

EFC COUNTRY PROFILE JANUARY 2011: LATVIA

Drafted by Rasma Pīpiķe, Civic Alliance Latvia; updated by Ansis Bērziņš, Valmiera Region Community Foundation

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)?**

Yes, a foundation is an aggregate of property set aside for a purpose defined by the founder. The law on associations and foundations identifies only one type of foundation and does not divide them into different types. But there are also public foundations which are created by the state and are governed by a separate law.

- **What purposes can foundations pursue?**

Foundations can have any legal purpose except the making of profit. If a foundation has a narrow goal, it might be difficult for it to get the status of public benefit organisation.

- **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?**

A foundation can be established by at least one individual or legal body. Foundations are registered and documents are submitted in the State Register of Companies, which includes the Register of Associations and Foundations (the "Register"). Registering a foundation takes 7 days.

The following documents should be submitted: (i) decision of establishment of a foundation, (ii) statutes, (iii) application for registration, (iv) consent from each member of the executive board to be a board member and (v) receipt of payment of duty.

- **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

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

Yes, in the State Register of Companies.

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

Title of the foundation; legal address; aim of the foundation; date of confirmation and signing the statutes; name, surname and personal code of executive board members, and their rights of representation (single, together with x members etc.); period of time the foundation is set up for; data about legal procedures, court decisions, reorganisation, dissolution, etc.

If foundations are registered, is the register publicly available?

Yes (Some fees are payable).

➤ **Is a minimum capital required?**

No

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

A foundation has to have an executive board with at least 3 members if there is no other governing institution in the foundation with the authority to supervise the foundation's executive board. If there is one, the executive board can also be composed of 1-2 persons.

Foundations also have to have an auditing institution with one or more members. Foundations can create other governing bodies with authority described and specified in the statutes. A board member can resign whenever he/she wants to, by giving written of the resignation. The term of office is prescribed in the statutes.

The board makes decisions on all questions concerning the foundation. The founder forms the first structure of the board and may have special rights if prescribed in the statutes.

Is it mandatory to have a supervisory board?

No

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?

No requirements are defined concerning either executive or governing/supervisory board members. The statutes must describe the appointment or election process of all governing bodies of a foundation.

A board member can be any individual who has reached the age of 18 if there are no other restrictions described in the statutes regarding criteria for board membership.

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

Not specified for governing board. The Executive board is fully responsible for all actions taken by the foundation.

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?

Rights of funders are described in the statutes. The statutes can prescribe that fundamental decisions can be made just by the executive or governing board's decision, that they can be made by decision of the founders, or that they can be forbidden altogether.

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

These are not specified in law.

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?

It is forbidden to finance, or to issue loans or warranties to members of any governance structure (executive board, supervisory board etc.) or their relatives.

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

The law does not set any restrictions for staff members to be in decision-maker roles (board member etc.). Typically, CEO is also the chairperson of Executive Board and, thus, the main or one of key decision-makers in the foundation.

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

The law stipulates that executive board members represent the foundation. The statutes should stipulate whether each member alone is allowed to represent the foundation, or whether a pair or group of members can do so, or only all members together.

Do the director and officers have powers of representation?

Director and/or officers can be authorised by the executive board to represent the foundation in certain situations, but generally the law does not include staff members as legal representatives.

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

The foundation is responsible for all the activities it has performed. Board members are responsible for the management of the foundation. Meanwhile, members of the executive board are collectively responsible for losses incurred by the foundation.

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

The law states that "board members act voluntarily, unless the statutes stipulate otherwise."

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?

We are not aware of such a concept in Latvia.

What is the liability the directors and officers?

Liability of directors and officers is set according to the labour contracts or similar documents, but law does not prescribe it.

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.		X - it might be required that this money is returned, unless there is very strong justification otherwise			
The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).					X - unless financial loss is caused
The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.					X - unless this leads to the bankruptcy of the foundation
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 - can and has to be discussed		

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

Economic activities (both related and unrelated) are allowed as income-generating activities, but this funding must be used for achieving the aims of the foundation.

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

There are no rules regarding any kind of shareholding by foundations. All foundation assets are managed by the executive board. Prescriptions on asset management do not appear in the law.

- **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 which have received the status of public benefit organisation can use granted funds only for public benefit purposes.

Granted funds cannot be transferred for the benefit of the founders or board members or their relatives, so the foundation cannot be used in any other way to give direct or indirect benefit (loans, guarantees, promissory bills or other material benefits).

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

Amendments to the statutes are made by the executive board of the foundation if there are no other rules prescribed in the statutes. In the statutes it can be stated that for any changes, including amendment of foundation's purpose, the consent of the founder or some other governing institution is required. The statutes may also state that changing the purpose of the foundation is forbidden.

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

Foundations must submit an annual report to the tax administration office. Foundations with public benefit status must also submit an annual report to the tax administration office, together with a report of activities during the financial year and activity plans for the coming year.

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

No, it is voluntary.

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 of finances (balance sheet, income/expenditure report and donation report) must be submitted. For public benefit organisations: Public benefit report, including detailed report on expenditure of donations and plans for the coming year.

Who checks (supervisory/tax authorities)?

Tax administration office (Revenue Service).

Where is the required information publicised?

Information used to be publicised by State Registry until 2009, but it is now not clear how or if the information is published. Probably it will not be published.

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

Not required.

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

Not required.

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

The supervisory organ is the tax administration office (Revenue Service) which supervises the use of assets and payment of taxes. It may apply certain sanctions for violation of tax laws.

Tax Revenue Service supervises the activities of public benefit organisations and may annul the public benefit status of those organisations that are not observing the rules of the Law on Public Benefit Organisations.

The activity of a foundation can be stopped by a court decision if it has committed a violation of the law.

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?

It is Public administrative body.

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

The authority reviews the financial data of the foundation, and may organise an inspection at the office of foundation. Any supervision is mainly targeted towards financial and tax management, not the content (activities of the foundation). Public benefit organisations are inspected more strictly since their actions influence income tax payments.

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

No

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?

Measures can be taken if foundation goes against the law, e.g. does not prepare, or delays its annual report; does not inform the Enterprise Registry of changes to the executive board; or does not pay taxes etc.

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

The decision to dissolve a foundation is taken by the board in accordance with the statutes and only in cases prescribed by the statutes.

Also, a foundation is dissolved if a specific duration for the foundation is defined by the statutes and this has reached its term, or if a specific aim is set in the statutes and this aim has been fulfilled.

A foundation can also be dissolved by a court decision.

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

No law recognises such a legal form as 'foreign foundation'. To conduct economic activities in Latvia, a foundation must be established as a foundation in Latvia.

➤ **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?**

No limitations are set in the Latvian laws concerning activities abroad.

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 exemptions are applied only to organisations with public benefit status and those organisations which are registered in the register of social service providers.

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

Having public benefit status and preparing an annual report on public benefit activities can be enough. Sometimes, a request for tax exemption is required before tax exemptions apply.

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

This depends on each funding contract, but usually a report on outcomes and a financial report (including copies of accountancy documents) are required.

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

A list of donors must be included in the annual report of all non-governmental organisations.

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

No

- **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.**

Yes, according to the Law on Public Benefit Organisations:

“Public benefit activity is activity that makes a significant contribution to society or a part of it, particularly if it is aimed at charity, protection of human and civil rights, development of civil society, promoting education, research, culture, health, and disease prevention, or supporting sports, environmental protection, rendering help in disasters and emergency situations, or improving social welfare, especially of poor and socially disadvantaged (underprivileged) people.”

- **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.**

Tax law does not define public benefit purpose, but refers to the Law on Public Benefit Organisations (see above).

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

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

Yes

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

Yes

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 - unless a poor family	
For benefit of the students of a university	X - if it promotes education, research, or helps underprivileged students				
Award for the best student of a university		X			

➤ **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?

Yes

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

The statutes should define what happens in this case. However, assets cannot be distributed among founders, members of the board and other institutions, or their relatives.

➤ **“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**?

Yes, it is allowed. For public benefit organisations, civil law stipulates that remuneration must be reasonable.

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)

No

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?

For public benefit organisations civil law states that 25% of general donations is the maximum that can be spent on administration costs.

Administration costs include: Materials used to support the needs of the organisation, purchase of fixed assets (computers, furniture, etc.) and stocks, salaries and related taxes, real estate tax, expenditures on telecommunications, postal services, travelling allowances, and advertising costs.

However, a foundation can reduce administration costs by categorising some of these expenses as directly connected with public benefit activities.

➤ **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.					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				X	

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.					
A foundation distributes a (small) part of its income to the founder or his family.					X

* Unless the founder works for the foundation, in which case they may receive a salary, but no other financial support is allowed.

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.					X
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.)?

Most probably no.

➤ **Distributions and Timely Disbursement**

Are foundations allowed to spend down their capital?

If the issue of the capital/endowment is addressed by the statutes, spending down may be permitted in line with what the statutes prescribe.

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

Yes, a particular period of time or a particular achievable aim/purpose can be stated in the statutes.

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 th 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 th 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?**

Tax exemptions are not applicable to activity abroad.

➤ **Income tax treatment**

Foundations do not pay income tax.

Grants and donations

Not taxed.

Investment income (asset administration)

Not taxed.

Economic activities related/unrelated)

There are no taxes on income. Related taxes (VAT, social insurance and income tax for staff still apply).

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

There is no precedent for this in Latvia, but income from shares is not taxed for foundations.

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

Not taxed.

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

No

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

No

➤ **Gift- and inheritance tax**

No

➤ **Value added tax (VAT)**

Foundations have to register as VAT payers if income from economic activities (excluding grants, donations, budgetary subsidies, etc.) in the last 12 months has reached the limit of 10,000 Latvian Lats (LVL) (approx. €14,200). Foundations are exempt from paying VAT if their income from economic activities does not exceed this limit.

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

No

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

No

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

Real estate tax has to be paid by foundations. There is an annual procedure for public benefit organisations that own real estate in which they are carrying out public benefit activities to receive an exemption from real estate tax.

➤ **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?**

No

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

No such taxes.

- **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?**

This issue is not widely discussed, since NGO issues are generally discussed in general terms only. Due to the requirements of the European Commission, discounts for corporate and individual income taxes are applied if a donation is given to a public benefit organisation in any European Union/European Economic Area (EEA) country.

III. Tax treatment of donors

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

Individuals who donate to a public benefit organisation can receive an income tax deduction. A corporate donor giving to public benefit organisations may receive a tax credit.

- **Tax treatment of individual donors**

Individual donors may make any kind of donation (cash, shares, securities, real estate, in-kind donations). They can receive an income tax deduction of 26% (in 2010; i.e. equal to the income tax rate) of donated sums, but not exceeding 20% of taxable income.

- **Tax treatment of corporate donors**

Corporate donors (residents and permanent offices) can make any kind of donation (cash, shares, securities, real estate, in-kind donations). They can receive a tax credit of 85% of donated sums, but not exceeding 20% of total amount of payable tax.

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

Equal tax incentives are available for donations to non-resident foundations based in European Union and EEA countries, as are offered for local donations.

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

Not at present.

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

For corporations: Donations must be included in annual report. Sometimes, the Revenue service requests additional documentation, but it depends on the individual case.

For individuals: Income declaration must be submitted with donations included. Payment documents must be added.

All donations appear in annual reports of foundations, thus the Revenue Service can easily compare the data given by donors and by public benefit organisations.

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

Individuals

They do not pay income tax on material assets received from public benefit organisations as support, provided the amount does not exceed the annual untaxed maximum (this changes every year: €1,350 in 2008 and €600 in 2010).

Legal entities

V. Trends and developments

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

Recently, some discussions about limitations on NGO activities have taken place, but all have been concluded in a positive way. Forbidding economic activity was one of the topics under discussion, but the issue is no longer open.

Voluntary work and its legal framework is currently a big issue, since current legislation does not deal adequately with recognise volunteerism.

➤ **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)?

Anti-terrorism is a part of national security. Since 2003, a government action plan for combating terrorism has been implemented. As a result, several changes in Latvian legislation have been introduced, concentrating mainly on cooperation among governmental and European institutions, police, and other governments.

In the summer of 2008 a new law was adopted: The Law on Prevention of Legalisation of Proceeds (Resources) from Crime and Financing of Terrorism (adopted in parliament on 17 July 2008, it came into force on 13 August 2008).

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

No, foundations are not a subject of the law described above, unless they conduct extensive economic activities involving real estate, transport, jewellery etc.

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?

➤ **Public fundraising**

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

No

Useful contacts

Civic Alliance Latvia
Gertrudes str 19/21-3 (2. stavs)
LV-1011 Riga
Latvia
Web: <http://www.nvo.lv>