

EFC COUNTRY PROFILE JANUARY 2011: SLOVENIA

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Introduction

In 1992 the Slovenian Parliament revitalised foundations and to do this it temporarily revived the Foundations Act of 1930 (Working Paper of Drava Province, 2 October 1930, No. 28). In October 1995 the Slovenian Parliament adopted a new Law, the Foundations Act (Official Gazette of the Republic of Slovenia, 20 October 1995, 60-2788/95), which entered into force on 4 November 1995. In accordance with the 1995 Foundations Act, foundations gained the status of legal entities in private law. In fact, they were the last missing legal form in the framework of the “*numerous clausus*” principle of legal entities in private law.

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 term “foundation” may be used in the name by legal entities which have been established for general beneficial or charitable purposes and do not pursue such purposes as a profit-oriented activity.

(Article 34, paragraph 1 of the Foundations Act, 1995).

- **What purposes can foundations pursue?**

According to the Foundations Act, a foundation is a legal entity of private law.

The purpose of a foundation shall be generally beneficial or charitable and, as a rule, permanent.

The purpose of a foundation is generally beneficial if the foundation has been established to carry out activities in the fields of science, culture, education and training, sport, health, child and disabled care, social welfare, environmental protection, conservation of natural treasures and cultural heritage, and religion.

The purpose of a foundation is charitable if it has been established for the purpose of helping persons who are in need of such help.

(Article 2, para. 2 and 3, Foundations Act)

- **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 established by a domestic or foreign natural person or legal entity (Article 4).

The founder may establish a foundation with a legal act *inter vivos* or in the event of death (Article 5, para.1).

The deed of establishment as a legal act *inter vivos* shall be made up in the form of a notarial deed (Article 7, para. 1).

The deed of establishment as a legal act in the event of death shall fulfil the conditions of legal form for one of the testaments according to the inheritance law (Article 8, para. 1).

The approval of the deed of establishment shall be issued by the body competent for foundations (i.e. the ministry whose operating range covers the purpose of the foundation) within 30 days of receipt of the deed of establishment (Article 12, para. 1).

This shall be immediately delivered to the ministry competent for administration by the body competent for foundations.

The body competent for foundations shall issue its approval provided that:

- The deed of establishment fulfils the conditions specified by the Foundations Act and other acts
- The purpose of the foundation must be generally beneficial or charitable
- The original property has been allocated
- The establishment is not contrary to public order

(Article 11)

- **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?)**

Yes

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

Yes. The register is at the Ministry for Home Affairs.

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

Only basic information about every foundation in Slovenia.

If foundations are registered, is the register publicly available?

Yes

- **Is a minimum capital required?**

No

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

The foundation is governed by the board of trustees.

If there are several founders of the foundation, they may create a common body of the founders which, however, shall not be able to assume the obligations of the board of trustees (Article 21).

Is it mandatory to have a supervisory board?

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 board of trustees shall consist of at least three members. The members of the board of trustees shall be appointed in accordance with the deed of establishment and the regulations. In the event that on the basis of the deed of establishment or the regulations it is not possible to appoint the board of trustees, the board of trustees shall be appointed by the body competent for foundations.

Members of the board of trustees cannot be:

- Persons who are not of age or have no legal capacity
- Persons employed in the foundation
- Persons exercising supervision of the foundation (Article 22)

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

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?

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

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?

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

➤ **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 of trustees or the director of the foundation represents the organisation. This is specified in the Foundation Act and in the statute of the foundation.

Do the director and officers have powers of representation?

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

The foundation is governed by a board of trustees with at least three members.

The board of trustees shall take care of implementation of the purpose of the foundation.

The board of trustees shall manage the property of the foundation with the due diligence of a prudent businessman.

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

No

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

The board of trustees shall manage the property of the foundation with the due diligence of a prudent businessman.

What is the liability the directors and officers?

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				
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				

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

Income from performance of economic activities is allowed, but the amount must be less than 30% of the total income.

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

The board of trustees shall take care of implementation of the purpose of the foundation.

The board of trustees shall manage the property of the foundations with the due diligence of a prudent businessman (Article 24).

Shareholding, major shareholding, alternative investments, hedge funds and private equity are not permitted.

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

No

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

The name, seat or purpose of the foundation may be changed by the board of trustees in accordance with the deed of establishment. The changes shall come into force after approval by the body competent for foundations (Article 17).

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

The foundation shall keep accounts and produce annual reports in compliance with regulations.

By the end of March each year, the board of trustees shall submit a report on its work and financial management in the preceding calendar year to the body competent for foundations (Article 30, para. 1 and 2).

The body competent for foundations may request an audit of financial management by a certified auditor (Article 30, para. 3).

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

Foundations have to keep accounts and produce annual report(s) in compliance with the law (Foundation Act).

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)?

Who checks (supervisory/tax authorities)?

Where is the required information publicised?

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

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

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

In the course of the establishment, operation and termination of foundations, the ministry whose operating range covers the purpose for which a given foundation has been

established (the body competent for foundations) will be responsible for overseeing that foundation (Article 3).

In the event that it is not possible to appoint such a ministry, the ministry responsible for public administration shall be competent.

Supervision of financial management shall be carried out by competent public bodies or an authorised organisation.

The body competent for foundations may request an audit of financial management by a certified auditor (Article 30).

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?

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

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

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

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

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

The foundation shall be terminated in the event that:

- The property fails to be sufficient for further implementation of the purpose of the foundation
- The purpose of the foundation becomes impossible
- In other cases when the body competent for foundations determines that there are no grounds for further existence of the foundation
- The purpose for which the foundation had been established has been fulfilled (Article 31)

The board of trustees or the body competent for foundations shall decide upon the termination of the foundation.

In accordance with the will and the purpose of the founder(s), the remainder of the property following the liquidation shall be allocated to another foundation with the same or similar purpose (Article 32, para. 6).

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

In Slovenia, a foundation may be established by a domestic or foreign natural person or legal entity.

- **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?**

Yes, there is no li

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?)**

The basic requirement to receive tax exemptions is to establish in accordance with the Foundations Act a foundation to act in the public interest and engage in not-for-profit activities. Under the Corporate Income Tax Act, foundations are exempt from taxes as per the said act if the foundations' operations are effectively in line with the purposes of their establishment and operation (Article 9). However, foundations are liable to income tax on revenues generated through for-profit activities.

- **What are reporting/proof requirements to claim tax exemptions?**
- **Is specific reporting required for the use of state funds?**
- **Is there an obligation to report on donors and beneficiaries?**
- **Are there specific accounting rules for foundations?**
- **Is there a statutory definition in the civil law of your country of what a public benefit purpose is? If yes, please give us the definition.**
- **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.**

No

- **Support of "the public at large"**

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

No

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

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					
For benefit of the inhabitants of a village with 10,000 inhabitants					
For benefit of the employees of a company					
For benefit of the members of a family					

For benefit of the students of a university					
Award for the best student of a university					

➤ **Non-Distribution Constraint**

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

No

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

In accordance with the will and the purpose of the founder(s), the remainder of the property following liquidation must be allocated to another foundation with the same or similar purpose.

➤ **“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

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?

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>					X

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

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

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.					
The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for its own continuing use.					
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.					
A foundation distributes a (small) part of its income to the founder or his family.					

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.)?

➤ **Distributions and Timely Disbursement**

Are foundations allowed to spend down their capital?

No

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

No

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.)?

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

➤ **Income tax treatment**

Grants and donations

Investment income (asset administration)

Economic activities related/unrelated)

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

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

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

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

➤ **Gift- and inheritance tax**

As legal entities governed by private law and established under the Foundations Act to engage in general benefit activities, foundations are exempt from tax on gifts in the form of movable and immovable property as well as other rights, if a gift or inheritance is used by a legal entity for not-for-gain activities (Article 9).

Movable property includes money and securities. Legacies are also considered gifts.

A gift is not subject to taxation if the aggregate value of movable property is lower than €5,000 (Article 2).

(Source: *Zakon o davku na dediščine in darila*) (Inheritance and Gift Taxation Act), Official Gazette of the Republic of Slovenia, 16 November 2006, 117-12327/06.

➤ **Value added tax (VAT)**

Foundations acting in the public interest in the fields of religion, philosophy, culture, sports and some others, are exempt from payment of VAT.

(Article 42, Value Added Tax Act/*Zakon o davku na dodano vrednost*)

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

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

➤ **Other taxes, where applicable (Real property 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?**

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

➤ **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 you county's legislation, or are changes being discussed?**

III. Tax treatment of donors

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

➤ **Tax treatment of individual donors**

Persons liable under the Personal Income Tax Act may claim tax reliefs – the total amount of cash and in-kind donations to foundations may be deducted from the tax base – which accounts for 0.3% of their taxed income in a tax year.

(Article 66, *Zakon o dohodnini*), (Personal Income Tax Act), Official Gazette of the Republic of Slovenia, 16 November 2006, 117-12272/06)

➤ **Tax treatment of corporate donors**

Corporate donors may claim a tax relief whereby 20% of their investments in research and development (R&D), in the form of commissioned R&D services carried out by a foundation

which is at the same time a private research organisation (Article 55), can be deducted from the tax base.

Corporate donors may claim another tax relief – a tax deduction in the amount of cash donations paid to a foundation, which accounts for 0.3% of the taxable entity's taxed income in a business (tax) year, but may not exceed the tax base in a given tax period.

(Article 59, *Zakon o davku od prihodkov pravnih oseb*), (Corporate Income Tax Act), Official Gazette of the Republic of Slovenia, 16 November 2006, 117-12303/06).

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

The tax relief for donations to foundations is also applicable to donations to residents of other European Union member states.

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

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

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

Individuals

Beneficiaries of foundations are exempt from income tax on grants received from foundations established and operating in accordance with the law governing foundations – the Foundations Act. This particularly applies to charity grants (Article 20) as well as scholarships and other benefits that are given to students by foundations active in the fields of education, culture and science.

(Article 25, *Zakon o dohodnini*, (Personal Income Tax Act), Official Gazette of the Republic of Slovenia, 16 November 2006, 117-12272/06).

Legal entities

Not-for-profit organisations (foundations, societies, political parties) are exempt from corporate income tax.

(Article 9, *Zakon o davku od dohodkov pravnih oseb*, (Corporate Income Tax Act), Official Gazette of the Republic of Slovenia, 16 November 2006, 117-12303/06).

V. Trends and developments

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

➤ **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)?

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

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

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

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?

Useful contacts

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