

## EFC COUNTRY PROFILE JANUARY 2011: FRANCE

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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 first law on foundations (*Loi 87-571 sur le développement du mécénat – LDM*), enacted on 23 July 1987, covers public utility organisations in general and state-approved foundations of public utility (*fondations reconnues d'utilité publique*). This law was modified on 4 July 1990 by introducing the so-called corporate foundations (*fondations d'entreprise*). Pursuant to amendments to Articles 19-20, one or more private or public corporations, cooperatives or mutual benefit companies can set up corporate foundations to pursue public benefit purposes.

Art. 18 LDM defines foundations as follows: The legal act through which one or more individuals or legal entities decide irrevocably to allocate property, rights or resources for a non-profit-making activity of public interest ("*La fondation est l'acte par lequel une ou plusieurs personnes physiques ou morales décident l'affectation irrévocable de biens, droits, ressources à la réalisation d'une oeuvre d'intérêt général et à but non lucratif*").

A new law to promote private giving in France was enacted on 1 August 2003 and published on 2 August 2003 (*Loi relative au mécénat, aux associations et aux fondations, n°709, 1er Août 2003*). This law provides for new measures to promote private giving in France. Proposals regarding the simplification of the public utility approval and the creation and operation of public utility foundations had already been put into practice in the first half of 2003. On 2 April 2003, the Highest Court/*Conseil d'Etat* approved a new version of the Model Statute for Public Utility Foundations (*Modèle de statuts des Fondations reconnues d'utilité publique*), which is an important resource for public utility foundations.

The term foundation is legally protected and can only be used by those foundations that are public utility foundations (*fondations reconnues d'utilité publique*), corporate foundations (*fondations d'entreprise*) or non-autonomous foundations (*fondations abritées*) under the aegis of a few public utility foundations (such as the Fondation de France). The Institut de France, which is not a foundation, has also received a special authorisation by the *Conseil d'Etat* to host non-autonomous foundations.

According to Law no. 2003-709, time-limited foundations can be set up, which are allowed to spend down their endowment (*fondations à capital consommable*). In addition, it is possible to set up a foundation whose activities depend on yearly donations (*fondations de flux*).

Law No. 2006-450 enacted on 18 April, 2006 implemented a new category of foundation : foundations for scientific cooperation (*fondations de coopération scientifique*) which may take the form of either a public utility foundation or of an autonomous foundation whose endowment is allocated to a public utility foundation in charge of managing it.

Recently, Law no. 2007-1199 (enacted on 10 August 2007) implemented two new categories of foundation : 1) university foundations (*fondations universitaires*), which are non-autonomous foundations created by universities and other public institutions of a scientific, cultural or professional character to perform non-profit public utility purposes within the framework of the higher education public service; 2) partnership foundations (*fondations partenariales*) which are autonomous foundations created by universities and other public institutions of a scientific, cultural or professional character either alone or together with enterprises.

Finally, Law no. 2008-776 (enacted on 4 August 2008) implemented a new legal tool - "endowment funds" (*fonds de dotation*). Based on the Anglo-Saxon model of an endowment fund, such funds will provide an opportunity to establish funds through a simpler process than that which is currently required for foundations of public utility.

➤ **What purposes can foundations pursue?**

Foundations, as well as endowment funds, must pursue a public benefit purpose. Private purpose foundations, such as family foundations, are not allowed in France. The bylaws of a foundation define its purpose.

➤ **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?**

To establish a public utility foundation, the founder must seek authorisation (*reconnaissance d'utilité publique*) via a decree issued by the French Ministry of the Interior (*Ministère de l'Intérieur*). The founder can establish the foundation through private deed *inter vivos* (during the founder's life) or through a will. The documents are then filed with the Bureau of Associations and Foundations, which will consult the various Ministries relevant to the contemplated foundation's objectives, as well as the Highest Court (*Conseil d'Etat*). The Bureau also drafts the decree to be executed by the French Interior Minister (*Ministre de l'Intérieur*). The foundation gets its legal personality only once the decree is signed and published in the French Official Gazette (*Journal Officiel*). The foundation's statutes must be based on the Model Statute (available at: <http://www.cf-fondations.fr/creer-une-fondation/documents-utiles/fondation-rup>)

The public utility approval process has been simplified by the 2003 reform. While before this law, it could take up to 18 months for a public utility foundation to be authorised via decree, the procedure has been shortened to a maximum of 4-6 months.

Public utility foundations have full legal capacity. They can receive legacies and gifts, whereas corporate foundations cannot receive donations other than those made by the founding corporation, its employees or the employees of a company related to the founding corporation. They cannot receive legacies.

Corporate foundations receive legal personality either through an authorisation by the *Préfet* (representative of the state at local level) or if the administration does not object within four months of the date on which the authorisation request was filed. Corporate foundations are only established for a limited period of time, a minimum 5 years, which can be extended for at least 3 years. A minimum endowment of €150,000 is required, which must be spent over a maximum period of five years. Corporate foundations have limited legal capacity, as they can only own buildings to be directly used for their operations.

Non-autonomous foundations are created by private contract between the host public utility foundation and the founder. Non-autonomous foundations have no legal capacity. They have their own board that decides on operations, but the host institution administers the assets. The legal and fiscal regime of the host foundation applies to non-autonomous foundations under its aegis.

The establishment process for endowment funds is considerably easier, as they are set up immediately after having filed a declaration with the *Prefet* and having published such declaration in the Official Gazette.

➤ **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? )**

To establish a public utility foundation, the founder must seek authorisation (*reconnaissance d'utilité publique*) via a decree issued by the French Ministry of the Interior (*Ministère de l'Intérieur*). The public utility approval process has been simplified by the 2003 reform. While before this law, it could take up to 18 months for a public utility foundation to be authorised via decree, the procedure has now been shortened to a maximum of 4-6 months.

The creation of a corporate foundation needs an authorisation by the *Préfet* (representative of the state at local level); however it is regarded as officially created if the *Prefet* does not object within four months of the date on which the authorisation request was filed.

The establishment process for endowment funds is considerably easier, as they are set up immediately after having filed a declaration with the *Prefet* and having published such declaration in the Official Gazette.

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

No. Irrespective of their nature (corporation foundations, public utility foundations or non-autonomous foundations) foundations are not required to register.

It may be requested that endowment funds register in a specific register dedicated to associations (decrees are still unpublished).

➤ **Is a minimum capital required?**

The endowment of a public utility foundation is the constituent element of the foundation, which leads to independence and duration. Although the law does not require a minimum endowment, in practice a minimum capital of €1 million seems to be requested by the state authorities to grant public utility status. The initial endowment can be transferred within the first ten years of the date of the State approval according to Art. 18 Section 1 LDM<sup>1</sup>. The foundation shall build up the endowment with approximately 10% of the annual income of the foundation.

As of 2003, time-limited foundations can be set up, which are allowed to spend down their endowment. In this case, no minimum endowment is requested by law or in practice.

Finally, it is possible to set up a foundation with no endowment, the activities of which depend only on yearly donations (*fondations de flux*).

No minimum capital is required for endowment funds.

➤ **What governance requirements are set out in the law?**

Is it mandatory to have a supervisory board?

No. According to the new Model Statutes, foundations may freely decide on their internal structure. They can choose between having either a supervisory board (*conseil de surveillance*) and an executive board (*directoire*), or just a managing board (*conseil*

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<sup>1</sup> Art. 18 was modified by Law no. 2003-709 (before it was only five years)

*d'administration*). As the new Model Statute has only been in force since 2003, most French foundations have a managing board.

What are the requirements concerning board members? Is a minimum/maximum number of board members specified?

The board of a public utility foundation must consist of at least three categories of members :

- Representatives of the founders, who cannot exceed one-third of the board,
- Qualified members, who cannot exceed one-third of the board, and
- Either a representative of the State appointed by the Ministry of the Interior, or members by right, including at least one representative of the Ministry<sup>2</sup>.

Moreover, it is also possible for the bylaws to provide for representatives of the foundation's employees to participate on the board. In this case, a representative of the employees is appointed by the employees themselves.

With respect to corporate foundations, their board must consist of at least two employees of the founding corporation. Not more than two-thirds of the members of the governing board can represent the founder. The other board members must have some expertise in the field of the foundation.

What are the rules concerning appointment of board members? And their resignation/removal?

The bylaws may freely decide on the appointment and renewal rules applicable to board members and the conditions of their dismissal as well as the term of their mission, which should preferably not exceed 4 years and should be renewed only once (pursuant to the Model Statute). Except for the founder himself and the members by right, the board members may be dismissed for fair reasons. Board decisions are taken with a simple majority, unless the bylaws provide otherwise (a majority of three-quarters of the members for amending the by-laws, for example). A meeting of the board can be called by the president or by at least one-quarter of the board members. The board shall convene at least twice a year (every 6 months, as provided by the Model Statute).

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

The board is in charge of the management of the foundation and rules on all important decisions: the budget, clearance of the annual accounts, modification of the bylaws, acceptance or refusal of gifts and legacies, etc. The president of the board is the legal representative of the foundation. Remuneration of board members is not allowed. Regarding endowment funds, the only requirement is that the board must consist of at least 3 members, the first ones being appointed by the founders.

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?

Only the board of public-utility foundations has the capacity to decide on any change to be made to the by-laws ; the founders have no right to that extent.

The by-laws can be modified only after two deliberations of the board of directors (or of the supervisory board) taken in two months of interval and in the majority of three quarters of the members in exercise.

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<sup>2</sup> Before 2003 one third of the governing board had to be representatives of public authorities.

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

The beneficiaries have no specific rights, unless a general right of information as for any third party to the foundation.

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?

Agreements passed directly or through a third party between a foundation or an endowment fund and a member of the board, as well as agreements signed by a foundation or an endowment fund with another legal entity a manager, member of the board, Chief Executive Officer, or a shareholder having a fraction of the voting rights over 10 % of which is simultaneously a member of the board of the foundation are regarded as “regulated” agreements subject to a specific process of approval (French commercial code, art. L. 612-5). Under this process, the statutory auditor of the foundation or, in his absence, the legal representative of the foundation, must establish a report on such regulated agreements which should contain the following information:

- A list of all regulated agreements signed by the foundation,
- The name of the members of the board and of any other persons concerned by such regulated agreements,
- The name of any persons or entities with which a regulated agreement (convention) has been concluded.

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

It varies from a foundation to another, depending on what has been provided to that respect in the by-laws.

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

The president of the board represents the foundations towards third parties. The by-laws may authorise him to delegate his powers to the general manager.

The president of the board represents the endowment funds towards third parties.

Do the director and officers have powers of representation?

Directors and officers may have powers of representation only if the by-laws of the foundation provide so and the board of directors has authorized that powers of attorney be granted to them.

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

Whatever their nature, foundations have a civil liability for damages they generate to third parties. Board members can be held civilly and criminally liable.

The same rules apply to endowment funds.

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

Fault and negligence are the general standard of diligence. Yes, France does distinguish between voluntary and paid board members - when unpaid, the liability of a board member is assessed in a less strict manner.

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?

No

What is the liability the directors and officers?

The directors, who are members of the board, can be held civilly and criminally liable for their personal fault or negligence.

Officers, who are employees of the foundation, are civilly liable to the foundation for serious offences; they may also be criminally liable for personal infractions committed while performing their job.

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

No

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.	Civilly liable to the foundation				
The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).	Civilly liable to the foundation				
The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.				Probably no, if no intentional fault	
The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low.		Probably civilly liable to the foundation			
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.		Probably civilly liable to the foundation			

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

Foundations can engage in commercial activities. Commercial activities are allowed within the framework of the foundation, provided they support the public benefit purpose of the foundation.

Endowment funds can also engage in commercial activities under the same conditions.

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

Unlike corporate foundations and associations that can only own real estate if directly used for their operations, public utility foundations as well as endowment funds do not face such restrictions. They can receive legacies and donations, while corporate foundations can only receive contributions from the founding corporation, and from the employees of the founding corporation and of any related companies.

Since the enactment of a law dated 15 July 2005, a foundation is entitled to hold the majority of the shares in a commercial company provided such ownership is in line with the purpose of the foundation, based on the so-called "principle of speciality" (*principe de spécialité*). However, the bylaws of the foundation may restrict or prohibit major shareholding<sup>3</sup>; moreover, due to potential adverse tax consequences, foundations do not currently make use of such a possibility in practice.

Financial advantage cannot be granted by the foundation to the founder or his/her relatives.

➤ **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)**

The French Monetary and Financial Code (*Code monétaire et financier*) prohibits entities other than banks or financial institutions to grant loans on a regular basis. Therefore, foundations and endowment funds are only entitled to allocate loans within their public benefit purpose, subject to specific conditions; as a consequence, they notably can only grant no-interest or very low-interest loans.

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

According to Arts. 13 and 15 of the Model Statute, any amendment to the bylaws must follow a strict and complex procedure and has to be approved by French public authorities.

As for endowment funds, any amendment to the bylaws must be declared to the *Prefet* and published in an Official Gazette.

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

Art. 16 of the Model Statute requires that all public utility foundations file an annual report and financial statements with both the competent *Prefet* and the Ministry of the Interior. Other ministries may also ask for an annual report.

Corporate foundations and endowment funds must file their annual report and financial statements with the administrative authorities.

Public utility foundations and corporate foundations must also appoint an auditor, plus a substitute. The same rule applies to endowment funds when their annual income exceeds €10,000.

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

Yes

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)?

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<sup>3</sup> This is the case of Fondation de France.

Art. 16 of the Model Statute require that all public utility foundations file an annual report including details of their finances and activities, as well as financial statements with both the competent *Prefet* and the Ministry of the Interior. Other ministries may also ask for an annual report.

Corporate foundations and endowment funds must file their annual report and financial statements with the administrative authorities.

Finally, foundations making public fundraising must also made publicly available a special report (the so-called earmarking of funds account ("*compte d'emploi des ressources*") which details all the funds raised from the public and the use of such funds.

Who checks (supervisory/tax authorities)?

The above referred reports must be filed with the *Prefet* and the Ministry of Interior.

Where is the required information publicised?

These reports must be published each year on the web site of the Official Gazette (*Journal Officiel*).

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

Public utility foundations and corporate foundations must appoint an auditor, plus a substitute. The same rule applies to endowment funds when their annual income exceeds €10,000.

Foundations are also subject to audits made by the *Cour des Comptes*, a special court having jurisdiction to audit the account of public entities and of entities making public fundraising.

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

The auditors of foundations (as well as auditors of any commercial company) are chosen from a list established by local Courts of Appeal, of individuals and audit companies sworn by the auditors' professional organisation.

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

The Ministry of the Interior and the *Prefet* (the sole *Prefet* in the case of endowment funds) exercise the supervision once a foundation is set up.

Until 31 December 2005, donations and legacies to foundations had to be approved by the state. However, the process is now easier since the adoption of Law No. 2004-1343 dated 9 December 2004 and Ordinance no. 2005-856 dated 28 July 2005, which have eliminated the need for state approval. As of 1 January 2006, donations and legacies can be freely accepted by foundations, the state authorities having the right to object only if they believe that a foundation would not be able to use a gift or legacy in accordance with its statutory objectives. Please note that gift and legacies made to endowment funds are not subject to this control.

Yearly reports have to be sent to the *Prefet* and the relevant ministries. Otherwise, in addition to fiscal sanctions, the public utility status of the foundation may be withdrawn, which leads automatically to its dissolution.

The supervision of corporate foundations is less strict: the state is not represented on the board of the foundation. Yearly accounts have to be sent only to the *Préfet*.

Non-autonomous foundations do not come under state supervision. They are overseen by the public utility foundation managing them.

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?

As indicated above, the French supervisory authority for foundations is made of both governmental body (the *Prefet* and the Ministry of Interior) and a special court (the *Cour des Comptes*).

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

The *Cour des Comptes* has full jurisdiction to audit the reports and accounts of the foundations, as well as their use of the funds raised from the public or derived from legacies and gifts made to them.

All public benefit organisations are subject to this inspection provided either they raise funds from the public, or they receive gifts and donations giving right to a tax credit for their donors.

Is approval from the authority required for certain decisions of the Board of Directors?

Decisions of the board of directors stating on (i) modification of the by-laws, (ii) sale of any real or financial assets which are part of the foundation's capital, (iii) creation of a mortgage and (iv) loans, are subject to a formal approval of the *Prefet* or the Ministry of Interior

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

The board of a public utility foundation must mandatorily contain either a representative of the State appointed by the Ministry of the Interior, or members by right, including at least one representative of the Ministry<sup>4</sup>.

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

None, except for the cancellation of the public-benefit status with respect to public utility foundations.

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

According to Art. 14 of the Model Statute, the managing board or the supervisory board may decide upon dissolution of a foundation. The foundation has to be dissolved if its public utility status is withdrawn, or if its endowment becomes insufficient (less than 10% of the initial endowment, such a rule being not applicable to time-limited foundations). The foundation also has to be dissolved if its endowment is not transferred to the foundation by the promised date. The Ministry of the Interior, as well as the representative of the government appointed to the board, will have to approve any dissolution of the foundation.

The statutes should provide requirements for the dissolution of the foundation. Assets can be transferred to organisations that pursue the same aims as those of the dissolved foundation.

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<sup>4</sup> Before 2003 one third of the governing board had to be representatives of public authorities.

An endowment funds can be dissolved (i) upon arrival of the term fixed in its by-laws in the case where it has a limited duration, (ii) upon decision of its board, (iii) once its endowment has been fully spent or (iv) upon judicial decision.

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

From a French legal standpoint, foreign foundations may benefit from a limited legal capacity in France provided they have legal personality under the law of their country of incorporation. Pursuant to such limited capacity, they may enter into contracts, purchase and own assets, be party to a legal action, and organise events in France. As a consequence, if a foreign foundation intends to perform its statutory purpose in France, it should then either create a foundation under French law, or seek special authorisation (recognition of public utility status) via a decree issued by the French Ministry of the Interior, after having received the approval of the *Conseil d'Etat* (French supreme administrative court).

➤ **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?**

French foundations are currently authorised to perform their activities abroad. However, French tax law denies the application of income and corporation tax reductions to gifts made to foundations which do not conduct the main part of their activities in France. As an exception to that principle, French foundations collecting funds and organising humanitarian missions abroad, as well as French foundations collecting funds to promote French language, culture and scientific knowledge outside France are deemed to be performing their activities in France in that sense.

## **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?)**

A favourable tax regime applies as soon as a public utility foundation is established, irrespective of the location of its activities. No special application is needed to receive tax exemption. The same rule applies to endowment funds.

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

No special application is needed to receive tax exemption.

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

Foundations receiving state funds exceeding €23,000 are required to sign a convention with the State, such convention defining the conditions of use of the funds received as well as the rules of reporting.

In addition, the *Cour des Comptes* has full jurisdiction to audit the reports and accounts of foundations receiving state funds, funds from local authorities as well as European funds

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

Foundations making public fundraising must make publicly available a special report (the so-called "earmarking of funds account" ("*compte d'emploi des ressources*") detailing all the funds raised from the public and the use of such funds.

➤ **Are there specific accounting rules for foundations?**

Yes. The accounting regulation CRC 99-01, as amended by the opinion no. 2009-01 issued by the National council for accountancy (*Conseil national de la Comptabilité*) contains specific accounting rules for associations and foundations, including particular regulations relating to registration of gifts, donations and legacies.

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

In France, there is no definition of public benefit purpose in civil law.

➤ **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.**

In France, under tax law, the public benefit purpose condition is regarded as fulfilled when (i) the activity of the foundation is a non-for-profit one, (ii) the management of the foundation is non-profit-minded, (iii) no advantage is obtained for the founders and (iv) the foundation's activities do not benefit a limited group of persons.

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

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

In France, under tax law, the public benefit purpose condition is regarded as fulfilled when (i) the activity of the foundation is a non-for-profit one, (ii) the management of the foundation is non-profit-minded, (iii) no advantage is obtained for the founders and (iv) the foundation's activities do not benefit a limited group of persons.

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

See above. The “limited /restricted group” notion is not a reference to a small number of persons, but rather to a restrictive definition of beneficiaries. Therefore, a foundation could support persons who suffer from a rare disease (since anybody could potentially be affected by such disease), whereas it could not support veterans or former students of such or such school.

**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		Yes, provided it also benefits future inhabitants of the city.			
For benefit of the inhabitants of a village with 10,000 inhabitants		Yes, provided it also benefits future inhabitants of the village.			
For benefit of the employees of a company					No
For benefit of the members of a family					No
For benefit of the students of a university		Yes, provided it also benefits future			

		students of the university			
Award for the best student of a university					No

➤ **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?

No, from a legal standpoint. However, such prohibitions or limitations are frequently included in the by-laws of French foundations

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

French civil law provides that, in such a situation, the foundation's assets must be devolved by the board to another foundation. A similar rule applies to endowment funds.

➤ **“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?

No, board members can benefit from a refund of their business expenses only if provided by the foundation's internal regulations.

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)

Yes. However, the tax reduction regime is denied to the donor/funder if the benefit granted in return for the donation exceeds a certain limit, which is equal to 25% of the amount of the gift with a ceiling of €60 for individuals and 25% of the amount of the donation for companies.

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?

No

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

**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.					No
The founder retains a beneficial reversionary interest in the capital of a property or other asset for his own continuing use.	Yes, provided that the reversionary interest is limited to a specific length of time or to the life of the founder and the interest reverts to the foundation at the expiration of this				

	period				
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.	Yes, provided that the foundation can freely decide not to renew the lease upon its expiration				
A foundation distributes a (small) part of its income to the founder or his family.					No, since it would then not be of public benefit

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 endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.					No
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.	Yes, provided that the reversionary interest is limited to a specific length of time or to the life of the founder and the interest reverts to the foundation at the expiration of this period				
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.	Yes, provided the foundation can freely decide not to renew the lease upon its expiration				
A foundation distributes a (small) part of its income to the founder or his family.					No, since it would then not be of public benefit

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.)?

No

➤ **Distributions and Timely Disbursement**

Are foundations allowed to spend down their capital?

Yes, in the case where the foundation is set up for a limited period of time.

Endowment funds are normally not allowed to spend down their capital, unless it is authorized by their by-laws. However, if such a provision is included in the bylaws, the endowment fund becomes liable to corporation tax.

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

Yes

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?

No

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”?

No

**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.	X				

**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.	X				

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.)?

No

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

Generally no, but tax benefits for donors are not granted, if the foundations do not conduct the main part of their activities in France. As an exception to that principle, French foundations collecting funds and organising humanitarian missions abroad, as well as French

foundations collecting funds to promote French language, culture and scientific knowledge outside France are deemed to be performing their activities in France in that sense.

A recent non-published decision of the French tax authorities specifies that tax benefits are no longer granted in relation to gifts made to French associations and foundations performing their activities in countries classified as "middle income countries" in the Development Assistance Committee (DAC) list of Official Development Assistance (ODA) recipients established by the Organisation for Economic Cooperation and Development (OECD).

#### ➤ **Income tax treatment**

Income derived from non-profit activities as well as capital gains or income derived from ancillary economic activities is tax-exempt. Royalties and rental income derived from commercial or furnished premises are subject to corporate income tax at the standard rate (33.33%).

If foreign foundations establish an autonomous branch in France, the same tax regime applies. If a foreign foundation is active in France and can prove its non-profit character, it is exempt from tax.

Subsidies from the State or public bodies are exempt from corporate income tax provided they have been granted to the concerned foundation in absence of any direct compensation being required. Their liability or non-liability to VAT depends on whether they are allocated to finance taxable or non-taxable activities of the foundation.

The same rules apply to endowment funds; but in the case where an endowment funds is entitled by its by-laws to spend down its capital, income derived from investment of its capital becomes taxable.

#### Grants and donations

Grant and donations received by foundations are tax exempt.

#### Investment income (asset administration)

Since 1 January 2005, most investment income (dividends, interest, rental income derived from unfurnished premises) are tax-exempt.

Public benefit foundations do not pay withholding tax in France. A 15% withholding tax applies to French nonprofit organisations, except public benefit foundations and endowment funds. This withholding tax at a rate of 15% is also levied on dividends paid to comparable foreign organisations as of 2010.

#### Economic activities related/unrelated)

Economic activities of public utility foundations that are directly linked to the purpose of the foundation are usually exempt from corporate tax. Profits derived from an unrelated commercial activity are regularly taxed at the normal corporate income tax rate. The distinction between non-profit character and profit-making activity is not always very clear. According to the fiscal guidelines introduced in 1998 and 1999 (*Instructions du 15 septembre 1998 - Bulletin Officiel des Impôts 4 H-5-98 et 16 février 1999 - Bulletin Officiel des Impôts OI 4 H-1-99*), tax exemption from standard rates is granted if (i) the organisation's management does not have a financial interest in the organisation, (ii) the organisation does not compete with the private sector, and (iii) activities are not conducted in the same way as commercial corporations.

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

Major shareholding is normally not regarded as an economic activity but as simple administration of assets. However, if a foundation is actively involved in the operational management of a company, the shareholding would then be considered a taxable economic activity, which could entail a corporate tax burden for the foundation if not considered an ancillary activity.

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

The French Monetary and Financial Code (*Code monétaire et financier*) prohibits entities other than banks or financial institutions to grant loans on a regular basis. Therefore, foundations and endowment funds are only entitled to allocate loans within their public benefit purpose, subject to specific conditions; as a consequence, they notably can only grant no-interest or very low-interest loans. In such cases, income derived from such loans is tax exempt as far as it is regarded as directly linked to the purpose of the foundation.

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

n/a

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

Most tax treaties signed by France do not cover French foundations, which are thus usually not regarded as “residents of France” for the application of such treaties. Therefore, income derived by a French foundation from foreign investment is normally subject to any applicable foreign withholding tax, unless provisions of the foreign applicable domestic law exempt them from such withholding tax.

#### ➤ **Gift- and inheritance tax**

Public interest foundations whose resources are exclusively spent for assistance, environment, animal protection, scientific, cultural or artistic purposes are exempt from inheritance and gift tax. Special donations like goods of historical value, books, and paintings are also exempt from this tax.

#### ➤ **Value added tax (VAT)**

As long as they do not perform economic activities, foundations and endowment funds are not subject to VAT.

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

There is no capital tax applicable to legal entities in France.

#### ➤ **Taxes on the transfer of assets?**

Sales of real estate or shares by a foundation are subject to transfer taxes (*droits d'enregistrement*) which are usually borne by the purchaser. The transfer of assets from a foundation to a public utility foundation is exempt from transfer tax, irrespective of the nature of the assets transferred (Article 1039 of the French Tax Code).

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

Foundations and endowment funds are liable to property tax on any immovable property they own on 1 January of each year.

➤ **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?**

Yes, but only if it performs its activities on French territory and is regarded as having a public benefit purpose in France.

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

Donations to a foreign foundation may benefit from the same tax treatment as donations made to French foundations only if (i) the foreign foundation performs its activities in France or (ii) is regarded as having a public-benefit purpose in France.

➤ **Are there current discussions about the question of whether cross-border activities of foundations or 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. publications in law journals / Have there been any resulting changes to your country's legislation, or are changes being discussed?**

In December 2009, the amending law to the 2009 budget law was adopted, including provisions in order to remove discrimination against foreign charities (associations and foundations). Under this new legal provision, French tax residents making gifts to public benefit organisations established in the EEA that are comparable to French public benefit organisations will be given the same tax advantages as those granted to French tax resident making gift to French non-profit organisations (see III hereto below), subject to the following conditions :

- The foreign organisation is established in a country which has signed a tax treaty with France containing a clause for assistance against tax fraud or evasion and the foreign organisation has obtained a specific agreement from the French tax authorities
- In the case where the organisation has not got this agreement, the donors may still benefit from the tax advantages provided that they file evidences that the organisation is comparable to a French tax exempt organisation

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

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

French resident taxpayers, regardless of their nationality, benefit from a tax credit in relation to gifts made to foundations. The beneficiary foundation, irrespective of the location of its head office in France or abroad, must however conduct part of its activities in France or benefit the national community; to that extent, a French foundation collecting funds and organising from France humanitarian missions abroad is deemed to be performing its activities in France in this sense. The foundation must provide the donor with a receipt; such a receipt must be enclosed with the donor's tax return in order for him to enjoy a tax credit.

Any type of donation can be made to a foundation: cash, shares, securities, real estate, in-kind donations, etc.

➤ **Tax treatment of individual donors**

Individuals making gifts to public utility foundations, to foundations under the aegis of a public utility foundation or to endowment funds, as well as employees contributing to the corporate foundation set up by their company, benefit from a tax reduction equal to 66% of the value of their gift (75% for gifts made to foundations and other organisations which supply free meals to persons in difficult situations), up to 20% of the donor's taxable income, according to Art. 200-1 CGI. When the amount of the gift exceeds this threshold, the excess is carried forward over the next 5 years.

In addition, since 1 January 2008, individuals donors may opt to benefit from a wealth tax reduction with respect to gifts of cash and/or listed shares made to public benefit foundations. The wealth tax reduction is equal to 75% of the value of the gift, but is limited to €50,000. Please note that if the donor opts for the wealth tax reduction, he cannot benefit from the income tax reduction with respect to the same gift. This tax advantage has not been extended to gifts made to endowment funds.

➤ **Tax treatment of corporate donors**

Corporate donors can benefit from a tax reduction equal to 60% of the donations to public utility foundations and to endowment funds up to 0.5% of their annual turnover according to Art. 238 bis CGI. Should there be no profits in the following years, the deduction can be carried forward over the next five years. The deduction may also be carried forward over the following five years, if the donations are beyond the 0.5% limit. The founding company can also benefit from a tax credit with respect to gifts made to a corporate foundation it has set up.

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

Donations made to non-resident public benefit foundations are subject to French gift taxes, unless provided otherwise by a tax treaty. Up to now, France has signed treaties regarding succession and/or gift duties **and** containing a specific provision relating to non profit organisations only with the following countries : Austria, Finland, Italy, Spain, Sweden, U.S.A. and Switzerland (only with respect to some "cantons")

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

n/a

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

The donor, whether an individual or a corporation, must file together with its annual tax return a form delivered by the foundation certifying the nature and the date of the gift it received as well as the amount of such gift.

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

**Individuals**

Individuals receiving funds from a foundation are exempt from paying tax on them if such funds are granted as assistance of an exceptional nature. However, if such funds are granted in exchange for compensation (such as the provision of certain services), they are subject to individual income tax at standard rates.

Prizes granted by a foundation are normally taxable; however, literary, artistic and scientific prizes are tax-exempt provided they are allocated by an independent jury and have been granted for at least 3 years.

## Legal entities

Subsidies granted by a foundation to non-profit entities are tax-exempt if they are used for the purpose of tax-exempt activities by the beneficiary entities.

Otherwise, the beneficiaries are subject to corporate income tax.

### V. Trends and developments

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

n/a

#### ➤ **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)?

Yes. Law no. 2006-64 dated 23 January 2006 relating to the struggle against terrorism and dealing with security and border controls issues; Law no. 2007-297 dated 5 March 2007 relating to crime prevention ; Ordinance no. 2009-104 dated 30 January 2009 relating to the prevention of use of the financial system for money laundering and terrorism financing.

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

Not directly. The 2009 Ordinance provides that barristers (*avocats*), notaries and auditors advising clients in relation with the creation or the management of endowments funds are liable to specific obligations of declaration with a special committee for financial inquiry, in the cases where they suspect that the funds used may come from money laundering operations or may participate to terrorism financing.

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

No, except for the above referred ordinance.

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?

n/a

#### ➤ **Public fundraising**

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

Yes, Law no. 91-772 dated 7 August 1991 regulates public fundraising made by organisations in order to support scientific, social, family, humanitarian, philanthropic, educational, sports, cultural or environmental actions, irrespective of the nature of the organisation concerned. Therefore, the provisions of this law fully apply to foundations provided they are authorised to make public fundraising (which is not the case for corporate foundations).

### **Useful contacts**

Centre Français des Fondations  
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Web: <http://www.fdf.org>

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### **Selected law texts**

- Law no. 87-571 dated 23 July 1987 (*Loi sur le d veloppement du m c nat*)
- Law no. 90-559 dated 4 July 1990 (*Loi cr ant les fondations d'entreprises et modifiant les dispositions de la Loi no.87-571 relatives aux fondations*)
- Law no. 2003-709 dated 1 August 1 2003 (*Loi relative au m c nat, aux associations et aux fondations*)
- Law no. 2004-1343 dated 9 December 2004 (*Loi de simplification du droit*)
- Law no. 2006-450 dated 18 April 2006 (*Loi de programme pour la recherche*)
- Law no. 2007-1199 dated 10 August 2007 (*Loi relative aux libert s et responsabilit s des universit s*)
- Law no. 2007-1223 dated 21 August 2007 (*Loi en faveur du travail, de l'emploi et du pouvoir d'achat*)
- Law no. 2008-776 dated 4 August 2008 (*Loi de modernisation de l' conomie*)