending 31 December

This rule as per paragraph 1 may not be altered for at least five years. As per paragraph 1, the decisive period is a calendar year.<sup>85</sup>

➤ **Hybrid Structures (elements of private benefit in public benefit foundations)**

Foundations or endowment funds founded by the Act of Foundations can serve only public benefit goals.

Does the civil law of your country accept the following provisions/activities of a public benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.					X
The founder retains a beneficial reversionary interest in the capital of a property or other asset for his own continuing use.					X
The gift is of only the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant.					X
A foundation distributes a (small) part of its income to the founder or his family.					X

Does the **tax law** of your country accept the following provisions/activities of a tax-exempt foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the					X

<sup>85</sup> § 22 Law on Foundations

endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.					
The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for its own continuing use.					X
The gift is of only the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant.					X
A foundation distributes a (small) part of its income to the founder or his family.					X

Are there any other examples from your country (in **civil law** and/or **tax law**) regarding such “hybrid structures” (e.g. law provisions, court decisions, etc.)?

n/a

#### ➤ **Distributions and Timely Disbursement**

Are foundations allowed to spend down their capital?

The assets of a foundation/endowment fund may be used only in line with the purposes and conditions set forth in its foundation charter or statutes as the grants and administrative costs<sup>86</sup>. The foundation equity is inalienable, provided that a founder or donor so requests. If this is not the case, the foundation equity may be disposed and the composition of foundation equity may be changed, provided that such disposal and changes are carried out in line with the foundation’s objectives and with due diligence.<sup>87</sup>

If during the course of the existence of a foundation, its equity falls below the value registered in the Register of Foundations, the foundation shall supplement the equity to reach the registered value. If the equity is not supplemented to reach the registered value within two years after the end of the accounting period in which the value decreased, the foundation shall be obliged to adopt a resolution to decrease the foundation equity in accordance with the actual status within three years after the end of the accounting period in which the foundation equity decreased.<sup>88</sup>

Are they allowed to be set up for a limited period of time only?

The Law on Foundations permits the winding-up of a foundation or endowed fund upon the attainment of the purpose for which it was set up by the date listed in the resolution by the management board on this matter.<sup>89</sup>

<sup>86</sup> § 21 Article 1 Law on Foundations

<sup>87</sup> § 23 Article 3 Law on Foundations

<sup>88</sup> § 23 Article 11 Law on Foundations

<sup>89</sup> § 7 Article 2 Law on Foundations

Does the **civil law** and/or the **tax law** of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year?

Foundations and endowed funds have an obligation to distribute grants. Upon a motion by the founder, the executor of the testament, or a person who asserts a lawful interest, the Court will wind up a foundation/endowment fund if it has not fulfilled, during a period of at least two years, the purpose for which it was set up (especially, if it has not distributed grants for a period of two years), and the foundation/endowment fund has not made efforts to rectify the matter by the deadline set by the Court.<sup>90</sup>

Does the **civil law** and/or the **tax law** of your country require a foundation to spend a percentage of its overall assets in the form of a “payout rule”?

The civil law and tax law do not require foundations to spend a percentage of their overall assets. The only rule is incorporated in the Act on Foundations: Foundations and endowment funds must distribute grants during a two year period (with a minimum of one grant during a period of two years).

Example: Does the **civil law** of your country accept the following activities of a public benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation.					

Example: Does the **tax law** of your country accept the following activities of a public benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation.					

Are there any examples or cases from your country (in **civil law** and/or **tax law**) regarding the question of “timely disbursement” (e.g. law provisions, court decisions, etc.)?

n/a

➤ **Does activity abroad put the tax exempt status at risk?**

No, not if the foundation is registered in the Czech Republic.

<sup>90</sup> § 7 Article 5 Law on Foundations

➤ **Income tax treatment**

Grants and donations

Foundation income from donations or grants is not subject to income taxes.

Investment income (asset administration)

Income from the registered endowment of a foundation is exempt from income tax.<sup>91</sup>

Tax-exempt endowments are limited to money kept in special accounts with banks, state-issued or guaranteed securities, real estate, income-producing art, authors' or patent rights, and investment instruments from an OECD country.

Economic activities related/unrelated)

The foundation is prohibited from doing business under its own name, save for real estate leases and organising lotteries, raffles, public collections, cultural, social, sport and educational events.<sup>92</sup>

Profits of less than 300,000 CZK (approx. 11,000 euros) are exempt. Foundations may deduct 30% from their tax base up to 1 million CZK (36,000 euros) if the tax savings are used to cover expenses from tax-exempt activities or the promotion of them.<sup>93</sup>

Foundations may invest up to 30% of their endowment value in bonds and other low-risk securities, and not more than 20% of other resources in shares of joint-stock companies, if these securities are bought and sold on public markets, and are prohibited from owning more than 20% of the equity of a stockholding company.<sup>94</sup>

Major shareholding - considered as an economic activity and taxed accordingly?

Major shareholding is not allowed.

Income deriving from grant expenditure towards public benefit purpose/programme activities (such as loans, guarantees, equities)?

n/a

➤ **Capital gains tax, where separate from income tax**

It is not separate from income taxes.

➤ **Withholding tax on foreign investment income?**

➤ **Gift and inheritance tax**

Donations and legacies to foundations registered in the Czech Republic are exempted from gift and inheritance taxes. The foundation has to register the donation at the tax office in cases where the foundation is applying for tax exemption.<sup>95</sup>

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<sup>91</sup> The Income Tax Law

<sup>92</sup> § 23 article 1 Law on Foundations

<sup>93</sup> § 20 article 7 of the Income Tax Law

<sup>94</sup> § 23 article 2 Law on Foundations

<sup>95</sup> The Gift, Inheritance and Real Estate Transfer Taxes No 357/1992

➤ **Value added tax (VAT)**

All taxpayers (including foundations) whose turnover exceeds 1 million CZK (approx. €33,300) in any consecutive 12 month period must register as a VAT payer with the tax authorities. The taxation period can be one month or one quarter. The turnover does not include membership fees or subsidies from the state budget or the EU budget.<sup>96</sup>

➤ **Capital taxes on the value of assets, where applicable?**

Capital taxes are not applicable.

➤ **Tax on the transfer of assets?**

Transfers of property to foundations registered in the Czech Republic are exempt from taxes. The foundation has to register the transfer with the tax office in cases where the foundation is applying for a tax exemption.

➤ **Other taxes where applicable (Real property tax)**

Exemption from land use tax is available for the lands owned by a foundation. Exemption from the tax on buildings is available for buildings owned by a foundation.

➤ **Can a foreign foundation get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions?**

Tax benefits are also available (revision of the Income Tax Law 2009) for organisations based outside the Czech Republic, but only within the EU, and Norway and Iceland.

➤ **What is the tax treatment (inheritance and gift tax) of legacies to non-resident public benefit foundations?**

n/a

➤ **Are there current discussions about the question of whether cross-border activities of foundations and other non-profit organisations are protected by the fundamental freedoms of the EC Treaty? Especially: Are the consequences of the Stauffer decision of the European Court of Justice and/or the current infringement procedures of the European Commission discussed by legal scholars or by practitioners? (e.g. publication in law journals) / Have there been any resulting changes to your country's legislation, or are changes being discussed?**

These issues are discussed, but only rarely. In May 2009, there was big NGO Conference in Brno, at which the concept of the "European Foundation" was introduced, and the Ministry of Justice asked for some consultation on this topic. The consequences of Stauffer and Persche cases were discussed by the Committee for Legislation and Financing of the NGO sector (one of the committees of the Advisory Board for NGOs) of the Czech government. All this information has been published in Czech language in: K. Ronovská, *Tendence vývoje českého nadačního práva v rámci sjednocené Evropy*, Masaryk University, 2009

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<sup>96</sup> The Value Added Tax Act No. 235/2004

### **III. Tax treatment of donors**

➤ **System of tax credit or tax deduction?**

There is a system of tax deduction.

➤ **Tax treatment of individual donors**

The object of a donation may be a movable asset (money, goods, services, securities etc.) as well as real estate. In the case of a non-monetary gift, it is necessary to estimate its value.

The donation made by a natural person is deductible up to 10% of taxable income, provided at least 2% of taxable income is donated, but not less than 1,000 CZK (approx. €35). The donation must be given to a foundation headquartered in the Czech Republic.<sup>97</sup>

Donations to foundations and endowment funds (registered in Czech Republic, and from 2009 also the EU, and Norway and Iceland) may, in accordance of Section 15 (1) of the Income Tax Act, be provided also by natural persons. Such natural persons may deduct from their tax base amounts exceeding, in a given tax period, 2 per cent of the tax base or at least CZK 1,000. (approx. €35). They may, however, deduct no more than 10 per cent of the tax base.

➤ **Tax treatment of corporate donors**

Under Section 20 (8) of the Income Tax Act, any legal person may deduct from its tax base the amount of donations provided to foundations and associations with their registered office in the Czech Republic, if this is used for the financing of science and education, research and development purposes, culture, education, police, fire protection, support and protection of young people, animal protection, social, health, ecological, humanitarian, charitable, or religious purposes of registered churches and religious organisations, physical education and sports purposes, or for activities of political parties and movements, as long as the amount of the donation is at least CZK 2,000. Starting from 2001, a total of no more than 5% of the tax base for income tax of legal persons may be deducted. Before this, the limit was 2% of the tax base. A donation provided in this way is not only bound to a particular purpose without the possibility of being used for any other purpose, but it is also exempt from gift tax. A donation may be obtained on the basis of a gift agreement (or a subsidy agreement), clearly delimiting the purpose of the donation. This deduction may not be carried out by entities not founded or established for the purpose of business.

The donation must be given to a not-for-profit organisation headquartered in the Czech Republic or, according to the law expressed in cases since 2009, in the EU, or Norway or Iceland, or to a legal entity organising a public collection.<sup>98</sup>

➤ **Tax treatment of donations to non-resident public benefit foundations**

Following the revision of inheritance and gift tax law in 2009, is possible to donate to a foundation abroad and to receive corresponding tax reliefs, if this foundation is recognised by the local law as a public benefit organisation.

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<sup>97</sup> § 15 article 8 of Income Tax Law

<sup>98</sup> § 20 article 8 of Income Tax Law

➤ **Other frameworks such as percentage law systems**

No, the percentage law system has not yet been adopted in the Czech Republic.

➤ **What are the reporting/proof requirement to claim tax benefits?**

n/a

**IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation)**

Grants provided by a foundation in accordance with its statutory purposes to any legal or natural person are tax-exempt.

**V. Trends and developments**

➤ **Recent trends of developments affecting the legal and fiscal environment for public benefit foundations**

The Ministry of Justice is working on the reform of private law. The reform of the Civil Code (CC) will introduce a new conception of the legal subjects of private law, foundations included. A definition of public benefit will be part of the new CC. The new CC will divide foundations into private (family) and public benefit foundations. It will come into force in the year 2013 at the earliest.

The legal framework for foundations and endowment funds, which was constituted in the 1990s, has stabilised and current changes are only partial..There has been a slight trend towards liberalisation of the sector, such as is also manifested in the amendment to the Act on Foundations and Endowment Funds (in force from 1 July 2010). The most important change is that foundations and endowment funds have been “freed” to carry out their own programmes and to separate the costs of these activities from the administrative costs of the foundation. This change increases the scope for foundations and endowment funds to carry out their own activities. Moreover, the amendment also took into account the particularities of endowment funds and targets the transparency of the foundation sector.

The upcoming reform of the Civil Code is expected to establish considerable changes to the concept of private law.. One important upcoming development is an Act on the public benefit status. For at least 10 years, there has been a discussion going on about the recodification of Czech private law<sup>99</sup> which would result in changes to the legal position of legal persons, including civil society organisations (CSOs) - including the positive specification in the legal regime of associations, foundations and institutions as special legal forms. Part of this complex reform of private law is a proposal for a new act on commercial companies.

The aforementioned Act on public benefit status (currently being drafted) will be part of conceptual reform, together with the reform of tax law. The draft of the proposal is still very unclear and there are various issues that it may yet take some time to resolve. Neither the current Civil Code nor any other legal regulation contains an explanation of what “public benefit” is.

There is a general agreement that a new Civil Code should provide a unification of the entire area of private law. It should formulate the fundamental principles and be

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<sup>99</sup> A proposal of a new Civil code will be soon discussed by the Czech Parliament.

sufficiently general that frequent amendments are not necessary. Most important and decisive, however, will be the quality of the proposed code and its applicability in practice.

➤ **Impact of anti-terrorist debate**

Is there a specific national/regional anti-terrorism act (legislation) in your country, (which one and date of entry into force or adoption)?

No, there is not.

If so, has this law introduced new legal and regulatory requirements for foundations (please describe)?

No

Has the foundation supervisory authority introduced new regulatory/oversight requirements to comply with counter terrorism measures/law?

No

Has the foundation supervisory / regulatory authority(ies) introduced guidance tools to assist foundations to comply with counterterrorism measures/law?

No

If so, did the foundation supervisory authority engage in a consultation with the foundation sector on counter terrorism measures/ does it plan such a consultation?

No

➤ **Public fundraising**

Are there any specific laws that regulate fundraising and do they affect foundations?

The granting of public subsidies is partly regulated by law<sup>100</sup> and partly a matter of the policy of the central or local government authorities. The funding conditions are mostly not set down by law. The grant rules are set by individual ministries and public funds, e.g. the State Fund for the Environment, the Grant Agency of the Czech Republic etc. Following the reform of the public administration carried out at the beginning of the new millennium, the situation has improved. Nowadays, even regional units and municipalities have their own policies on providing subsidies. Centrally, the principles for distributing the subsidies are submitted to the Advisory Board for NGOs, which is an advisory body to the government of the Czech Republic which may influence the government's decisions. Special rules for the provision of subsidies have been set in the agreement on the provision of contributions from the NIF (Foundation Investment fund). The subsidies are provided on the basis of agreements on the provision of contributions. It is also possible for contracting parties to agree on other rights and obligations. Any violation of such rules may be sanctioned by, e.g. the duty to return the contribution made.

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<sup>100</sup> Act No. 218/2000 Coll. - the Act on Budgetary Rules, and the Act No. 250/2000 Coll. on Budgetary Rules of Regional Budgets

### **Useful contacts**

Czech Donors Forum  
[www.donorsforum.cz](http://www.donorsforum.cz)  
[donorsforum@donorsforum.cz](mailto:donorsforum@donorsforum.cz)  
[www.law.muni.cz](http://www.law.muni.cz)

The Ministry of Finance  
[www.mfcr.cz](http://www.mfcr.cz)

The Association of Tax Advisors  
[www.kdpcr.cz](http://www.kdpcr.cz)

Masaryk University, Faculty of Law, dept. of Civil Law  
[www.law.muni.cz](http://www.law.muni.cz)

### **Selected bibliography**

In Czech language:

Adamec, Jaromír; Almerová. Zdenka: *Účetnictví, daně, audit a finanční management*. Doplněk, Brno, 2005

Hurdík, J; Telec. I.: *Zákon o nadacích a nadačních fondech. Komentář*. C.H. Beck, 1998

Ronovská K. *Soukromoprávní aspekty nadačního a spolkového práva v Česku, Švýcarsku a v Nizozemí*. (Legal aspect of foundation and association law in Czech Republic, the Switzerland and the Netherlands), Masaryková univerzita, Brno, 2004

Ronovská, K: *Tendence vývoje českého nadačního práva v rámci sjednocené Evropy* (Tendencies of Development of Czech foundation law in Context of Europe,), MU, Brno, 2009

Ronovská, K.: *Spolkové a nadační právo* (Law on associations and foundations), MU, Brno, 2008

In English language:

Ronovska, K.: Nonprofit organisations in the Czech Republic in: HOPT, J.K., von HIPPEL, T.: *Comparative Corporate Governance of Non-Profit Organisations*, Cambridge, 2010, p. 379

Ronovská, K.: Civil Law in the Czech Republic: tendencies of development (some notes on the proposal of the new civil code). *European Revue of Private Law*, The Netherlands, Kluwer Law International. ISSN 0925-9880, 2008, vol. 16/2008, no. 1., s. 111 - 120.

Ronovská, K: The Contemporary Trends and Issues of Foundation Law in Europe and Their Characteristics in the Czech Republic, in: Hurdik, Polcak, Smejkalova: *Czech Law in European Regulatory Context*. Wien - München : Verlag Medien und Recht, 2009. od s. 259 - 273

Ronovská, K.: Reflection on the Common Grounds for the Legal Framework of Civil Society in Europe, in: Knez, Rozehnalová, Tyc a kol. : *Five Yers of EU Membership Case of Czech Republic and Slovenian Law*. 1. vyd. Maribor, Slovenia, 2009. od s. 250 - 257

Ronovská, K.: Legal Framework for external supervision of NGOs in the Current Czech Law, *International Journal for Not for Profit Law*, 2009

Survey of tax Laws in Central and Eastern Europe. International Center for Not-for-Profit Law, 2003