

EFC COUNTRY PROFILE JANUARY 2011: POLAND

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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)?**

There is no legal definition of a foundation in Polish law. The basic act that regulates the principles for the establishing and operation of foundations is the Law on Foundations, which is a part of administrative law. Foundations in Poland can be established only to serve a public benefit purpose. Almost all foundations, those formed by individuals, companies, families, and even those set up by the state treasury and local administration, were formed on the basis on this law. There are, however, a few foundations that were formed on the basis of separate, special legislative acts, such as the Ossolinski Foundation established by an act of Parliament in January 1995 and the Foundation of the Public Opinion Research Center (CBOS) set up in 1982.

- **What purposes can foundations pursue?**

A foundation may only be formed to “pursue socially or economically useful objectives that are consonant with the basic interests of the Republic of Poland; in particular, such objectives as health protection, advancement of the economy and of science, education, literacy, culture, art, social services, environmental protection, and the protection of historical landmarks” (from the Law on Foundations).

- **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 may be formed by Polish citizens or foreigners who are of legal age and have no limitations on their rights (e.g. through a felony conviction). Foundations may also be formed by legal persons, foreign or domestic. A foundation formed under Polish law, however, must be based in Poland. Foundations may be established through a notarised document expressing the wish of a founder to form a foundation, or via a will. The founding document must be filed with the appropriate regional Registration Court together with the statutes of the foundation. (In the case of a foundation established by a will, where no statutes are provided, the Civil Code provides the appropriate regulations.) The statutes should indicate the purpose of the foundation and the nature of the assets earmarked for accomplishing that purpose (money, securities, and the movable property and real estate donated to the foundation).

In order to register a foundation, the founder should submit the notarial act and the statutes of the foundation and provide the following information:

- The name, address, assets, purposes, principles, forms and scope of activity of the foundation
- The composition and organisational structure of governing board (and other organs), and the procedure for appointing members of that body, as well as the scope of their authority
- The appropriate minister relevant to the purposes of the foundation, who will supervise the foundation, or the appropriate regional public official/*starosta* (in the statutes or in a separate declaration)

The statute may also contain other provisions, in particular those concerning the foundation's conduct of economic activity, the admissibility and terms of its linkage with another foundation, any changes to its objectives, and any amendments to the statutes, and it may also provide for the establishment of other foundation bodies in addition to the governing board.

The declaration of will to establish the foundation and the foundation's statutes are submitted to the one of 13 registry courts appropriate for the seat of the foundation, together with the registry form filled out by the founder, the signatures of people entitled to represent the foundation, and the registry fee (€100).

The court makes the decision on the foundation's registration no later than 14 days following submission of the application. It may refuse registration if the purpose and the statutes of the foundation violate the law of the country (e.g. if the foundation spreads racist slogans) or on formal grounds (e.g. lack of some documents). The founder may appeal the court's decision to a regional court and higher up if necessary to a district court and the Supreme Court. Once the decision to register the foundation is made, the foundation receives a registration number and may officially operate.

➤ **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?)**

Generally not. A foundation is registered by the Registry Court which checks if its statutes conform to the law. The permit of the minister relevant to the purposes of the foundation is necessary only in cases where a foreign foundation establishes its branch or a representative office in Poland.

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

Yes, in the Registry Court.

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

- Entry number
- Legal status
- Statistical identification number
- Name, registered office and address, field units or branches
- Purpose of the foundation and the date of its formation
- Duration for which the organisation was created:
- Information on the Statute and amendments
- Name of the authority exercising supervision (appropriate ministry) and (if Relevant) identification of the regional public official (*starosta*)
- Objectives of the organisation (from the statute) including its mission and goals as well as areas of activity
- Name of the authority which has the right to represent the entity and the manner of representation

- Names (and ID numbers) of the members of the governing body (and other organs) of the foundation as well as the scope of their authority
- Name of the court-appointed caretaker in the event of suspension of the governing body
- Whether the foundation has public benefit status
- Type and scope of its economic activities (if it conducts economic activities)
- Any changes in the statutes and the composition of its organs
- Other notes, particularly ones dealing with motions by the appropriate minister or regional public official to suspend the foundation's governing body, the court's appointment of a caretaker, and annulment of such an appointment

If foundations are registered, is the register publicly available?

Yes

➤ **Is a minimum capital required?**

No. Only if a foundation plans to engage in economic activities, a minimum starting capital of 1,000 Polish *złotys* (PLN) (approx. €265) is required.

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

The law requires the foundation to establish one governing body that manages the foundation and represents it to the world. The details concerning the rights and duties of this body and its members, as well as the manner of their election is left to the founder and must be described in the foundation's statutes.

Is it mandatory to have a supervisory board?

No, only if a foundation applies for public benefit status (as defined in the 2003 Act on Public Benefit Activity and Voluntarism), in which case it must establish a supervisory board. A foundation may have also other organs (board of trustees or programme council, advisory board or audit commission), but the law does not prescribe any specific competencies for these organs.

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?

The law does not specify the number of the board members or any requirements they should meet; neither are there any rules concerning the appointment of the board members, board rotation or the number of their terms in the office and procedures for their removal/resignation. All of this is to be regulated by the statutes. The general opinion of the law experts is that the board is a collective body and as such should consist of more than one person. However, in practice the court does register foundations with just one board member.

In the case of foundations registered as public benefit organisations, the board members, as well as the members of the supervisory body, shall not have been convicted by virtue of a final court judgment for any crime involving intentional fault, or for a tax offence; nor shall they be spouses, domestic partners, relations, next of kin, or employment subordinates of members of the management body (Article 20, paragraph 1).

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

The role of the board as defined by the law is to represent the foundation and administer its activities. Specific duties and rights of the board members are left to the discretion of the statute. Typically a board of directors defines and sets organisational priorities and makes strategic and financial decisions. It either manages the foundation itself or appoints the management (executive/managing director).

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?

If the founder wants to preserve some influence over the foundation, he must specify it in the statutes. The purpose of the foundation as defined in the statutes may be changed only by the founder. All amendments in the statutes are scrutinised and approved by the registry court before their entry in the register.

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

The rights of beneficiaries are not regulated by the law. However, their right to information is secured by the obligation to produce and make public annual narrative and financial reports on their activity.

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?

There is no legal definition of a conflict of interest in Polish legislation except, for the conflict of interest policy described in the Act on Public Benefit Activity and Voluntarism which requires a public benefit organisation to have a statutory collegiate audit or a supervisory body, separate from the management body and not reporting thereto within the scope of internal audit or supervision. The members of such an audit or supervisory body shall not be members of the management body. Furthermore, they shall not be spouses, relations, next of kin, or employment subordinates of members of the management body. Also, Article 20, paragraph 6 a-d, of the Act on Public Benefit Activity and Voluntarism bans a public benefit foundation from:

- Issuing loans or pledging an organisation's property to cover any financial liabilities of its members, members of its governing bodies, employees, or their spouses, or relatives with whom they have lineal consanguinity or affinity or collateral consanguinity or affinity, or individuals linked to them through adoption, guardianship, or ad hoc guardianship, all of whom are jointly referred to as "close relatives"
- The transfer of the organisation's property to its members, members of its governing bodies, employees, or their close relatives under terms and conditions other than those applying to unrelated third parties, in particular if such transfer is free of charge or under preferential terms
- The use of the organisation's property for the benefit of its members, members of its governing bodies, employees, or their next of kin under terms and conditions other than those applying to unrelated third parties, unless such use stems directly from the statutory objectives of the organisation
- The purchase under special terms of goods or services from entities in whose operations the organisation's members, members of its governing bodies, employees, or their close relatives take part

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

Participation of the staff in decision making is not regulated by the law, but is left to the discretion of the statute and organisational culture of a given 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 on Foundations specifies only that the governing board of the foundation directs its activities and represents it towards third parties. The rights and duties of its members must be specified in the foundation's statute. The statute decides who has the legal power to represent the foundation (e.g. joint action of two members of the board of directors or one member of the board of directors and a proxy appointed by the board of directors shall be required to represent the foundation both in court and out of court). The board may delegate certain powers, including direct management, to the CEO of the foundation.

Do the director and officers have powers of representation?

The board of the foundation may delegate certain powers, including representation of the foundation in certain situations or functions, to the managing director and other officers of the foundation. However legal responsibility always remains with the board.

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

A foundation is liable through its property for any unmet obligations, but the foundation's organs are not financially responsible for the obligations of the foundation.

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

There is no general standard of diligence.

The law does not make any differentiation between voluntary and paid board members and allows both.

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, all of this is to be determined by the foundation in its statutes or internal rules, such as by-laws, conflict of interest regulations, etc.

What is the liability of the directors and officers?

This is left to be determined by the statute or internal regulations.

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

The Founder can specify the standard of diligence in the statutes.

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).	X				
The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.					X*
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	

* This would be Impossible, because the foundation cannot invest in stocks and equities on its own but only through asset managers and the decision on the investment is made collegially.

** In the case of foundations of public benefit status, a foundation cannot sell any of its property to the relatives of its board members or its employees – there is a conflict of interest policy as described in Article 20 paragraph 6 of the Act on Public Benefit Activity and Voluntarism (See answer to the conflict of interest question).

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

Yes, both related and unrelated activities are allowed, but a minimum capital of 1,000 PLN is required.

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

Foundations may invest the assets designated for their statutory activity in certain financial instruments without losing tax benefits. Specifically, the foundation may invest its assets in bank deposits, state and local government bonds and obligations, investment fund units and, with the help of professional asset managers, in other financial instruments such as shares and private equity. Shareholding and major shareholding, as well as alternative investments, hedge funds and private equity are allowed.

- **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 may invest grant funds in certain categories of assets (as described in the answer to previous question). However, providing low-interest loans and equities are considered as economic activity and income from economic activity is taxed.

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

A foundation's statutes must specify how the statutes can be amended. The purpose of the foundation can be amended only by the founder. If the statutes do not provide for its amendment, the governing organ cannot change it. The foundation must inform the court about any changes in its governing statutes as well as in its registration information. These changes are also entered in the register.

- **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 is required to file a detailed annual activity and financial report with the appropriate minister. The format of the report is strictly prescribed by government regulations. The foundation must also make the report available to the public.

Moreover, the foundation has to submit financial information to fiscal offices and also to the register of enterprises if it runs an economic activity. If the foundation has public benefit status, it must submit a separate report to the Ministry of Social Policy in accordance with the ministry's requirements. The ministry is expected to publish it on its website.

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)?

A foundation is required to submit a detailed annual activity and financial report to the minister relevant to the purpose of the foundation. An annual financial report should also be submitted together with the annual tax report, to the fiscal authorities. In the case of a foundation that runs economic activity, the financial information must be sent to registry of enterprises.

A public benefit foundation must, in addition to the above reporting requirements, also submit a narrative and financial report to the relevant ministry (Minister of Social Policy).

A foundation that runs street collections must provide a detailed report on expenditure of money raised to the Ministry of Interior.

Further to the amendment of the Act on Public Benefit Activity and Voluntarism (12 March 2010) new regulations are being prepared by the minister competent for social security which will impose further supervision of foundations of public benefit status. Public benefit organisations will be required to report on the public benefit work performed during the reporting period and on the disbursement of funds received as 1% of personal income tax.

Who checks (supervisory/tax authorities)?

Once a foundation is registered, the Registry Court designates a minister to supervise the operations of the foundation. This is generally the same minister indicated by the foundation in its statutes or declaration submitted with the application. Typically, it is the minister whose

competencies come closest to the purposes of the foundation. If the foundation has a limited geographical scope of operation, the court notifies the appropriate regional public official (*starosta*) to substitute for the minister with respect to supervisory authority.

The operation of a public benefit foundation is also supervised by the minister responsible for social policy. The minister may delegate their powers of supervision to the relevant governor (*wojewoda*) for the geographical scope of the foundation's operation.

The foundation is subject to fiscal control by tax authorities.

A foundation that receives public funding might be controlled by the National Chamber of Control or the regional audit chambers.

Where is the required information publicised?

The foundation must make public its annual report either on its website or in its headquarters and it should make it available upon request of an individual or institution.

In the case of public benefit foundations the Ministry of Social Policy posts the annual report submitted in line with the ministry's requirements on its website.

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

External audit is required by law in two cases:

- When a foundation employs at least 50 employees, has a total income of over €5 million and/or total assets of at least €2.5 million (two out of the three conditions must apply)
- When a foundation of public benefit status that has a total annual income of at least 3,000,000 PLN (€857,000) receives public funding at the level of a minimum of 50,000 PLN (€15,000) to conduct public tasks commissioned by the state administration

The recently amended bill on Public Benefit Activity and Voluntarism (Article 23, paragraph 5) authorises the minister of social policy together with and minister of finance to introduce a regulation which will impose mandatory audit on public benefit foundations in recognition of: (i) the overall value of grants received;(ii) the overall amount of income generated; (iii) the need to ensure monitoring of bookkeeping integrity.

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

Audits should be undertaken by the external auditor operating in conformance with international and national auditing standards.

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

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?

The supervisory authority comprises of a public administrative body (ministry) or of a regional public administrative body (*starosta*).

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

The supervisory authority (relevant minister or his delegate) reviews reports submitted by the foundation and can make inquiries, and demand oral or written clarification, as well as documents or other information materials for inspection, and any other data relating to the subject of control. It might also carry out control duties at the seat of the foundation.

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?

In the case of foundations, the minister may apply to the court to decide, in non-litigious proceedings, whether the activities of a foundation are consonant with the provisions of the law as well as the organisation's own statutes and the purposes for which it was established.

He may appeal to the court to suspend the implementation of a resolution of a foundation's governing board if it is in glaring contrast with the foundation's purposes, with the provisions of the foundation's statutes, or with the law, and to order that the suspension remain in force until the matter is resolved.

If the actions of a foundation's governing board substantially violate the provisions of the law or of the organisation's statutes, or if they are inconsistent with its purposes, the appropriate minister or *starosta* may designate a suitable time limit for eliminating these shortcomings, or he may demand the replacement of the board within a specified time limit.

If the time limit expires without effect, or if the foundation's governing board persists in acting in a manner that is inconsistent with the laws or with the foundation's statutes or its purposes, the proper minister or *starosta* may request the court to suspend the foundation's governing board and appoint a government administrator. This administrator will represent the foundation in matters concerning its board of governors, including judicial proceedings, and is obligated to perform the duties needed for the proper operation of the foundation.

The proper minister or *starosta* may request the court to dissolve the foundation if the purposes for which the foundation was established are accomplished, or its funds and assets are exhausted and the foundation's statute does not provide for its dissolution, or if its related provisions are not executed

In the case of public benefit foundations, the minister may exclude a foundation that has failed to submit the required performance reports and financial statements for the year to which the tax return refers from the registry of organisations entitled to appeal for 1% designated income tax donations. The minister may also apply to the Registry Court to delete a public benefit status from the National Court Register if the foundation refuses to be subject to the inspection by the supervisory authority, fails to remove irregularities identified during an inspection, or if the inspection reveals that the organisation has indulged in a serious breach of the law.

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

A foundation is dissolved if its purposes have been achieved or if its financial assets have been exhausted. The foundation's statutes should prescribe the procedure for dissolution. If there is no such prescription in the statutes, or if the statutes are not being followed, the appropriate minister or regional public official can appeal to the court for dissolution. If the statutes do not specify how assets are to be distributed upon dissolution, the court decides on the distribution of these assets to serve purposes similar to those served by the foundation.

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

Article 19 of the Foundation Law states that foreign foundations may open branches in Poland. This requires the permission of the proper minister with regard to the scope of foundation's activities. Foreign foundations can also operate in Poland by establishing foundations under the Polish law. Foreign foundations may also give grants without being registered in Poland. They might operate directly from their respective countries if their respective law allows them to make grants abroad. On the recipient side, donations by a foreign foundation are treated in the same way as donations made by a domestic donor:

Article 19

1. Foreign foundations sited abroad may open branch offices on the territory of the Republic of Poland
2. The opening of the branch office referred to in Paragraph 1 requires a permit, which is tantamount to approval of the commencement of the activities specified in the permit. The permit is granted by the minister proper with regard to the scope of his activities and the purposes for which said branch office is opened.
3. The permit may be granted if the opening of the branch office is intended to promote the accomplishment of the objectives referred to in Article 1. If the branch office is also to engage in economic activity, the provisions of Article 5, Paragraph 5, first sentence, apply accordingly.
4. The branch office is obligated to adhere to the laws binding on the territory of the Republic of Poland.
5. The minister proper with regard to the scope of his activities and the purposes for which the branch office is opened may revoke the permit if the branch office does not adhere to the terms specified in the permit or markedly violates the laws binding on the territory of the Republic of Poland or the interests of the state.
6. If the branch office or the foundation it represents impairs the security or other important interests of the state, the proper minister may suspend its permit. Such suspension entails, until a ruling on the revocation of the permit is issued, an immediate cessation of the activities specified in the permit without payment of any compensation there for.
7. Matters concerning the economic activity of the branch office of a foundation are moreover governed by separate regulations governing the conduct of economic activity on the territory of the Republic of Poland by representations of foreign entities.

➤ **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?**

Formally there is no limitation, however the law on foundations in Article 1 states that "A foundation may be established to pursue socially or economically useful objectives that are consonant with the basic interests of the Republic of Poland; in particular, such objectives as health protection, advancement of the economy and of science, education, literacy, culture,

art, social services, and environmental protection, and the protection of historical landmarks.” In practice, many foundations conduct activities abroad and enjoy all tax privileges.

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?)**

According to the tax law (Article 17), tax exemptions are available for taxpayers whose activities (as shown in their statutes or articles of incorporation) include: science and research, education including academic education, culture, sport and physical exercise, environmental protection, support of social initiatives for infrastructure development in rural areas (roads, telecommunications and water supply networks), charity, health care and social welfare, occupational and social rehabilitation of the disabled, and religion.

Also, the tax law makes the income of public benefit organisations (as defined in the Act on Public Benefit Activity and Voluntarism) tax-free as far as it is designated for their statutory activity, excluding economic activity.

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

A foundation is obliged to submit a financial statement and income tax declaration to the revenue office.

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

There are different reporting requirements in specific grant programmes conducted by public administration.

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

Together with the annual tax return a foundation must submit a list of all corporate and institutional donors (companies, institutions of a legal identity) who in the fiscal year donated a single gift of PLN15 000 (approx. €3,750) or more, or donations and gifts of a total value of PLN 35 000 (€8,750) or more. This list including donors' addresses should be also made public by the foundation.

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

Yes, foundations and other NGOs that do not run economic activity are required to maintain their accounting records in accordance with the so called simplified accounting principles as defined by the Accounting Act of 29 September 1994 and Decree of the Ministry of Finance of 15 November 2001 on specific accounting regulations for certain organisations other than commercial companies and not engaged in business. Foundations that engage in economic activities must follow the same accounting rules as commercial entities.

➤ **Is there a statutory definition in the civil law (foundation law, trust law) of what a public benefit purpose (charitable purpose) is?**

Article 20 of the Act on Public Benefit Activity and Voluntarism from 2003 defines a public benefit organisation as an organisation whose “statutory activity includes work for the benefit of the entire society or of a specific group of entities provided that such a group can be distinguished from society due to its difficult living conditions or financial situation.”

Article 4 of the Act on Public Benefit Activity and Voluntarism gives a catalogue of public benefit activity areas which include:

- Social assistance, including aid offered to disadvantaged families and individuals, and ensuring equal opportunities to such families and individuals
- Professional and social integration and reintegration of persons threatened with social exclusion
- Charity work
- Preserving national traditions, sustaining Polish identity and developing national, civic, and cultural awareness
- Work to support national and ethnic minorities and regional languages
- Protection and promotion of health
- Work to support the disabled
- Promoting employment and professional activation of the unemployed and individuals threatened with job loss
- Promoting equal rights of women and men
- Work to support the elderly
- Promotion of economic growth and entrepreneurship
- Promotion of the development of new technologies, inventions and innovation transfer and implementation of new technologies for companies
- Work to support the development of local communities
- Science, education, coaching, and upbringing
- Recreation of children and youth
- Culture, art, and the protection of culture and national heritage; Promoting physical culture and sports
- Ecology, animal protection, protection of natural heritage
- Tourism and knowledge touring
- Public order and security
- National defence and the activity of Armed Forces of the Republic of Poland
- Promoting and protection of human and civil rights and freedoms, work to support the development of democracy
- Rescue systems and protection of residents
- Aid to victims of calamities, natural disasters, armed conflicts and warfare in Poland and abroad
- Promoting and protecting consumer rights
- Work to support European integration, and the development of contacts and co-operation between societies
- Promoting and organising volunteerism
- Aid extended to Poles and Polish community abroad
- Work to support the veterans and persons who have undergone State repression
- Promotion of the Republic of Poland abroad
- Work to support families, promote motherhood and parenthood and to promote and protect the rights of children
- Prevention of addictions and social pathology
- Work to support non-governmental organisations and entities listed in Article 3, para 3 active in the areas listed in subpara 1-32.

This catalogue is open and the Council of Ministers may, in an ordinance, define tasks within a scope other than those specified above as activities in the public interest, in recognition of their particular public benefit.

Article 3 of the same law defines the term “public benefit work” as “work performed to the benefit of society by non-governmental organisations within the area of public tasks as set out herein”.

- **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 refers to Articles 3 and 4 of the Act on Public Benefit Activity and Voluntarism, which defines public benefit organisation as an organisation whose “statutory activity includes work for the benefit of the entire society or of a specific group of individuals provided that such a group can be distinguished from society due to its difficult living conditions or financial situation” see question 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
For benefit of the students of a university	X				
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, it does. Since the tax exemption concerns only income spent on purposes defined in corporate tax law, the fiscal office would certainly question such a distribution. Any use of foundation property to support foundation board, staff, or their kin is explicitly forbidden in case of foundations with a public benefit status by the Public Benefit Activity and Voluntarism Act.

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

They are distributed in accordance with the dissolution clause in the foundation’s statute. If the statutes do not contain a dissolution clause, the court decides on the distribution of the

assets taking into account the purposes of the foundation (The assets have to be allocated to an organisation or institution having similar statutory purposes).

➤ **“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**?

Remuneration of board members is allowed, but if the foundation has public benefit status there is a limit on the reimbursement of its supervisory organ as follows (Article 20 item 6 c of the Act on Public Benefit Activity and Voluntarism): “The members of a foundation’s audit and supervision body may, for the performance of duties in such a body, be reimbursed for any reasonably incurred costs, or be remunerated at a rate not exceeding that specified in Article 8 paragraph 8 of the Act of Law of 3 March 2000 on the remuneration of individuals managing certain corporate entities.”

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)

The tax law does not specify this explicitly, but there is a differentiation between donation and sponsorship (the latter being an exchange of services or products).

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.					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

The law does not explicitly ban these activities, especially given that the term “endowment” does not exist in Polish law. However, since the only type of foundation permitted by the law is the public interest foundation (see Article 1 of the Law on Foundations) and tax exemptions are tied to specific statutory activities carried out by legal entities (Article 17, paragraphs 4 and 6c of the Corporate Income Tax law - CIT), the distribution of any part of a foundation’s income for private purposes will not be considered tax-exempt by the fiscal authorities.

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.)?

No

➤ **Distributions and Timely Disbursement**

Are foundations allowed to spend down their capital?

Yes

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, because there are very few endowed foundations, most are fundraising and grantseeking.

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			

Neither civil nor tax law specifies when the income should be spent. The tax law states only that the income of the foundation is tax-free if it is designated to be spent for the purposes defined in the tax law (Article 17.1.4. and 17.1.6c.). Since there has been no case recorded of a foundation that does not distribute any of its income and only accumulates assets, it is difficult to say what the reaction of the court would be if such an activity were questioned.

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.)?

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

No

➤ **Income tax treatment**

Grants and donations

Grants, gifts, and donations are not taxed if spent on the purposes defined in the Corporate Income Tax Act, Article 17 (see above), provided these purposes are specified in the foundation’s statutes.

Investment income (asset administration)

Investment income is not taxable, if it is designated to be spent on public benefit purposes as defined in the Act on Public Benefit Activity and Voluntarism, provided these purposes are listed in the statutes. Major shareholding is not considered an economic activity and is not taxed (although there has not yet been such a case in Poland).

Economic activities related/unrelated)

Economic activities (related or unrelated) can be undertaken if allowed in the foundation's statutes, but the income deriving from economic activities is taxed.

On 13 March 2002, the Supreme Court resolved the legal doubt in a dispute between the Foundation for Polish Science (FNP) and the Revenue Chamber. The litigation concerned the interpretation of the tax law provisions on investments in securities. The Revenue Chamber declared that the expenses incurred by FNP for the purchase of bonds, Treasury bills or publicly traded shares did not constitute part of its statutory activity (i.e. supporting Polish science). Therefore, these expenses should be subject to taxation, despite the fact that the proceeds had been used for statutory activity. Consequently, FNP was obliged to pay the tax due for the period 1995-1997; an amount of around 80 million PLN (more than €20 million). FNP did not agree with the Revenue Chamber's arguments and appealed to a higher-instance jurisdiction. Had the legal interpretation applied by the Revenue Chamber been sustained, the Foundation would have lost the opportunity to efficiently augment its endowment fund. FNP would have been able to place its funds without obligation to pay tax exclusively in the form of bank deposits, which offer low interest rates. This would have materially restricted its statutory activity and might even have resulted in a gradual termination of its operations. The Commissioner for Civil Rights Protection (the Ombudsman) joined the dispute and challenged the decision of the Supreme Administrative Court in favour of the Revenue Chamber, by stating that the underlying construction of the tax law provisions was faulty. The Commissioner believed that this decision deprived the Foundation of significant funds destined for supporting the development of science, and consequently violated the interests of the Republic of Poland. Therefore, the Commissioner applied to the Supreme Court for an appeal against the decision of the Supreme Court of Administration. The Supreme Court, having thoroughly analysed the matter, decided that FNP could benefit from the tax exemption when investing in securities. Consequently, the existence of one of the largest Polish non-profit organisations has remained secure. Furthermore, by virtue of the decision of the Supreme Court, the Revenue Chamber was obligated to return to FNP the amount of the tax paid together with interest.

This ruling of the Supreme Court constitutes a judicial precedent of great significance to all Polish non-governmental organisations. It enables institutions of public interest to establish capital funds which, if appropriately placed, will generate funds necessary for their statutory activities. Therefore, these bodies will be able to efficiently increase the funds available for their statutory operations by investing in securities.

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

Yes

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

Loans and guarantees programs are considered economic activity and as such are taxed.

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

Capital gains are treated the same as income and are not taxable if they are spent on public benefit and statutory purposes.

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

No

➤ **Gift- and inheritance tax**

Gifts and legacies made to the foundations are not taxable if they are designated to be spent on public benefit and statutory purposes.

➤ **Value added tax (VAT)**

Foundations are treated as final consumers, if they do not run economic activities. Generally there are no exemptions on VAT unless grants qualify as foreign government aid (e.g. grants by the Polish-American Freedom Foundation). Also the donors of gifts in-kind to foundations have to pay VAT on the products donated. The only exception, recently introduced into the tax law, concerns VAT exemptions on food products donated by businesses to public benefit organisations that distribute food to the needy.

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

No

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

No

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

There is a lower tax rate if a piece of real property is the seat of a foundation. A foundation that has public benefit status does not pay tax on property which serves as its premises.

➤ **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?**

The operation of a representative office of a foreign foundation is treated similarly to a domestic foundation with regard to taxes. However, if it carries out an economic activity, it is subject to separate regulations governing the conduct of economic activity on Polish territory by the representatives of foreign entities (Art 19.7, Law on Foundations).

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

Gifts and legacies made to the foundations are not taxable if they are designated to be spent on public benefit and statutory purposes, and since January 2007 donations to non-resident public benefit foundations are also tax-deductible. The foundation needs to be registered in an EU or European Economic Area (EEA) member country.

➤ **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?**

No there is no such debate. Right now the biggest problem being discussed by the NGO sector is the implementation of anti-terrorist measures introduced in the interests of harmonising Polish regulations with the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

III. Tax treatment of donors

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

Tax deduction.

➤ **Tax treatment of individual donors**

Donations of cash, shares, securities, real estate and in-kind-donations are deductible up to 6% of the taxable base.

➤ **Tax treatment of corporate donors**

Donations of cash, shares, securities, real estate, and in-kind contributions for public benefit purposes are deductible from the taxable base for corporate tax up to 10% of the taxable base.

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

Donations to non-resident public benefit foundations within the European Union are tax-deductible.

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

A 1% system whereby taxpayers can designate 1% of their taxes to a public benefit organisation of their choice – only available for individual taxpayers, not for legal entities.

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

In the case of corporate donors the list of donations made in a given year (name of beneficiary institutions, amount of gift) must be filed with annual Corporate Income Tax (CIT) return. The proof of donating funds (copy of bank transfer) must be kept by the donor for up to 5 years in case it is required for tax control.

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

Individuals

If the value of grants or in-kind donations does not exceed 4,902 PLN (around €1,400) over the course of 5 years the recipient is not taxed.

Scholarship grants made by foundations are tax-free up to 380 PLN (€100) monthly.

Legal entities

Grants are tax-free if used for activities that are defined as tax-exempt in the Corporate Income Tax Act (see answer to first question in this part), provided these “tax free” activities are explicitly specified in the statutes of the grantees.

V. Trends and developments

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

In 2007 Parliament introduced an amendment to the tax laws that expands tax exemptions for donations to non-resident public benefit foundations within the European Union.

Currently, the foundation sector is advocating for:

- An increase in the tax exemption threshold for gifts from private donors up to 10% of the taxable base
- An amendment to the law on street collections to limit it to cash and in-kind gifts not transferred to a bank account
- Zero VAT on in-kind contributions (products and services) to NGOs involved in public benefit activity
- Zero VAT on charitable text messages

➤ **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, there is a special law on preventing the use of assets from illegal or unknown sources in financial transactions and on counteracting the financing of terrorism. It was adopted on 16 November 2000 and amended on 5 March 2004 to include foundations as eligible institutions and again in June 2009 to include associations.

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

The 2004 amendment (see above) added foundations to the list of institutions that are obliged to register financial transactions carried out on somebody else's behalf or in somebody else's name in such a way that will enable identification of the person or legal entity initiating a transaction, as well as the transaction's beneficiaries. The foundation must inform the General Inspector of Financial Information at the Ministry of Finance about transactions carried out by a foundation on behalf of third parties whose value exceeds €15,000.

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

The law itself requires foundations to introduce the preventive measures described above.

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

No, the General Inspector of Financial Information at the Ministry of Finance who oversees the implementation of the Act on Prevention of Money Laundering and Terrorist Financing prepared an e-learning course on the regulations introduced by the Act and those requirements the eligible institutions must meet in order to comply with it.

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?

The NGO sector strongly opposes the measures introduced by the above mentioned Act and through NGO representatives in the Public Benefit Activity Council at the Ministry of Social Policy is trying to engage the Ministry of Finances in a discussion on the possibility of amending the law to exclude foundations and associations from the regulations which impose on them the same obligations to which financial institutions (banks, credit institutions, insurance companies, investment funds) are subject.

➤ **Public fundraising**

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

There is only Law on Street Collection which requires foundations and other non-profits to apply to the Ministry of Interior for a licence to organise fundraising events in public places and to appeal to the general public for supporting specific cause/ activity (including charitable SMS campaigns or donations transferred to a bank account).

Useful contacts

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Selected law texts

<http://www.icnl.org/knowledge/library/showRecords.php?country=Poland>