



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

CYPRUS – 2014

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I. Legal framework for foundations

1. 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)?

Under Cypriot law there is no specific legislation for foundations and thus no legal definition is provided. However, there exist various kinds of foundations under different laws which have been enacted through the years.

Charitable Trusts: These are governed by the Charities Law, Chapter 41. There is no satisfactory legal definition of what is meant by “charity” and thus reference is made to case law in interpreting the term.

Societies and Associations: These are governed by the Societies and Associations Law 57/72. The Council of Ministers appoints a Registrar regulating the registration of Societies and Associations (hereinafter referred to as the “Registrar”).

A Society is defined in the 1972 Law as an organised association of at least twenty people for the accomplishment of non-profit purposes.

An Association is defined in the 1972 Law as an allocation of assets which are dedicated to serving a specific purpose.

Companies Limited by Guarantee: These are governed by the Companies Law, Chapter 113. In the majority of cases these Companies are incorporated as non-profit-making organisations under section 20 of Chapter 113. The liability of each member is limited to the amount agreed between the members and which is contained in the Memorandum of Association. Thus, as opposed to companies limited by shares, the members of a Company Limited by Guarantee may not need to provide their contribution in advance but only if required at a later stage (in the event that the company goes into liquidation).

2. What purposes can foundations pursue?

Charitable Trusts: These comprise trusts set up for public benefit purposes such as relief of poverty, advancement of religion, education, literature, science and any other purposes that are considered to be beneficial to the community.

Societies: Societies can pursue both public and private benefit purposes as specified in their respective Articles of Association. These purposes may be amended at any time by amending the Articles of Association following the procedure prescribed in the Law.

Associations: Similar to Societies, Associations can pursue both public and private purposes depending on the intention of the founder. The purposes of an Association must be set out in the Act of Incorporation.

Companies Limited by Guarantee: Such companies can pursue both public and private purposes. Although it is possible for such entities to pursue business or other related purposes, nevertheless,

Companies Limited by Guarantee are mostly established and used for educational, literary, scientific and other beneficial purposes for the public.

3. 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?

The requirements vary depending on the type of the foundation to be set up:

Charitable Trusts: The trustee of any charitable institution submits an application to the Council of Ministers for the registration of the institution as a legal entity. The Council of Ministers will issue a certificate of registration if it considers it to be appropriate and subject to such terms and conditions as the Council of Minister may impose (Article 2 of Chapter 41). No minimum capital requirements exist in relation to Charitable Trusts. Charitable trusts can also be set up under the International Trusts Law, provided one of the main purposes of the trust is the relief of poverty, the advancement of education, or the advancement of religion or any other purposes beneficial to the public as a whole and need not be registered under the provisions of any legislation.

Societies: A Society shall have a minimum of twenty members and a specific non-profit purpose. It must be registered with the Registrar (in charge of these matters) by submitting an application accompanied with the Incorporation Act, its Articles of Association dated and signed by all members, the names and addresses of its board members, its logo/emblem, and a description of the immovable and movable property which such society holds at the time of the submission of the application. The relevant application may be submitted either by the founders or the board of directors of the society. Upon the issuance of the registration certificate by the Registrar, the Society becomes a legal entity. A relevant entry confirming the registration of the Society will also be made with the Official Gazette (governmental official gazette) and this will be considered as conclusive evidence of the proper registration of the Society.

Associations: An Association must be registered by an act of incorporation with the Registrar in the Register of Associations. The Act of Incorporation includes the name and objectives of the Association, as well as its seat, the property appropriated, and the names and addresses of the members of its management. These items usually reflect the founder's wishes. Associations do not have minimum capital requirements. A registration certificate will be issued by the Registrar (bearing its signature) confirming the proper establishment of the Association.

Companies Limited by Guarantee: They are set up in the same manner as any other type of company as provided under the Cyprus Companies Law, Chapter 113. Companies limited by guarantee may be registered with or without share capital. A Company Limited by Guarantee must file its Articles and Memorandum of Association, together with details of its members, directors, secretary and registered address with the Company Registrar (such information will be contained in the relevant forms and will accompany the Memorandum and Articles of Association). The number of members that the company is intended to be registered with must be stated in the relevant constitutional documents. There are various restrictions applicable in relation to private companies the most relevant (in our case) of which is the right to have more than fifty members. Consequently, if there is a possibility that the company may at some point have more than fifty members, the initial founders may consider incorporating a public company limited by guarantee in which case the above mentioned restriction will be inapplicable.

4. 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?)

Charitable Trusts: The approval of the Council of Ministers is required pursuant to section 2 of Chapter 41.

Societies and Associations: The approval of the Registrar is required.

Companies Limited by Guarantee: Companies need to be registered and approved by the Companies Registrar. The Companies Registrar may also give permission to omit the word "limited" at the end of the company's name, if it is satisfied that the company is established for public benefit and uses its profits for the promotion of its objectives and prohibits payment of dividends to its members.

5. Do foundations have to register? If yes, in what register?

Foundations must be registered with the Council of Ministers.

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

The information that is kept at the register consists of:

- The objectives of the foundation and the regulations for its operation, together with any agreement or will or any other document by which the foundation was established;
- Description of the property of the foundation;
- The names with full details of the trustees of the foundation;
- The name of the foundation; and
- The stamp.

b) If foundations are registered, is the register publicly available?

The register of foundations is not publicly available.

6. Is a minimum founding capital required? Is the foundation required to maintain these assets or any other specified asset level throughout its lifetime?

There are no minimum capital neither any maintenance of assets requirements.

7. What governance requirements are set out in the law?

Charitable Trusts

Before the Council of Ministers can grant a certificate of registration to a Charitable Trust, the trustees must have been effectively appointed under the terms of any agreement, will or any other document that establishes the Charitable Trust to the satisfaction of the Council of Ministers (section 5(1) of Chapter 41).

Every five years the trustees must submit a report to the Administrative Secretary with the names and addresses of the trustees.

The trustees are personally responsible for the property of the charity that comes into their hands and are accountable for their own acts, as well as for the proper administration of the charity and its property.

Societies

The Articles of Association of a Society specify, inter alia, the conditions for admitting or expelling a member, the members' rights and duties, the organs of management, the manner of their establishment and functioning, the dismissal of the organs, and the manner of auditing the Society's accounts.

Societies are managed by persons elected or appointed by members.

The meeting of members constitutes the supreme organ of the Society and, unless the Articles of Association provide otherwise, such meeting itself may:

- Elect the members of the management
- Nominate the auditors of the accounts;
- Decide on the admission or expulsion of a member;
- Decide on the approval of the balance sheet; and
- Decide on the alteration of the Society's objectives, the amendment of the Articles of Association and the dissolution of the Society.

Associations

Associations are managed by one or more persons and any decisions are taken on a simple majority basis, unless there are other specific provisions (e.g. certain reserved matters) in the Act of Incorporation or Articles of Association. The person in charge of the management shall attend to the affairs of the Association and shall represent it both in and out of court. The extent of their authority is specified in the Articles and any limitation is also valid as against third parties.

The members of the management must keep accounting books which show all the transactions of the Association which must be audited by a certified auditor and which must be submitted to the Registrar. The Cyprus courts have the right at any time to perform checks on the accounts of an Association as well as on any other related document.

Companies Limited by Guarantee

Such a company (with or without share capital) is managed by its board of directors and the provisions of Chapter 113 apply. The Articles of Association may lawfully impose restrictions or conditions not otherwise contained in the Companies Law as long as such matters do not contravene the law. A condition in the Articles requiring the consent of the members for the purchase of assets exceeding €10,000 (the Companies Law does not deal with such matters) would be perfectly valid whilst the amendment of the Articles so as to provide a right to the directors alone to be able to liquidate the company or change the name of the company would not (as these are matters for which the law reserves for the shareholders).

a) Is it mandatory to have a supervisory board?

There is no such requirement.

b) 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?

Companies Limited by Guarantee: The number of directors is a matter which is regulated by the Articles of Association of the company and not the Companies Law. Depending on the Articles of Association a director may be appointed either by the shareholders (ordinary resolution) or by the board of directors in order to fill a vacancy (provided that the appointment by the directors will not exceed the maximum number of directors set out in the Articles). As regards the removal of any Director, the Company may remove a director by an ordinary resolution irrespective of any provisions contained in the Articles of the Company.

Societies/Associations and Charitable Trusts: There is no minimum requirement contained in the relevant legislation. Therefore, the appointment/removal of board members/trustees will be regulated by the Articles of Association or the trust instrument.

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

Charitable Trusts: The trustees have fiduciary duties and are liable for any omissions or negligence and are also liable for any property that is under their control.

Societies/ Associations: They have fiduciary duties and their rights and obligations are specified in the Articles of Association.

Companies Limited by Guarantee: The directors are entrusted with the management of the company. The Companies Law imposes certain obligations on the directors requiring them to act and carry out certain functions, and places restrictions on certain other acts. The Companies Law does not set out in detail the powers and duties of the directors, which are left to the Articles of Association and case law. The duties of the directors can be broken down to (a) the duty to act in good faith and in the interests of the Company and to use their powers for the purposes which they were conferred; (b) the duty of skill and care; and (c) statutory duties (e.g. maintaining various registers, convening general meetings etc).

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

The relevant legislations do not provide for any particular rights of the founders. The settlor of the trust has the right to change the trustees.

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

Charitable Trusts/ Societies/ Associations and Companies Limited by Guarantee: These are not specified in the Law. In case of Companies Limited by Guarantee, the members participate in Annual General Meetings where they can make enquiries and/or request documents in relation to the Company.

f) 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?

Company limited by Guarantee: The director is under the obligation not to put himself in a conflict with his duties towards the company. The Articles of Association usually contain provisions as to how to disclose a conflict and what procedures and conditions need to be followed to determine whether a director is able vote on a specific issue or not.

Societies/ Associations/Charitable Trusts: There is no definition in the relevant legislation. As they have fiduciary duties they have an obligation not to put themselves in a conflict of interest situation. Self-dealing is also prohibited unless permitted by the trust instrument.

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

Company limited by Guarantee: The directors are entrusted with the day-to-day running of the company and participate in decision making in accordance with the Articles of Association.

Societies/ Associations/Charitable Trusts: The board members and trustees are entrusted with the management and participate in decision making.

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

Foundations are represented towards third parties by their trustees.

a) Do the director and officers have powers of representation?

Yes.

9. Liability of the foundation and its organs

Charitable Trust: The trustees are responsible for all the property of the trust that comes into their hands and are answerable and accountable for their own acts and for the proper administration of the charity and its property.

Societies: A Society shall be liable for any legal transactions carried out by any member of the management of the Society, acting within the powers conferred to said member. Furthermore, the Society is liable for the acts or omissions of the members that are representing it where these have occurred in the course of carrying out their duties. The member at fault is also personally liable. There may be instances where the Society may be liable for the acts or omissions of a member of the management which have been carried out in excess of the powers conferred to such member.

Associations: An Association shall be liable for any legal transactions that have been carried out by the organ managing the Association within the limits of the organ's powers. The Association shall also be liable for any acts or omissions of the organ representing it where these have taken place during the carrying out of these duties entrusted to it. The person at fault shall also be liable in full. There may be instances where an Association may be liable for the acts or omissions of any of its members which have been carried out in excess of the powers conferred to such member.

Companies Limited by Guarantee: A company limited by guarantee is a limited liability company. Each member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the Company contracted before he ceases to be a member but not exceeding a specified amount (section 4(3) of Chapter 113). The board of directors has certain powers and obligations imposed by the Companies Law some of which are detailed in the Articles of Association of the company. Agency principles mentioned above in relation to Societies and Associations apply equally in the case of Companies Limited by Guarantee.

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

There is no difference in the liability between unpaid and paid board members, and the members are obliged to serve the foundation/association/company, act in good faith and to protect and promote its interests.

b) 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.

c) What is the liability of executive staff?

Directors/officers are liable for any act or omission which is in contradiction with the powers and purposes of the company/society/institution/trust and for breach of any provisions of the relevant legislation.

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

There is no such restriction in the law, however, it is unlikely for such power to be available for the founder.

e) 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		

The answers provided in the table above will depend on various parameters and will be decided on a case law basis taking into account the circumstances and particularities of each case.

10. Are economic activities¹ allowed (related/unrelated)? If so, is there a ceiling/limit on economic activities (related/unrelated)?

There are no restrictions in the law but the common law principle is that the property must be used:

- In the case of a Charitable Trust, for the purposes of the Foundation (whether specific or not) or for the purposes for which it was set up.
- In the case of a Society, for the objectives provided under its statutes which have to be of a non-profit nature.
- In the case of an Association, for the purpose for which its founder set it up.

In the case of a Company Limited by Guarantee, for the activities stipulated in its Memorandum of Association.

11. Are foundations permitted to be major shareholders?

There is no specific restriction in the Law; provided, that (i) the purpose for which the Foundation was set up is observed, (ii) funds received from such action would not be used or applied for profit making purposes, and (iii) such action would not contradict the Articles of the Foundation, foundations could be permitted to be major shareholders.

12. Are there any rules/limitations in civil and/or in tax law regarding foundations' asset management? What, if any, types of investment are prohibited?

Please see response at question 10 and 11.

13. 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)

Please see response at question 10 and 11.**14. What are the requirements for an amendment of statutes/amendment of foundations purpose?**

Charitable Trusts: Since they are set up for a specific purpose, that purpose cannot be amended and there is no provision in the law regarding this. In the unlikely event that such an issue may arise, it must be referred to the Supreme Court which has the power and the jurisdiction to "give all such directions and make all such orders as may appear to it necessary or expedient for the administration of any trust created for a charitable purpose".

Societies: The Articles of Association of a Society shall provide the conditions for amending the Articles, including its objectives. To be valid, every such amendment must be filed within 21 days in the Register.

Associations: In general, the purpose for which an Association has been founded cannot be amended. This can only occur exceptionally by court order if it can be shown that the will of the founder has become unattainable and another incidental purpose may be given to the Association according to the most probable will of the founder.

Companies Limited by Guarantee: This is achieved by amending the Company's Memorandum of Association by a special resolution approved by the court.

15. What are requirements with regard to reporting, accountability, auditing?

Charitable Trusts: The trustees of a Charitable Trust may keep books where they shall enter all the accounts of the Trust, including all monies received and paid, and furthermore at the end of every year they must prepare and submit to the Administrative Secretary the following accounts which must be certified by one of the trustees:

- An account of the gross income arising or which ought to have arisen for the benefit of the charity during the year ending on 31 December;
- An account of all balances on hand at the beginning of every year, and all moneys received during the same year, on the account of the charity;
- An account for the same period of all payments; and
- An account of all monies owed to or by the charity as far as is conveniently possible (section 10 of Chapter 41)

The Council of Ministers may at any time request the accounts of the Charitable Trust to be audited by the Director of Audit or other such person as the Council may deem fit to appoint (section 11 of Chapter 41).

Societies: Unless the Articles of Association provide otherwise, the meeting of members is the reporting body within a society, including the taking of decisions in relation to the appointment of auditors and approval of the accounts.

Associations: The reporting body within an Association are the members of its management who are also obliged to keep accurate and complete accounts. The accounts of the Association must be audited by a certified auditor whose report is filed with the Registrar. The Court has the discretion at any time to order the audit of the accounts of an Association and such an audit is carried out by the Auditor-General of the Republic and any such other person authorised by the Court.

Companies Limited by Guarantee: A Company must file its annual audited accounts and its annual returns with the Company Registrar. The annual audited accounts must also be filed with the Income Tax Department. The Accounts must meet the International Financial Reporting Standards.

a) What type(s) of report must be produced?

- annual financial report,
- annual activity report,
- public benefit/activity report,
- tax report/tax return,
- other reports e.g. on 1% schemes).

Charitable trusts: At the end of each financial year, the following accounts and reports must be prepared: Gross Income report, amounts brought forward at the beginning of the financial year, expenses account, accrued and receivables account.

¹For the purposes of this profile economic activity can be understood as “trade or business activity involving the sale of goods and services”. “Related” economic activity is in itself related to and supports the pursuance of the public benefit purpose of the foundation. According to the above, normal asset administration by foundations (including investment in bonds, shares, real estate) would not be considered as economic activity.

Associations: At the end of each financial year, the accounts and the following reports must be prepared and be submitted to the Commissioner of Associations within 1 month from the day of completion: Gross Income report, amounts brought forward at the beginning of the financial year, expenses account, accrued and receivables account. The accounts must be audited.

Companies Limited by Guarantee: At the end of each financial year, accounts and annual returns of the Company must be prepared.

b) Must all/any of the reports produced by the foundation be submitted to the supervisory authorities? If so, to which authorities (e.g. foundation authority, tax authority)?

Please see responses to questions 15(a) and (c).

c) Are the reports checked/reviewed? By whom (supervisory/tax authorities)?

The Minister of Interior, the Registrar of Companies and the Commissioner of Inland Revenue.

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

The International Financial Reporting Standards (IFRS) are applicable. External audit is required for Associations and Companies Limited by Guarantee. The Council of Ministers may at any time request the accounts of a Charitable Trust to be audited.

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

Please see reply above. IFRS will be applicable.

f) Do any or all of the reports and/or accounts of foundations need to be made publicly available? If so, which reports and where (website, upon request)

No annual reports / accounts of foundations need to be made publicly available.

16. Supervision (which authority – what measures / sanctions?)

The relevant legislation does not provide for any regulatory or supervisory control of foundations. The laws under which foundations are established merely impose filing or regulatory requirements on an annual basis.

a) 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?

Charitable Trusts, Societies/Associations: The Ministry of Interior.

Companies limited by Guarantee: The Registrar of Companies.

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

The relevant legislation does not provide for any regulatory or supervisory control of foundations. The laws under which foundations are established merely impose filing or regulatory requirements on an annual basis.

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

Yes, certain decisions need approval, such as a decision of the members to change the name of a company limited by guarantee.

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

There is no such requirement.

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

Companies Limited by Guarantee: The Company and/or directors or officers who do not comply with the relevant legislation could be liable to a fine or imprisonment or both depending on the particular offence and/or omission.

Charitable Trusts: The board members could be liable for any omissions, negligence, or any other act in contradiction with the purposes of the trust and could also liable for any property that is under their control.

Societies/Associations: Any officer who participates in the management/governance, and contributes towards a task which is illegal and/or undermining public security or public health, may be found liable.

Directors or officers who do not comply with matters concerning registration, governance, reporting and public benefit status could be liable to a fine or imprisonment or both depending on the particular offence and/or omission.

17. When and how does a foundation dissolve?

Charitable Trusts: They may continue in perpetuity or when the trustees declare that the specific purpose for which the trust was set up has been accomplished.

Societies: A Society can be dissolved:

- At any time by a decision of the meeting of members – this requires the presence of at least one-half of the members plus one and the majority of three-quarters of those present;
- If the membership is reduced below twenty;
- By decision of the court on the application of the Society's management or of one-fifth of its members or a decision of the Attorney-General of the Republic if:
 - (i) It becomes impossible to elect a management;
 - (ii) It becomes impossible to continue the Society in accordance with its statutes;
 - (iii) The objectives of the Society have been fulfilled;

- (iv) There has been a very long period of inactivity leading to the presumption that the objectives of the Society has been abandoned;
- (v) The Society pursues an objective which it different from that stipulated by its statutes; and
- (vi) The objectives of the Society have been declared illegal.

The liquidation shall be carried out by the management of the Society (unless the law provides differently or the responsible organ decides differently), otherwise a liquidator shall be appointed by the court.

Associations: An Association shall be dissolved:

- If such events as stipulated in its act of incorporation have occurred; or
- by order of the court if:
 - (i) The objectives of the Association have been fulfilled;
 - (ii) The objectives of the Association have been rendered unattainable;
 - (iii) The Association has deviated from its objectives; and
 - (iv) Its objectives and operation have become illegal.

The liquidation shall be carried out by the management of the Association (unless the law provides differently or the responsible organ decides differently), otherwise a liquidator shall be appointed by the court.

If it is not otherwise provided in the law or in the act of incorporation of the society or if no decision has been taken by the relevant organ, the property of the dissolved institution shall be vested in the government of Cyprus which shall be obliged to carry out the objective of the Association or another identical objective by using that property.

Companies Limited by Guarantee: A company may be wound up in the following ways:

- a) by the Court; or
- b) voluntarily (which can be either a members' voluntary winding up or a creditors' voluntary winding up); or
- c) Subject to the supervision of the Court.

A company may be wound up by the court if (a) the company has by special resolution resolved that it be wound up by the Court; (b) default is made in delivering the statutory report to the registrar or in holding a statutory meeting; (c) the company does not commence its business within a year from its incorporation or suspends its business for a whole year; (d) the number of members is reduced, in the case of a public company, below seven; (e) the company is unable to pay its debts; or (f) the court is of opinion that it is just and equitable that the company should be wound up.

A company will be deemed to be unable to pay its debts in the following situations:

- if the company is indebted to a creditor in a sum exceeding €854 which is due, and the creditor has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- if execution or other process issued on a judgment, decree or order of any court in favor of a creditor of the company is returned unsatisfied in whole or in part; or

- If it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court will take into account the contingent and prospective liabilities of the company.

In all cases in which a company is solvent we are concerned only with a members' voluntary winding up which is still a complicated and time consuming exercise and various conditions and requirements as set out in the law will need to be observed. In a nutshell, such process entails the realisation of all assets of the company and the proceeds will be distributed to the creditors and if there is any surplus, this will be provided to its members. It is common that the Articles of a Company Limited by Guarantee will contain restrictions on the allocation of available surplus to its members.

Another procedure available is the so called "strike off" procedure. This is a "simplified way" of dissolving a company and is utilised when a company does wish to carry on business in the future. Various requirements set out in the Companies Law will, again, need to be observed. Unfortunately, there is considerable delay on the part of the Companies Registrar in effecting a striking off of a company (such delay may exceed 2 – 3 years).

18. Under what conditions does the civil law in your country recognise a foreign foundation?

As long as a foundation is registered in any EU country, it may carry out activities in Cyprus.

19. 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, a foundation may conduct activities abroad and there are no limitations.

II. Tax treatment of the foundation

1. What are the requirements to receive tax exemptions (pursuing public benefit purposes, non-distribution constraint, being resident in the country?). Is there a special approval process for receiving tax exemption? If so does the process have to be repeated every year?

Provided all the conditions are met that the Council of Ministers wishes to impose, the income of a company – which was incorporated exclusively and solely for the promotion of the arts, the sciences or sports from which it does not seek to gain profits for itself or its members, and whose activities are limited only to such causes – shall be exempt from income tax.

2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)

Provided all the conditions are met that the Council of Ministers wishes to impose, the income of a company – which was incorporated exclusively and solely for the promotion of the arts, the sciences or sports from which it does not seek to gain profits for itself or its members, and whose activities are limited only to such causes – shall be exempt from income tax.

3. Is specific reporting required for the use of state funds?

There is no specific legislation dealing with this issue, however, a state authority may impose certain conditions from time to time for the use and application of state funds.

4. Is there an obligation to report on donors and beneficiaries?

No.

5. Are there specific accounting rules for foundations?

No.

6. 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.

There is no exhaustive statutory definition. Foundations apply to the Council of Ministers who then consider whether the purpose is a public benefit purpose.

7. 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.

There is no statutory definition in tax law of what public benefit is. In case a foundation or any other institution is recognised by the Minister of Finance as a charitable institution, the whole amount of donations with receipts is tax-deductible.

8. Please indicate whether the following purposes would or would not be accepted for tax privileges in your country

Public benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	X			
Environmental protection		X		
Civil or human rights		X		
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination		X		
Social welfare, including prevention or relief of poverty		X		
Humanitarian or disaster relief		X		
Development aid and development cooperation			X	
Assistance to refugees or immigrants			X	

Protection of, and support for, children, youth or elderly		X		
Assistance to, or protection of, people with disabilities		X		
Protection of animals		X		
Science, research and innovation	X			
Education and training	X			
European and international understanding			X	
Health, well-being and medical care		X		
Consumer protection			X	
Assistance to, or protection of vulnerable and disadvantaged persons			X	
Amateur sports			X	
Infrastructure support for public benefit purpose organisations		X		
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

9. Support of “the public at large”

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

The activities of a tax-exempt foundation generally do not have to benefit “the public at large”.

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

Not applicable

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		

10. Non-Distribution Constraint

a) Does a **tax-exempt** foundation generally have to follow a “non-distribution constraint”² which forbids any financial support of the foundation board, staff, etc.?

The members of the board of a foundation usually do not receive any benefit from their participation in the board but they can receive an amount for covering their expenses, although there are no restrictions. The foundation on the other hand may employ employees for serving the foundation.

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

In the case that a foundation is dissolved, its assets must be given to other charitable institutions of the same nature as the foundation under dissolution or to the state.

11. “Altruistic” Element

a) 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**?

There are no restrictions on remuneration to members of foundation boards as long as the amounts payable are bona fide.

b) 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 examples mentioned herein above (postcards or free tickets for a concert) will not be restricted.

c) Is there a maximum amount that can be spent on office/administration costs in **civil law** and in **tax law**?

There is no maximum amount that can be spent on office / administration costs as long as the amount is bona fide.

If yes, how are “administration costs” defined? Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

- Personnel costs (staff salaries/payroll costs)
- Board remuneration
- Costs of external audit
- Other legal/accounting costs

²For the purposes of this profile, a non-distribution constraint implies that any transactions/benefits to third parties going beyond reasonable compensation for services rendered are prohibited (such as unreasonable board remuneration or excessive payments to service deliverers) except where transactions/benefits provided are part of the direct promotion of the public benefit purpose.

- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)
- Insurance
- Publicity and promotion of the foundation (e.g. website, printed promotional materials)
- Asset administration costs
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation
- Costs related to fundraising - *These costs will fall under the category of financial expenses.*

12. Hybrid Structures (elements of private benefit in public benefit foundations)

a) 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>freeholdreversion</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	

b) 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>freeholdreversion</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	

13. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their capital?

Foundations' assets can be spent by the foundations for serving the purpose for which they were established

b) Are they allowed to be set up for a limited period of time only? If so, is there a minimum length of time for which the foundation must exist?

Foundations may be established for a limited period of time or to serve a particular purpose.

c) 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? If so, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated as being for building up the endowment be included in /excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded?)?

A foundation is not obliged to spend its assets within a certain period of time, but as outlined above it is obliged to use them for the purpose for which it was established.

d) 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 "pay-out rule"?

The foundation is not obliged to spend any percentage of its overall assets in the form of a "pay-out rule".

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

14. Does activity abroad put the tax-exempt status at risk?

Activity abroad has no bearing whatsoever as long as the conditions mentioned above are satisfied.

15. Are there any civil and/or tax law rules regulating cross-border grants by a foundation? If yes, please provide a description of the requirements the foundation must fulfil in such cases.

Not applicable.

16. Income tax treatment

Public benefit organisations are exempt from income tax. Companies, other than public corporate bodies, are subject to corporation tax at a rate of 12.5%.

How are the following types of income treated for income tax purposes?

Grants and donations – *Not taxable*

Investment income (asset administration)

- Interest from fixed rate bonds – *Likely to be tax exempt unless bank interest received is through Cypriot bank which is taxed at defence tax.*
- Equities
- Income from leasing of a property that belongs to the foundation

Economic activities related/unrelated – *Exempt for public benefit organisations.*

- Income from running a hospital/museum/opera
- Income from producing/selling books (e.g. art books sold by a cultural foundation)
- Income from running a bookshop inside a museum/opera run by the foundation
- Income from running a café in the hospital/museum run by the foundation
- Income from selling T-shirts (activity not related to the pursuance of the public benefit purpose)
- Income from intellectual property (e.g. royalties and licence fees)

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

Exempt.

Is major shareholding considered as an economic activity and taxed accordingly?

Exempt.

17. Are capital gains subject to tax? If so, are they taxed as income or liable to a separate tax?

Tax is imposed on profits from disposal of immovable property situated in Cyprus, or shares in companies, which have immovable property in Cyprus, and such shares are not listed in any stock

market. The tax is imposed on the net profit from disposal at the rate of 20%. The net profit is calculated as the disposal proceeds less the greater of the cost or market value on 1 January 1980 adjusted for inflation. Inflation is calculated using the official Retail Price Index. The index on 1 January 1980 was 67.15. Exemptions from capital gains tax are available in several cases, e.g. for gifts to the Republic or to a local authority for educational or other charitable purposes or to approved charitable institutions.

18. Does any kind of value added tax (VAT) refund scheme for the irrecoverable VAT costs of public-benefit foundations exist in your country?

Value-added tax is imposed on the provision of goods and services in Cyprus as well as on the importation of goods into Cyprus. There are four rates of VAT; namely, the standard rate of 18%, the reduced rates of 8% and 5%, and the zero rate (0%).

The standard rate applies to any provision of goods and services in Cyprus which is not subject to the zero rate, the reduced rate or is exempt.

The reduced rate of 8% applies to all restaurant services and any similar catering services (excluding the sale of alcoholic drinks, beers and wine), accommodation in hotels, tourist lodgings and other similar lodgings, transportation within the Republic using urban, intercity and rural taxis and tourist and intercity buses, and the movement of passengers in waters. The 5% reduced rate applies to the provision of fertilizers, animal food, pesticides, livestock, books, newspapers and magazines, gas irrespective of package, non-bottled water, a variety of snack foods, sundry goods used by disabled persons, and transportation using public and rural buses.

Zero-rated supplies include food supplies, medicines, and exports.

Exempt supplies include rental of immovable property, financial services, hospital and medical services, postal services, insurance services, disposal of immovable property where the application for building permission has been submitted prior to 1 May 2004, and disposal of land to be used for building purposes.

19. Is capital tax levied on the value of assets, where applicable?

Immovable property tax is payable and is calculated at the market value as of 1/1/1980, which shall be adjusted in the next years to reflect the current market value. This is a new tax, introduced in 2013.

20. Are there taxes on the transfer of assets by foundations?

Transfers of immovable property are subject to transfer fees at rates between 3% and 8%, calculated on the market value of the property, as assessed by the Land Registry Department. There are, however, exemptions for transfers between family members and in the context of reorganisations.

21. Are there any other taxes to which public-benefit foundations are subject there (e.g. real property tax)?

By virtue of the Special Contribution for the Defence of the Republic Law of 2002, all residents are subject to the defence contribution. Rental income is subject to both corporation tax and the defence contribution. The rate of the defence contribution is 3%. It is imposed on the gross rental income, as

reduced by 25%. It is payable by the recipient in two 6-monthly instalments, namely on 30 June and 31 December. The defence contribution is not deductible for corporation tax purposes.

Furthermore, a contribution to the Social Cohesion Fund is chargeable at 2% on all salaries and wages of employees. The contribution is not deductible for corporation tax purposes.

With regards to social security contributions, employer contributions are payable at the following rates: social insurance fund at 6,8%, redundancy fund at 1.2% and training development fund at 0.5%. The maximum amount of monthly earnings on which the contributions are payable is €4,533 per month and €54,396 per annum). The contributions are deductible for corporation tax purposes.

Immovable property located in Cyprus is subject to real estate tax. The tax is levied on the estimated market value of the property on 1 January 1980. Rates range from 0% on the first 100,000 CYP to 0.4% on the excess over 500,000 CYP. The tax is payable by the end of September each year. It is not deductible for corporation tax purposes.

22. 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– if they have to fulfil exactly the same requirements as local based public benefit foundations, please refer to above but indicate which documents need to be provided and translated:

- Statutes (translation required)
- Last annual financial report (translation required)
- Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought

A foreign foundation cannot get the same tax benefit as a national foundation because in order to get the benefit it must be recognised as a charitable foundation and only foundations registered in Cyprus are eligible for this status.

23. Does your country apply withholding tax to the income from local investments held by domestic and/or foreign-based foundations? If so, can domestic or foreign-based foundations reclaim all or part of the withholding tax under domestic law?

Dividends and royalties paid to resident companies are not subject to withholding tax. Interest not accruing from ordinary business activities is subject to a 30% defence contribution as a final tax.

With regard to foreign income, resident companies are taxed on their worldwide income. Income from sources outside Cyprus is taxed in the same way as domestic income, subject to the rules listed below.

Profits from a permanent establishment abroad are exempt in Cyprus. Nevertheless, losses incurred from a business abroad, including the losses of a foreign permanent establishment, are deductible. Under a recovery rule, future profits from a permanent establishment abroad will be taxable, subject to overriding treaty exemptions. However, anti-avoidance rules in respect of passive income should be borne in mind.

Any dividends received, including foreign dividends, are exempt from corporation tax and, in general, also from the 25% defence contribution. The 15% defence contribution on dividends applies unless, in general, more than 50% of the activities of the company paying the dividend are in trading and not investment activities and the tax regime which applies in such country is at least 5%.

Foreign interest income, if not accruing from ordinary business activities, is subject to a 30% defence contribution by assessment. The defence contribution is not deductible for corporation tax purposes.

III. Tax treatment of donors of public benefit foundations

1. System of tax credit³ or tax deduction⁴?

Tax credit. A tax credit is available where grants or donations were made for educational or other charitable purposes to the Republic or a local authority or to any other charitable institution, which is approved as such by the Council of Ministers.

2. Tax treatment of individual donors

a) What tax relief is provided for individual donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

If it is an approved charity, there is a 100% tax deduction. There is a list available with approved charities. There is no minimum or ceiling to a contribution.

b) Which assets qualify for tax deductibility?

Any type of donation is acceptable. There is no limit on the tax incentive and the whole amount of the donation can be deducted. This is however subject to certain conditions, which are examined on a case-by-case basis.

In the event of a loss which took place within the year of the grant or the donation, any part of the loss suffered equal to the level of the total grant or donation amount will not be carried forward and will not be consolidated with the income of future years.

3. Tax treatment of corporate donors

a) What tax relief is provided for corporate donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

b) Which assets qualify for tax deductibility?

The same conditions are applicable as to individual donors.

4. Tax treatment of donations to non-resident public-benefit foundations – do donors get the same tax incentive?

Where a donation is made to a non-resident public benefit foundation which has met all the conditions that the Council of Ministers wishes to impose, then a tax credit is available.

³For the purposes of this profile tax credit can be defined as an amount that can be deducted from the actual tax to be paid (reduction in amount of tax paid)

⁴For the purposes of this profile tax deduction can be defined as a reduction in the gross amount on which tax is calculated (reduction in taxable income/tax base)

5. Other frameworks such as percentage law systems

Not applicable.

6. What are the requirements that the donor must fulfil/ information they must provide in order to claim tax benefits?

What information do donors have to provide to their tax authority in order to receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?

Where a donation is made to a non-resident public benefit foundation which has met all the conditions that the Council of Ministers wishes to impose, then a tax credit is available.

7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation?

What information do donors to foreign-based organisations have to provide in order to receive tax incentives for their donation (e.g. Statutes (translation required?)? Annual financial report (translation required?)? Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?

This depends on the laws of the country in which the foreign foundation is based.

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

1. Individuals

2. Legal entities

3. Are there any different or additional requirements that must be fulfilled by a beneficiary receiving funding from abroad?

If individuals or legal entities satisfy the requirements provided in the first answer (page 1 of the profile) regarding the tax treatment of the foundation, then there will be exemption from tax.

V. Gift and inheritance tax

There is no gift or inheritance tax.

1. Does gift and inheritance tax/transfer tax exist in your country and if yes who has to pay the tax in the case of a donation/legacy to a public-benefit organisation (the donor or the recipient organisation)?

2. What are the tax rates? Is there a preferential system for PBO's? Which PBO's qualify? Is there a difference according to the region or the legal status of the PBO?

3. Is there a threshold (non-taxable amount) from gift and inheritance tax for donations/legacies to public-benefit organisations?

4. Is there a legal part of the estate that is reserved for certain protected heirs and which a donor cannot give to third parties?

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

VI. Trends and developments

1. Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations and their donors are protected by the fundamental freedoms of the EC Treaty? Have there been any changes to your country's legislation, resulting from the Persche, Stauffer, Missionswerk or other relevant ECJ judgments, or are changes being discussed?

No.

2. Has the fight against terrorism and financial crime led to the introduction in recent years of new laws / rules affecting the foundation sector (e.g. implementation of EU Anti Money Laundering Directive, or reactions to recommendations of the Financial Action Task Force)?

No.

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

Money- Laundering Law of 188/2007 of 31/12/2007, as amended.

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

No.

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

No.

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

No.

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

No.

3. Are there any other recent trends or developments affecting the legal and fiscal environment for public benefit foundations in your country?

No.

4. Public fundraising

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

No.

Useful contacts

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Selected bibliography

Please list here any books/articles which provide further information on the any of the topics discussed in the profile. Links to online articles/resources are also appreciated

Selected law texts online:

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About the EFC Legal and Fiscal Country profiles

This profile is part of a series of profiles of the legal and fiscal environments for foundations in 42 different countries across the wider Europe, as well as some countries in other world regions. The aim of these profiles is to paint a picture of the current operating environment for foundations in these countries to better understand the legislative landscape foundations inhabit. The profiles are produced in collaboration with foundations, legal experts, and associations in each country. Each profile is written by the national-level expert. A comparative overview of the country profiles from wider Europe can be downloaded from the EFC website: “Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe.”

www.efc.be

About the European Foundation Centre

The European Foundation Centre, founded in 1989, is an international membership association representing public-benefit foundations and corporate funders active in philanthropy in Europe, and beyond. The EFC develops and pursues activities in line with its four key objectives: creating an enabling legal and fiscal environment; documenting the foundation landscape; building the capacity of foundation professionals; and promoting collaboration, both among foundations and between foundations and other actors. Emphasising transparency and best practice, all members sign up to and uphold the EFC Principles of Good Practice.