

# EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for  
foundations*

## CZECH REPUBLIC – 2014

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***The operating environment for foundations***

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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)?**

The present legal framework in the Czech Republic, as established in 1998, is favourable to the creation and operation of foundations, endowment funds and public-benefit institutions, which are the counterpart to the English term “foundations” (private foundations).

The Act No 227/1997 Coll., as subsequently amended, on Foundations and Endowment funds, (Law on Foundations) is a complex legal regulation containing both private law and public law features. This act regulates the establishment, operation and winding up of foundation subjects, corporate governance, and also other questions.

Foundations operate with income generated from a registered endowment, as well as from donations and other resources. They are expected to provide financial or other grants to third persons exclusively for public-benefit purposes. Endowment funds are a “more simple” form; they do not have to have a registered endowment, but may raise funds for public-benefit purposes and use them only for such a purpose.

This relatively extensive law is a reaction to the very liberal approach to the regulation of foundations in the Civil Code, which was one of the main reasons for which the institute of the foundation became discredited in the Czech Republic at the beginning of the 1990s.

In addition to lay foundations established under the Foundations Act, there are also foundations existing under canon law. These are Roman Catholic religious and pious foundations – “independent pious foundations” (*piae foundationes autonomae*), which are established as independent organisation units of the church and endowed with a legal subjectivity under the universal canon law (Canon Law Code CIC/1993 - *Codex iuris canonici*), which was effective even prior to the adoption of the Act No. 227/1997 Coll.

The Act No. 248/1995 Coll. on Public Benefit Institutions constituted a new type of a legal person in the Czech legal system, whose statutory purpose was strictly limited to the provision of services beneficial to the public. It is a legal entity rendering generally beneficial services to the general public and to all clients under identical terms and conditions, whose profit may not be used for the benefit of its founders, members of its bodies or employees and must serve for the rendering of the generally beneficial services for which the organisation was established (comparable to “operating foundations”). However, on account of historical reasons, it is not possible to state that ‘public-benefit institutions’ make up a third type of foundation and as such, this legal form will be left aside.

In Czech Republic there also exist public foundations (funds, which are based on separate laws).

### **2. What purposes can foundations pursue?**

A foundation and an endowment fund can pursue only public benefit purposes. A public benefit purpose is, in particular: The development of spiritual values; the protection of human rights and other humanitarian values; the protection of the environment, cultural monuments and traditions; developments in science; education; and physical education and sports.

There is no unified legal definition of public benefit purpose in the Czech Republic. Public benefit purpose is thus defined differently in each of the various laws (e.g. Act on Foundations, Act on Income Tax, Act on Public Benefit Corporations).

Currently there is a discussion about implementation of “public benefit status” (drafting of paragraph version of the Act on public benefit status), which would be very important for the relationship between NGOs and the government. There is also a reform of tax regulation currently going on, which will have a great influence on the NGO sector.

### **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?**

A foundation and an endowment fund can pursue only public benefit purposes. A public benefit purpose is, in particular: The development of spiritual values; the protection of human rights and other humanitarian values; the protection of the environment, cultural monuments and traditions; developments in science; education; and physical education and sports.<sup>1</sup>

There is no unified legal definition of public benefit purpose in the Czech Republic. Public benefit purpose is thus defined differently in each of the various laws (e.g. Act on Foundations, Act on Income Tax, Act on Gifts, Inheritance and Real Estate Tax, Act on Public Benefit Corporations).

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### **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? )**

No, pure registration principle, no state approval required. A foundation is an independent legal person at the moment of its entry into the Foundation Register.<sup>2</sup>

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

A foundation/endowment fund exists independently from the date of its entry in the foundation register.

The register is a public list; the statutes of the foundation/endowment fund and the annual report constitute parts of the register.<sup>3</sup>

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

The following data is entered in the Register:

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<sup>1</sup> § 1 article 1 Law on Foundations

<sup>2</sup> K. Ronovská *Soukromoprávní aspekty nadačního a spolkového práva v Česku, Švýcarsku a v Nizozemí*. Masaryková univerzita, Brno (2004) Page 83.

<sup>3</sup> § 5 Article 1 Law on Foundations

- The name, location and identification number of the foundation
- The name or business name, location and identification number of the founder if it is a legal entity; or first and last names, or business name, personal identification number, date of birth, and permanent residence of the founder, if an individual (natural person)
- The purpose of the foundation
- The amount of foundation equity or the amount of property deposited in the endowment fund
- The first and last names, personal identification numbers, dates of birth, and permanent residences of the members of the management board and the manner of their acting on behalf of the foundation
- The first and last names, personal identification numbers, dates of birth, and permanent residence of the members of the supervisory board, or the comptroller if no supervisory board has been set up
- The list of assets comprising the non-financial deposit or foundation gift to the foundation equity, stating its description and value<sup>4</sup>

The proposal to register the foundation/endowment fund is accompanied by its foundation charter, a voucher confirming payment of the financial deposit, or a voucher confirming receipt of a non-monetary deposit issued by the person responsible for deposits, and copies of the police records of the management board, the supervisory board, or the comptroller (these police record copies may not be more than 6 months old). Those members of the management board, the supervisory board, or the comptroller, whose permanent residence is not in the Czech Republic, have to submit a relevant voucher from the state of their permanent residence ascertaining they have not been sentenced for a wilful act punishable by law. This voucher may not be older than 6 months.

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

The foundation register is public evidence, open and accessible for anyone. Any person is entitled to see data entered in the register and to make copies and excerpts.

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

Yes, to establish a foundation, 500,000 CZK (approx. €18,000) is required as a minimum capital and this amount should not decrease throughout the period of the foundation's existence.<sup>5</sup> For an endowment fund a minimum capital is not required.

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

a) Is it mandatory to have a supervisory board?

The Act on Foundations provides for the management board and a supervisory board or comptroller as the main governance bodies of a foundation. The founders (in the founding charter) or the management board (in the statutes) can establish additional bodies, e.g. executive director, grant committees etc.

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<sup>4</sup> §5 article 4 Law on Foundations

<sup>5</sup> § 3 article 4 Law on Foundations

The management board is the main governing board of a foundation. The management board manages the equity (assets) of the foundation, directs its activities and makes decisions in all the matters concerning the foundation, and constitutes the statutory body of the foundation.<sup>6</sup> The management board has to have a minimum of 3 members. The total number of the members of the management board has to be divisible by 3, unless stated otherwise by the foundation charter.<sup>7</sup> The term of office is three years unless stated otherwise by the Act on Foundations or the foundation charter. Repeated terms of office are allowed, unless otherwise stated in the foundation charter.<sup>8</sup>

The supervisory board is the body that oversees the foundation.<sup>9</sup>

The supervisory board has to be instituted whenever the foundation equity assets exceed 5 million CZK (approx. €178,000) or when the foundation charter so mandates.<sup>10</sup> Otherwise (if no supervisory board is set up), the responsibilities of the supervisory board are exercised by the comptroller.<sup>11</sup>

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?

Only individuals of integrity, capable of legal acts, who are not in employment or a similar relationship with the foundation, may be members of the management board.<sup>12</sup>

An individual who receives funds granted in pursuit of the purpose of the foundation may not serve as a member of the management board; nor can he be a member of a statutory or controlling body at a legal entity, if this entity receives funds granted in pursuit of the purpose of the foundation.<sup>13</sup>

The first members of the management board are appointed by the founder, or the executor of the testament, unless they are mentioned by name in the testament.<sup>14</sup> Unless stated otherwise by the foundation charter, upon the appointment of the first members of the management board, one-third of the members' names for a one-year term of office and one-third of the members' names for a two-year term of office from the date of their appointment will be drawn by a lottery. New members whose term of office will be a full three years will be elected subsequently to all vacated positions.<sup>15</sup>

The foundation charter may state that a certain number of the members of the management board be elected upon their nomination by certain legal entities, or an individual, as specified by the founder, or the testator.<sup>16</sup>

Membership on the management board expires:

- Upon the expiration of the term of office
- Upon one's death
- By recall, if the member fails to meet the conditions for membership, or if he violates in a serious manner, or repeatedly, the Act on Foundations, the foundation charter or statutes of the foundation, or due to other reasons if so stated by the foundation charter
- By resignation<sup>17</sup>

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<sup>6</sup> § 10 article 1 Law on Foundations

<sup>7</sup> § 11 article 1 Law on Foundations

<sup>8</sup> § 12 article 1 Law on Foundations

<sup>9</sup> § 17 article 1 Law on Foundations

<sup>10</sup> § 17 article 2 Law on Foundations

<sup>11</sup> § 20 article 1 Law on Foundations

<sup>12</sup> § 11 article 2 Law on Foundations

<sup>13</sup> § 11 article 4 Law on Foundations

<sup>14</sup> § 13 article 1 Law on Foundations

<sup>15</sup> § 13 article 2 Law on Foundations

<sup>16</sup> § 13 article 3 Law on Foundations

<sup>17</sup> § 15 article 1 Law on Foundations

The management board will rule on the recall of one of its members due to the reasons stipulated by the Act on Foundations within one month from the date it learned the reason for the recall and no later than six months from the date the cause for the recall had occurred. Failure of the management board to rule on the recall within this prescribed deadline will result in the recall of the member of the management board by the Court upon the motion of a member of the management board, the supervisory board, the founder, the executor of the testament through which the foundation were set up, or by a person who asserts his lawful interest.<sup>18</sup>

Composition of the Supervisory Board/Comptroller:

For the composition, expulsion, resignation and term of office of the supervisory board, the same rule applies as for the management board.<sup>19</sup>

The discharge of duties as a member of the supervisory board is incompatible with membership on the management board, or with the duties of a person who is authorised to act on behalf of the foundation as a representative.<sup>20</sup>

If no supervisory board is set up, its responsibilities will be carried out by the comptroller. The same regulation of the Law on Foundations that applies to the supervisory board would apply to the comptroller.<sup>21</sup>

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

Rights and duties of board members (Management board):

The following constitutes the exclusive competence of the management board:

- To issue the foundation's statutes and decide on any amendments to them
- To approve the foundation's budget and any changes to this
- To approve the annual financial statements and the annual report on activities and performance (hereinafter referred to as "the annual report")
- To decide on mergers unless mergers are excluded by the foundation charter
- To elect new members of the management board and of all members of the supervisory board, unless stated otherwise by the foundation charter, and to decide on recalls of members of the management board, the supervisory board, or of the comptroller, if they fail to meet conditions for membership or office
- To determine the amount of remuneration for the discharge of duties for members of the management board, the supervisory board or for the comptroller
- To rule on any increase in the foundation's equity<sup>22</sup>

Rights and duties of the Supervisory Board or Comptroller:

The supervisory board of a foundation<sup>23</sup> in particular:

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<sup>18</sup> §15 article 2 Law on Foundations

<sup>19</sup> § 19 article 2 Law on Foundations

<sup>20</sup> §19 article 1 Law on Foundations

<sup>21</sup> § 20 article 1 Law on Foundations

<sup>22</sup> §10 article 2 Law on Foundations

<sup>23</sup> § 17 article 1 Law on Foundations

- Oversees the observance of conditions for the provision of foundation disbursements (contributions) and the accuracy of the accounting system maintained by the foundation
- Reviews the annual financial statements and the report
- Supervises whether the activities of the foundation comply with the legal regulations, the foundation charter and the statute of the foundation
- Points out any deficiencies noted to the management board and submits proposals on how to remove these deficiencies
- At least once a year, submits its oversight activity report to the management board<sup>24</sup>

If no supervisory board is set up, its responsibilities will be carried out by the comptroller.<sup>25</sup> The same regulation of the Law on Foundations that applies to the supervisory board would apply to the comptroller.<sup>26</sup>

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 will of the founder stated in the foundation charter determines the specific purpose of foundation and influences the governance of the foundation.

The founder appoints the first members of the management board.<sup>27</sup>

The founder may state in the foundation charter that a certain number of members of the management board will be elected upon nomination by certain legal entities or a certain individual, as specified by the founder or the testator.<sup>28</sup>

The founder may file a motion in the court to wind up a foundation if the foundation's equity yields no revenues on a permanent basis and the foundation has no other assets and thus cannot fulfil the purpose for which it was set up or for other reasons specified by the Law on Foundations.<sup>29</sup>

The founder may limit or forbid the merger of the foundation through a provision in the foundation charter.<sup>30</sup>

The founder may name another foundation in the foundation charter, to which assets remaining after liquidation should be transferred in case the foundation is liquidated.<sup>31</sup>

The founder may, in the foundation charter, modify the rule that the management board elects the new members of the management board and all members of the supervisory board<sup>32</sup>.

The founder may, in the foundation charter, modify the rule that the total number of members of the management board has to be divisible by 3 and that the terms of office of board members are limited to three years, as well as the procedural rules of the management board.<sup>33</sup>

The founder can, in the foundation charter, extend the reasons for recall of board members.<sup>34</sup>

<sup>24</sup> §17 article 3 Law on Foundations

<sup>25</sup> § 20 article 1 Law on Foundations

<sup>26</sup> § 20 article 2 Law on Foundations

<sup>27</sup> § 13 article 1 Law on Foundations

<sup>28</sup> § 13 article 3 Law on Foundations

<sup>29</sup> § 7 article 3 Law on Foundations

<sup>30</sup> § 8 article 4 Law on Foundations

<sup>31</sup> § 9 article 4 Law on Foundations

<sup>32</sup> § 10 article 2 e) Law on Foundations

<sup>33</sup> § 11 article 1 Law on Foundations

<sup>34</sup> § 15 article 1 c) Law on Foundations

The founder may, in the foundation charter, provide for the setting up of a supervisory board except in the cases stated in the Law on Foundations.<sup>35</sup>

The founder specifies the purpose and conditions of the disposition of the foundation's assets in the foundation charter.<sup>36</sup>

The founder may include a provision in the foundation charter limiting administrative costs of the foundation.<sup>37</sup>

The founder may specify another method for publishing the foundation's annual report in the foundation charter.<sup>38</sup>

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

Beneficiaries of contributions are delimited in the fundamental document (foundation charter, or statutes).

The law gives several rights to persons who assert a lawful interest. The most important rights of these parties (and also beneficiaries) include the right to request the winding up of the foundation, endowment fund, or public benefit institution by a court.

There is also public access to the foundation registry, which is kept by the relevant registry court.

The foundations registry is a public list containing foundations' charters the statutes of foundations (endowment funds), and their annual reports. Any foundation/endowment fund is required to make its statute available if so requested; everyone is also entitled to peruse the annual reports and make copies and excerpts.

The Law on Foundations specifies<sup>39</sup> some duties on the part of beneficiaries of foundation contributions: A foundation disbursement (contribution) has to be used by the recipient (beneficiary) in compliance with the conditions set forth by the foundation/endowment fund, otherwise this foundation disbursement has to be returned or refunded in money by the recipient within the deadline stipulated by the foundation/endowment fund. The recipient that was provided with a foundation disbursement by the foundation/endowment fund is required, if so asked, to demonstrate in what manner and towards what end this foundation disbursement has been used.

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?

The main duties of the management board of foundations and endowment funds are explicitly defined in the law<sup>40</sup>.

An individual who receives funds granted in pursuit of the purpose of the foundation may not serve as a member of the management board; nor can he be a member of a statutory or controlling body of a legal entity, if this entity receives funds granted in pursuit of the purpose of the foundation.<sup>41</sup>

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<sup>35</sup> § 17 article 2 Law on Foundations

<sup>36</sup> § 21 article 1 Law on Foundations

<sup>37</sup> § 3 article 2 g) Law on Foundations

<sup>38</sup> § 26 article 3 Law on Foundations

<sup>39</sup> § 21 article 3 and 4 Law on Foundations.

<sup>40</sup> § 10 and following sections of the Law on Foundations

<sup>41</sup> § 11 article 4 Law on Foundations

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

It is up to the foundation charter or statutes, since there are no provisions in the law.

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

In principle, the management board of a foundation, or some of its members, is authorised to act externally. This power of representation is unconditional and unlimited, unless the law or the deed/statutes provides otherwise.

The Law on Foundations stipulates (§ 3 /2 (e))<sup>42</sup> the obligatory essential elements of a foundation deed, the identification of the members of the management board (their names, surnames, birth dates, permanent addresses), and the delimitation of the manner in which they may act in the name of the foundation. The regulation contained in § 20 of the Civil Code is also applicable in a subsidiary manner to govern external acts.

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

Generally, the management board and its members have power of representation.

**9. Liability of the foundation and its organs**

The management board is the representative body of the foundation. The representative authority of the management board and its members is unlimited unless otherwise stated in the Act on Foundations. The charter of the foundation has to specify the manner of their acting on behalf of the foundation. The foundation is liable towards third persons if a member of the management board acts on behalf of the foundation even if he exceeds his authority. The delictual responsibility of the members of a foundation body for damage is possible.

The internal relationship between the foundation and the members of foundation bodies is usually regulated by a labour contract.

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

The Law on Foundations does not differentiate between voluntary and paid board members. The management board must make decisions on the foundation's equity in line with the foundation's objectives and with due diligence.

According to the Law on Foundations, the management board is convened to determine the amount of remuneration for the discharge of duties for members of the management board, the supervisory board, or for the controller. This right, however, is not unlimited due to the relatively strict statutory limitation of expenses connected with the administration of foundations (see below).

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<sup>42</sup> § 3 /1e) of the Law on Foundations: The foundation charter, if not a testament, must include: ...e) the number of members of the management board, first and last names, personal identification numbers, or dates of birth, and permanent residence of the members of the first management board, with a statement of the manner of their acting on behalf of the foundation/ endowment fund.

The foundation charter or the statute of the foundation/endowment fund must announce one of the rules set by law<sup>43</sup> intended to curb administrative costs of the foundation/endowment fund and such a rule may not be altered for at least five years.

The following are under the exclusive competence of the management board:

- To issue the statutes and decide on amendments to them
- To approve the budget and any changes to it
- To approve the annual financial statements and the annual report on the foundation's activities and performance ("the annual report")
- To decide on mergers, unless mergers are excluded by the foundation charter
- To elect new members of the management board and of all members of the supervisory board, unless stated otherwise by the foundation charter, and to decide on recalls of members of the management board, the supervisory board or of the comptroller if they fail to meet conditions for membership or office
- To determine the amount of remuneration for the discharge of duties for members of the management board and supervisory board, or for the comptroller
- To decide on increases to the foundation's equity<sup>44</sup>

The supervisory board in particular:

- Oversees the observance of conditions for the making of foundation disbursements (contributions) and the accuracy of the accounting system maintained by the foundation/endowment fund
- Reviews the annual financial statements and the annual report
- Monitors whether the activities of the foundation/endowment fund comply with legal regulations, the foundation charter and the statutes of the foundation/endowment fund
- Points out any deficiencies to the management board and submits proposals on how to remove these deficiencies
- At least once a year, submits its oversight activity report to the management board<sup>45</sup>

Regarding its oversight activities, the supervisory board is entitled to examine accounting ledgers and other vouchers relevant to the foundation/endowment fund and to convene extraordinary sessions of the management board, if so necessitated by the interests of the foundation/endowment fund and unless convened by the chairman of the board.<sup>46</sup>

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?

The management board must make decisions on the foundation's equity in line with the foundation's objectives and with due diligence. The members of the management board are responsible for decisions about the foundations equity.<sup>47</sup> Members of the management board are jointly responsible and are therefore also collectively and equally responsible if damage is incurred by the foundation/endowment fund. A member of the management board can be acquitted of liability if he/she proves his/her innocence.

According to the Act on Insolvency No. 182/2006, the members of the management board are responsible (including individual liability of personal property) in the event damage is incurred as a result of board inactivity.

c) What is the liability of executive staff?

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<sup>43</sup> § 22/2 of the Law on Foundations

<sup>44</sup> § 10 Article 2 Law on Foundations

<sup>45</sup> § 17 Article 3 Law on Foundations

<sup>46</sup> § 18 Article 1 Law on Foundations

<sup>47</sup> § 23 Article 3 Law on Foundations

The members of management boards of foundations and endowment funds are not personally liable for the activities of the entity (outside), unless otherwise stipulated by the laws regulating bankruptcy, but they may be held responsible by the body itself for damage caused to the entity due to their decisions or activities. Such cases are dealt with according to the civil law. When members of the management board do not fulfil their duties properly, they are liable for the damage caused to the legal person. The acting bodies usually have their relationship with a particular legal person (i.e. a foundation, an endowment fund) regulated on the basis of an authorisation agreement (a contract of mandate). The internal liability is thus covered mainly by the content of such agreements. Personal liability for damage caused by an employee to an organisation is regulated by Section 172 and subsequent sections of the Labour Code.<sup>48</sup> Criminal liability of an acting body, e.g. for embezzlement, fraud, etc. is not excluded either.

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

No. Diligence for board members is built into the Law on Foundations. The founder cannot modify it. Liability is established directly by the Law and is binding on all members of the management board.

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).					
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			

<sup>48</sup> The Labour Code.

**10. Are economic activities<sup>49</sup> allowed (related/unrelated)? If so, is there a ceiling/limit on economic activities (related/unrelated)?**

The essential difference between the Czech conception of foundation law and most regulations in Western Europe consists in the acceptability (or unacceptability) of possible business activities and other limitations concerning economic activities and the use of the assets of foundation subjects.

The aim of this strict legal regulation is to eliminate the possibility of any misuse of the institute of the foundation and, above all, the protection of property. This conception, however, causes many problems in real life and there are indications that it is likely to be dropped in the future.

This strict regulation reflects the legislators' effort to protect the foundation property for the performance of the foundation purpose and to minimise the risks related to its activities. Foundations and endowment funds may also engage in other gainful activities which, however, may not meet the criteria constituting entrepreneurial (business) activities.

The Czech Law on Foundations<sup>50</sup> includes a provision on the ban of business activities engaged in by foundations. However, there are several statutory exceptions to this prohibition.

The foundation/endowment fund is prohibited from doing business under its own name, save for real estate leases, organising lotteries, raffles, public collections, cultural, social, sports and educational events. Assets of the foundation/endowment fund may not be used as collateral nor subject to any other way of securing liabilities.

The foundation assets are inalienable if this is determined by the founder or the donor. In other cases, assets may be disposed of, including the change of the composition of the assets, but only in harmony with the purpose of the foundation and with all due care. The law provides a detailed regulation of the manner in which a foundation may invest its means, with the aim of maximum protection of foundation property for the publicly beneficial purpose.

Assets of the foundation/endowment fund may not be used for the participation in the property of any other legal entity, unless the law provides for an exception to this rule. Such an exception is the property participation of foundations (i.e. not endowment funds), limited by law, in joint stock companies. A foundation may also be the founder of a public benefit institution.

The foundation may participate in the business of joint-stock companies only. The entire involvement of assets by the foundation may not exceed 20% of the foundation's property after deducting the

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<sup>49</sup> For 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.

<sup>50</sup> Section 23 (1) of the Law on Foundations

value of the foundation equity. Publicly negotiable securities issued by joint-stock companies may be purchased and sold by the foundation only in regulated markets. The foundation's stake in a joint-stock company's assets may not exceed 20%.

By contrast, the law strictly provides that foundations and endowment funds may not become members of an unlimited liability company, general partners in a limited partnership company, silent partners or members of a cooperative whose members are obliged to cover the losses of the cooperative over their membership contributions, or members of other legal persons if such members are liable for the obligations of such persons.

#### **11. Are foundations permitted to be major shareholders?**

Major shareholding is not allowed.

#### **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?**

The Law on Foundations strictly regulates the manner in which the property of foundations and endowment funds may be used. This detailed mandatory regulation is a reaction to the misuse of the institution of the foundation in the 1990s, mentioned above, and is guided by the effort to preserve foundation assets for their publicly beneficial purpose to the greatest degree possible.

The property of a foundation/endowment fund may, generally, be used only in keeping with the purpose and conditions specified in the foundation charter or the statutes as a foundation contribution, and for the payment of costs related to the administration of a foundation. The costs pertaining to administration<sup>51</sup> of the organisation must be kept separately from its foundation disbursements (contributions). Members of the bodies of the foundation/endowment fund, or the comptroller, are not eligible for foundation disbursements. The foundation/endowment fund is prohibited from financing political parties or political movements. The foundation charter or the statutes must also announce one of the rules intended to curb administrative costs of the foundation/endowment fund. The rule may not be altered for at least five years<sup>52</sup>.

There is a limitation on economic activities and the prohibition of business for foundations and endowment funds (see above).

The property of a foundation/endowment fund may not be mortgaged, or used as any other form of security for its obligations. The foundation property is inalienable as long as this is provided for by the founder or the donor. In other cases, the property may be used but only in keeping with the goals of the foundation and with all due care. The law further strictly provides the manner in which a foundation may invest the financial means which form a part of the foundation property.<sup>53</sup>

Regarding the sale of the assets of an endowment fund or the lease of real estate constituting part of the property of the foundation/endowment fund, the buyer or leaseholder may not be a member of the management board, the supervisory board, or the comptroller, or any person close to them<sup>54</sup>

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<sup>51</sup> Costs pertaining to administration of the foundation/endowment fund include particularly the costs to achieve and valorize assets of the foundation/endowment fund; costs to promote the purpose of the foundation/endowment fund; and operating costs of the foundation/endowment fund, including emoluments for the management board, the supervisory board, or the comptroller.

<sup>52</sup> The decisive period is a calendar year.

<sup>53</sup> § 23/3 to 10 of the Law on Foundations

<sup>54</sup> § 116 of the Civil Code.

or a legal entity of whose statutory body a member of the management board, the supervisory board, or the comptroller of the foundation/endowment fund happens to be a member.

The Law on Foundations determines the rules and limitations regarding foundations' asset management.

The Law on Foundation allows the following instruments of investment:

- Investment instruments emitted in an OECD state valued in CZK or any other currency
- Financial market instruments
- Bonds registered on capital markets in any OECD state
- Shares of pooled investment funds (maximum 30% stocks in portfolio)
- Securities emitted by central banks or states
- Real estate<sup>55</sup>
- The Law on Foundations also includes rules for safe investments. The total amount of the following instruments cannot exceed 30% of total endowment value:
  - Investment instruments in foreign currency
  - Shares of investment funds other than collective investment fund bonds with a lower rating than the rating of the Czech Republic with no state guarantee<sup>56</sup>

Alternative investments are not permitted.

**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)**

Foundations are not legally allowed to allocate grant funds towards furthering their public benefit purpose/programmes which (can) also generate income.

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

Under current Czech law on Foundations it is very difficult to do any change of the foundation charter. If it is necessary, a court can do it, but it is complicated. The purpose is stated in the foundation charter, so it is almost impossible to make any changes. It is rare, but if this is undertaken, the court implements the changes with *cy-prés* approach.

The statutes of the foundation deal with the functioning of the foundation's bodies; conditions for the provision of foundation grants and the types of beneficiaries eligible to receive them; and the manner of the provision of these grants, as well as other issues.<sup>57</sup>

**15. 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?

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<sup>55</sup> § 23 article 3 Law on Foundations

<sup>56</sup> § 23 article 4 Law on Foundations

<sup>57</sup> § 4 article 1 Law on Foundations

A foundation/endowment fund must compile its annual report by the deadline set by law<sup>58</sup>: By the end of the next accounting period at the latest.

The foundation/endowment fund must file the annual report with the register court.<sup>59</sup> Everyone is entitled to peruse the annual report and make copies and excerpts.<sup>60</sup>

### The Annual Report

The foundation has to prepare and publish an annual report in line with the Law on Foundations. The foundation compiles its annual report by the deadline determined by its management board, or by the statutes of the foundation, but at the latest within 6 months of the completion of the period under review. The period under review is the past calendar year, or the time elapsed between the establishment of the foundation and the end of the calendar year in which the foundation was established, if it is the organisation's first annual report.<sup>61</sup>

The annual report outlines the activities of the foundation in their entirety during the period under review, as well as providing an assessment of these activities. In particular, it must to include:

- An outline of assets and liabilities of the foundation
- An outline of the use of the property of the foundation
- An outline regarding persons who were beneficiaries of the foundation
- An assessment of whether the foundation adheres to the administrative cost-curbing rule in its economic performance
- An assessment of basic disclosures contained in the annual financial statements and the auditor's opinion supplemented by significant findings from the audit report (the annual financial statements constitute an appendix to the annual report)<sup>62</sup>

### Auditing

The foundation's annual financial statements have to be verified by an auditor. An endowment fund's annual financial statements have to be verified by an auditor for any calendar year in which the sum of total costs or revenues disclosed by the endowment fund exceeded 3 million CZK (approx. €107,000 ), or if the endowment fund's assets are in excess of 3 million CZK.<sup>63</sup>

#### 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)

Annual report including details of finances and activities must be submitted to the registration court and the tax report to tax authority.

#### 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)?

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<sup>58</sup> 26 article 1 Law on Foundatons

<sup>59</sup> § 26 Article 1 Law on Foundations

<sup>60</sup> § 26 article 1 Law on Foundations

<sup>61</sup> § 25 article 1 Act on Foundation

<sup>62</sup> § 25 article 2 Act on Foundation

<sup>63</sup> § 24 article 2 Law on Foundations

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

The tax authority carries out checks in relation to tax issues. A court can check the annual report.

d) 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)

The information can be accessed via the registry. This includes not only the basic data, but also the full collection of deeds with all necessary documents important for the life of an established legal person, i.e. the fundamental document, annual reports, information about mergers or termination of subjects, etc. The documents to be placed in this collection of deeds are specified by particular special acts. In this respect, the regulation contained in the Commercial Code and the Civil Procedure Code concerning matters of the commercial registry is applicable in a subsidiary way.

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

Yes, The Law of Foundations (§24, Art. 2) provides that a foundation's annual financial statements must be verified by an auditor. An endowment fund's annual financial statements must be verified by an auditor for any calendar year in which the sum of total costs or revenues disclosed by the endowment fund exceeds CZK 3 million, or if the endowment fund's assets are in excess of CZK 3 million.

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

Private auditors.

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

The Supervisory Board/Comptroller:

- Is the oversight body of the foundation
- Oversees the observance of conditions for the provision of foundation disbursements (contributions)
- Reviews the annual financial statements and the report
- Supervises whether the activities comply with the legal regulations, the foundation charter and the statutes of the foundation
- Points out any deficiencies noted to the management board and submits proposals on how to remove these deficiencies<sup>64</sup>

The Auditor:

The auditor verifies the foundation's annual financial statements.<sup>65</sup>

The Registration Court:

The Court, upon the motion of a member of the management board or supervisory board, the founder, the executor of the testament through which the foundation was set up, or a person who asserts his lawful interest, may recall a member of the management board if the management board

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<sup>64</sup> § 17 article 3 Law on Foundations

<sup>65</sup> § 24 article 2 Law on Foundations

does not act to recall the member for the reasons stipulated by the Act on Foundations within one month of the date on which it learned the reason for the recall.<sup>66</sup>

The Court will wind up a foundation (this applies just to foundations, not to endowment funds) whose equity yields no revenues on a permanent basis and which has no other assets and thus cannot fulfil the purpose for which it was set up, if so requested by the founder, the executor of the testament, the management board or a person who asserts a lawful interest.<sup>67</sup>

The Court will wind up an endowment fund whose endowment fund assets have been irrevocably used up (disbursed) and which can no longer fulfil the purpose for which it was set up, if so requested by the founder, the executor of the testament, the management board or a person who asserts a lawful interest.<sup>68</sup>

The Court will wind up a foundation if requested by the founder, the executor of the testament, or a person who asserts a lawful interest if:

- The foundation in its activities gravely or repeatedly violates the Act on Foundations, its foundation charter or statutes
- In the preceding year, not a single session of the management board was held or no members of the bodies of the foundation were elected, nor a comptroller appointed, to replace those members whose membership or office ceased to exist more than one year ago
- The foundation did not fulfil, during a period of at least two years, the purpose for which it was set up, and the foundation has not made efforts to rectify the matter by the deadline set by the court<sup>69</sup>. The court will appoint a liquidator for the foundation, if the management board does not appoint a liquidator without unnecessary delay in case of liquidation of the foundation<sup>70</sup>. The court will appoint a liquidator for the winding up of the foundation following a court judgement on winding up the foundation and a declaration of bankruptcy, or the rejection of a bankruptcy motion due to insufficient assets<sup>71</sup>

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?

There is no special supervisory body. There is a combination of strict regulation, internal supervision, court supervision and tax authority supervision.

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

There is a combination of strict regulation, internal supervision, court supervision and tax authority supervision. We do not believe that enquiries are made or that public benefit organisations are subject to inspection.

c) Is approval from the authority required for certain decisions of the Management board?

No, generally not.

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

No

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

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<sup>66</sup> § 15 article 2 Law on Foundations

<sup>67</sup> § 3 article 3 Law on Foundations

<sup>68</sup> § 7 article 4 Law on Foundations

<sup>69</sup> § 7 article 5 Law on Foundations

<sup>70</sup> § 9 article 2 Law on Foundations

<sup>71</sup> § 9 article 2 Law on Foundations

Not applicable.

### **17. When and how does a foundation dissolve?**

The foundation ceases to exist from the date it was deleted from the register.<sup>72</sup>

The foundation will be wound up:

- By the resolution of the management board, when the purpose the foundation was achieved
- By merger with another foundation on the date of the merger agreement
- by a Court judgement on winding up the foundation on the date shown in this judgment, or on the legal effective date of such a judgment
- By a declaration of bankruptcy or rejection of a bankruptcy motion due to insufficient assets<sup>73</sup>

The Court will wind up a foundation if:

- The foundation in its activities gravely or repeatedly violates the Law on Foundations, its foundation charter, or statutes
- The foundation did not fulfil, during a period of at least two years, the purpose for which it was set up and did not make efforts to rectify the matter by the deadline set by the court
- The foundation equity has fallen below 500,000 CZK (approx. €18,000)
- In the preceding year, not a single session of the management board was held or no members of the bodies of the foundation fund were elected, nor a comptroller appointed, to replace those members whose membership or office expired more than one year before<sup>74</sup>

A revision of the Law on Foundations enacted 1 July 2010 allows the winding up of the management board of an endowment fund (but not of a foundation), for practical reasons, such as in a cases, where the endowment fund no longer has any assets and cannot fulfil the purpose for which it was established. This must, however, be allowed and approved by the founder.

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

Foreign foundations (based in their own countries) are recognised as legal persons in the Czech Republic. Foundations are governed (have a legal status) by the law of the state in which the NGO had its registered office at the time of its establishment (the incorporation theory).

A legal entity with its registered office outside the territory of the Czech Republic which is a foundation or an endowment fund under the law of the country in whose territory it has its registered office (hereinafter only "a foreign foundation"), may perform its activities in the territory of the Czech Republic under identical conditions and in an identical scope as foundations or endowment funds established under the Czech law. The right of the foreign foundation to operate in the territory of the Czech Republic commences on the date of the registration of its branch (*organizační složka*) established in the territory of the Czech Republic in the register, and ceases to exist on the date of the branch's deletion from the register. The register court will register the branch of a foreign

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<sup>72</sup> § 7 article 1 Law on Foundations

<sup>73</sup> § 7 article 2 Law on Foundations

<sup>74</sup> § 7 article 3 Law on Foundations

foundation that has been established in the territory of the Czech Republic, provided that the foundation serves a public benefit purpose<sup>75</sup>.

The Czech Republic has not ratified the European Convention on the recognition of the legal personality of international non-governmental organisations (1986) yet, and it does not seem as though that it will be in force in the future.

**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?**

The Law on Foundations does not place restrictions on conducting grant-making, operating, or carrying out fundraising activities abroad.

According to the Law on Foundations, a foundation must deposit the money that is part of the foundation equity at a special account in a bank or in a branch of a foreign bank operating in the Czech Republic, or can use the money to purchase investment instruments issued in an OECD membership state (such financial instruments may be in Czech or foreign currency).

**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?**

Tax exemption for a foundation registered in the Czech Republic is applied automatically on the basis of the law. Tax exemption is based on the legal form of the foundation (endowment fund).<sup>76</sup>

**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?)**

No.

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

Not applicable.

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

This obligation is generally not stated in the law, but a contract between a donor and grantee can contain such an obligation.

**5. Are there specific accounting rules for foundations?**

Foundation should account separately for administrative costs and costs incurred in pursuit of statutory purposes.

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<sup>75</sup> § 27 Law on Foundations

<sup>76</sup> The Income Tax Law No 586/1997 (Income Tax Law)

**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 special public benefit status. The discussions on the meaning of the term 'public benefit', the establishment of the status of 'public benefit' in the Czech legal system and other related issues have been going on at various levels for some time and will certainly continue in the future

**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.**

From the point of view of taxes, the Czech legal system does not really distinguish between public and non-public benefit NGOs, thereby providing public advantages also (but not always) to private activities or, to put it another way, legal persons which carry out solely private activities. Tax advantages are conditioned by non-profit character, which have to be both – formally stated (in foundation documents) and really executed (this means there is real non-profit activity). Some legal forms are excluded such as business corporations, legal entities founded for the protection of business interests and also foundations set up for family purposes.

I. Act on Income Tax:

Exemption may be applied to donations given to charities located in the Czech Republic which finance one of the following qualifying purposes:

- Science and learning
- Research and development
- Culture and education
- Police
- Fire departments
- Support and protection of youth
- Protection of animals
- Social and health care
- Ecology
- Humanitarian and charitable purposes
- Religious purposes for registered churches and religious communities
- Sports

In addition, donations to natural persons living in the Czech Republic who use the donations to run schools and healthcare establishments and care for abandoned animals or endangered species are also tax-exempt. The same pertains to donations to handicapped persons with permanent residency in the Czech Republic, as well as donations to remedy the damage caused by natural disasters occurring in the territory of the Czech Republic.

Exemptions of gifts from Income tax are available for all public benefit NGO's when the gift is used for qualifying purposes stated above (same as in the case of tax benefits for donors)

For purposes of tax benefits for NGO's – same treatment as gift has free of charge service.

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”?

Yes. Foundations and Endowment Funds are public benefit by definition directly in the Law on Foundations. Thus, they have to serve the public at large.

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

In principle yes, except family foundations

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”<sup>77</sup> which forbids any financial support of the foundation board, staff, etc.?

There are generally no tax restriction in tax law. The restrictions are only in Czech civil law.

A member of the Management board or controlling body of a foundation or endowment fund cannot receive foundation contributions.

“An individual who is disbursed means that constitute fulfilment of the purpose of the foundation/endowment fund may not serve as a member of the management board; nor can he be a member of a statutory or controlling body at a legal entity if the means that constitute fulfilment of the purpose of the foundation/endowment fund are disbursed to this legal entity”.

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

The founder can state in the foundation charter that any liquidation balance in case of dissolution of the foundation/endowment fund has to be transferred to another foundation/endowment fund pursuing the same purpose. If the foundation charter does not state this, the liquidator will offer this liquidation balance to a foundation/endowment fund with an identical, or similar, purpose. If no such foundation/endowment fund is identified by the liquidator, or if this balance is refused by the

<sup>77</sup> For 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.

liquidator-identified foundation/endowment fund, the liquidator will offer this balance to the municipality where the foundation/endowment fund is located. If the municipality does not accept the offer within 60 days from the offer date, this balance will go to the state treasury upon the expiration of the 60 day deadline. The state is required to use this liquidation balance for publicly beneficial goals.<sup>78</sup>

## 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**?

Administration costs of the foundation/endowment fund include particularly the costs to achieve and valorise assets of the fund; costs to promote the purpose of the fund; and operating costs of the fund, including emoluments for the management board, the supervisory board, or the comptroller.<sup>79</sup>

The regulation limiting administrative expenses is incorporated in the Law on Foundations. The administrative and operational expenditures of a foundation or endowment fund are limited by a rule, which cannot be changed for at least five years. In the case of a foundation, this rule may be expressed as a percentage of the yield from the endowment, a percentage of the total endowment value or a percentage of the total yearly value of the grants made by the foundation to third persons. In the case of an endowment fund, the rule may be expressed as a percentage of the yield from the property of the fund, a percentage of the total assets of the fund or a percentage of the total yearly value of the grants made by the fund to third persons.<sup>80</sup>

There is no special treatment in Czech tax law.

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)

Receipt of some type of benefit in return for a donation (postcards, free tickets) is not exempt from income tax. But this income will be treated as a “windfall” income and so in case of individual taxation it could be exempted from the tax to the limit of approximately €1,050 windfall incomes in total.

A donor or founder should declare any such benefit as income for income tax purposes.

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

The foundation charter or the statutes of the foundation/endowment fund must announce one of the following rules intended to curb administrative costs of the foundation/endowment fund:

- Total annual cost of the foundation/endowment fund pertaining to administration of the fund may not exceed a certain percentage of total annual revenues from foundation equity or assets of the endowment fund
- Total annual costs of the foundation/endowment fund pertaining to administration of the fund may not exceed a certain percentage of the value of the foundation disbursements of that year

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<sup>78</sup> § 9 Article 4 Law on Foundations

<sup>79</sup> § 21 Article 2 Law on Foundations

<sup>80</sup> § 22 Law on Foundations

- Total annual costs of the foundation/endowment fund pertaining to administration of the fund may not exceed a certain percentage of foundation equity or assets of the endowment fund depending on their disclosure for the year ending 31 December

This rule as per paragraph 1 may not be altered for at least five years. As per paragraph 1, the decisive period is a calendar year.<sup>81</sup>

There is no special treatment in Czech tax law.

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
- 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

## 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>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

<sup>81</sup> § 22 Law on Foundations

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>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

### 13. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their capital?

The assets of a foundation/endowment fund may be used only in line with the purposes and conditions set forth in its foundation charter or statutes as the grants and administrative costs<sup>82</sup>. The foundation equity is inalienable, provided that a founder or donor so requests. If this is not the case, the foundation equity may be disposed and the composition of foundation equity may be changed, provided that such disposal and changes are carried out in line with the foundation's objectives and with due diligence.<sup>83</sup>

If during the course of the existence of a foundation, its equity falls below the value registered in the Register of Foundations, the foundation shall supplement the equity to reach the registered value. If the equity is not supplemented to reach the registered value within two years after the end of the accounting period in which the value decreased, the foundation shall be obliged to adopt a resolution to decrease the foundation equity in accordance with the actual status within three years after the end of the accounting period in which the foundation equity decreased.<sup>84</sup>

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?

The Law on Foundations permits the winding-up of a foundation or endowed fund upon the attainment of the purpose for which it was set up by the date listed in the resolution by the management board on this matter.<sup>85</sup>

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

<sup>82</sup> § 21 Article 1 Law on Foundations

<sup>83</sup> § 23 Article 3 Law on Foundations

<sup>84</sup> § 23 Article 11 Law on Foundations

<sup>85</sup> § 7 Article 2 Law on Foundations

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?)?

Foundations and endowed funds have an obligation to distribute grants. Upon a motion by the founder, the executor of the testament, or a person who asserts a lawful interest, the Court will wind up a foundation/endowment fund if it has not fulfilled, during a period of at least two years, the purpose for which it was set up (especially, if it has not distributed grants for a period of two years), and the foundation/endowment fund has not made efforts to rectify the matter by the deadline set by the Court.<sup>86</sup>

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 civil law and tax law do not require foundations to spend a percentage of their overall assets. The only rule is incorporated in the Act on Foundations: Foundations and endowment funds must distribute grants during a two year period (with a minimum of one grant during a period of two years).

Example: Does the **civil law** of your country accept the following activities of a public benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation.					

Example: Does the **tax law** of your country accept the following activities of a public benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation.	X				

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

No, but some benefits are connected with having the seat of the foundation in an EU or EEA country.

<sup>86</sup> § 7 Article 5 Law on Foundations

**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.**

Foundations from EU or EEA countries have same treatment as foundations seated in Czech Republic.

**16. Income tax treatment**

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

Grants and donations

Foundation income from donations or grants is exempted from income taxes.

Investment income (asset administration)

- Interest from fixed rate bonds

When the bonds or bank accounts are part of a foundation's endowment, the interest is exempted.

If not, interest from bank account is exempted from income tax and interests from bonds are taxed regardless of the owner.

- Equities

- Income from leasing of a property that belongs to the foundation -

When it is part of a foundation's endowment, it is exempted from income tax. If not, - standard corporate taxation.

Economic activities related/unrelated

- 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)

The foundation is prohibited from doing business under its own name, save for real estate leases and organising lotteries, raffles, public collections, cultural, social, sport and educational events.<sup>87</sup>

There is a special deduction for NGOs: Profits of less than 300,000 CZK (approx. €11,000) are exempt.

Foundations may deduct 30% from their tax base up to 1 million CZK (€36,000) if the tax savings are used to cover expenses from tax-exempt activities or the promotion of them.<sup>88</sup>

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<sup>87</sup> § 23 article 1 Law on Foundations

<sup>88</sup> § 20 article 7 of the Income Tax Law

Foundations may invest up to 30% of their endowment value in bonds and other low-risk securities, and not more than 20% of other resources in shares of joint-stock companies, if these securities are bought and sold on public markets, and are prohibited from owning more than 20% of the equity of a stockholding company.<sup>89</sup>

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

n/a

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

Major shareholding is not allowed.

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

It is not separate from income taxes.

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

All taxpayers (including foundations) whose turnover exceeds 1 million CZK (approximately €33,300) in any consecutive 12 month period must register as a VAT payer with the tax authorities. The taxation period can be one month or one quarter. The turnover does not include membership fees or subsidies from the state budget or the EU budget.<sup>90</sup>

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

Capital taxes are not applicable.

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

Transfers of property to foundations registered in the Czech Republic are exempt from taxes. The foundation has to register the transfer with the tax office in cases where the foundation is applying for a tax exemption.

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

Exemption from land use tax is available for the lands owned by a foundation. Exemption from the tax on buildings is available for buildings owned by a foundation.

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<sup>89</sup> § 23 article 2 Law on Foundations

<sup>90</sup> The Value Added Tax Act No. 235/2004

**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?
- Other?

Tax benefits are also available (revision of the Income Tax Law 2009) for organisations based outside the Czech Republic, but only within the EU, and Norway and Iceland. Foundations based in other countries are excluded. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil in order to receive tax exemptions.

**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?**

### **III. Tax treatment of donors of public benefit foundations**

#### **1. System of tax credit<sup>91</sup> or tax deduction<sup>92</sup>?**

There is a system of tax deduction.

The Czech tax law foresees tax incentives for donations to public benefit foundations (nadace). According to Section 15 (1) and Section 20 (8) of the Income Tax Act the donor can deduct the amount of the donation in his/her tax income tax statement (tax deduction) in the following way: The object of a donation may be a movable asset (money, goods, services, securities etc.) as well as real estate and also free of charge services.

#### **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?

The donation made by a natural person is deductible up to 15% of the tax base, provided at least 2% of tax base is donated or not less than 1,000 CZK (approx. €35). The donation must be given to a foundation headquartered in the Czech Republic.<sup>93</sup>

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<sup>91</sup> For 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)

<sup>92</sup> For 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)

<sup>93</sup> § 15 article 8 of Income Tax Law

Donations to foundations and endowment funds (registered in Czech Republic, and from 2009 also the EU, and Norway and Iceland) may, in accordance of Section 15 (1) of the Income Tax Act, be provided also by natural persons. Such natural persons may deduct from their tax base amounts exceeding, in a given tax period, 2 per cent of the tax base or at least CZK 1,000. (approx. €35). They may, however, deduct no more than 15 per cent of the tax base.

b) Which assets qualify for tax deductibility?

The object of a donation may be a movable asset (money, goods, services, securities etc.) as well as real estate and also free of charge services. In the case of a non-monetary gift, it is necessary to estimate its value.

### **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?

The donation made by a legal person is deductible up to 10 % of tax base, provided at least of 2% of tax base is donated. The value of each donation has to be at least equivalent to approximately €35.

b) Which assets qualify for tax deductibility?

Under Section 20 (8) of the Income Tax Act, any legal person may deduct from its tax base the amount of donations provided to foundations and associations with their registered office in the Czech Republic, if this is used for the financing of science and education, research and development purposes, culture, education, police, fire protection, support and protection of young people, animal protection, social, health, ecological, humanitarian, charitable, or religious purposes of registered churches and religious organisations, physical education and sports purposes, or for activities of political parties and movements, as long as the amount of the donation is at least CZK 2,000. Starting from 2001, a total of no more than 10% of the tax base for income tax of legal persons may be deducted. Before this, the limit was 5% of the tax base and before that 2% of the tax base. A donation provided in this way is not only bound to a particular purpose without the possibility of being used for any other purpose, but it is also exempt from income tax. A donation may be obtained on the basis of a gift agreement (or a subsidy agreement), clearly delimiting the purpose of the donation. This deduction may not be carried out by entities not founded or established for the purpose of business.

The donation must be given to a not-for-profit organisation headquartered in the Czech Republic or, according to the law expressed in cases since 2009, in the EU, or Norway or Iceland, or to a legal entity organising a public collection.<sup>94</sup>

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

Following the revision of inheritance and gift tax law in 2009, is possible to donate to a foundation abroad and to receive corresponding tax reliefs, if this foundation is recognised by the local law as a

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<sup>94</sup> § 20 article 8 of Income Tax Law

public benefit organisation. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil.

Donations to foundations based in other countries are excluded.

#### **5. Other frameworks such as percentage law system**

No, the percentage law system has not yet been adopted in the Czech Republic.

#### **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 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?)?

In general a copy of the gift contract is enough. But this treatment is case by case (burden of proof in this tax benefit is on the taxpayer – donor).

#### **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 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?)?

There is no special treatment.

### **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?**

Grants provided by a foundation in accordance with its statutory purposes to any legal or natural person are tax-exempt.

## **V. Gift and inheritance tax**

Czech law do not foreseen gift or inheritance tax since 1st January 2014. Gifts and inheritance are considered as an income for purposes of income tax. There also exists a tax benefit for public benefit foundations according to § 19b (1), b) of income tax code. Donations and legacies to foundations registered in the Czech Republic (and also in the EU or EEA) are exempted from income taxes. The same applies to any organisation (regardless of legal form) which is performing one or more of the activities mentioned above. Also donations and legacies to political parties and registered churches are exempted.

- 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?**

The Ministry of Justice is working on the reform of private law. The reform of the Civil Code (CC) will introduce a new conception of the legal subjects of private law, foundations included. A definition of public benefit will be part of the new CC. The new CC will divide foundations into private (family) and public benefit foundations. It will come into force in the year 2013 at the earliest.

The legal framework for foundations and endowment funds, which was constituted in the 1990s, has stabilised and current changes are only partial. There has been a slight trend towards liberalisation of the sector, such as is also manifested in the amendment to the Act on Foundations and Endowment Funds (in force from 1 July 2010). The most important change is that foundations and endowment funds have been "freed" to carry out their own programmes and to separate the costs of these activities from the administrative costs of the foundation. This change increases the scope for foundations and endowment funds to carry out their own activities. Moreover, the amendment also took into account the particularities of endowment funds and targets the transparency of the foundation sector.

The upcoming reform of the Civil Code is expected to establish considerable changes to the concept of private law.. One important upcoming development is an Act on the public benefit status. For at least 10 years, there has been a discussion going on about the recodification of Czech private law<sup>95</sup> which would result in changes to the legal position of legal persons, including civil society

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<sup>95</sup> A proposal of a new Civil code will be soon discussed by the Czech Parliament.

organisations (CSOs) - including the positive specification in the legal regime of associations, foundations and institutions as special legal forms. Part of this complex reform of private law is a proposal for a new act on commercial companies.

The aforementioned Act on public benefit status (currently being drafted) will be part of conceptual reform, together with the reform of tax law. The draft of the proposal is still very unclear and there are various issues that it may yet take some time to resolve. Neither the current Civil Code nor any other legal regulation contains an explanation of what "public benefit" is.

There is a general agreement that a new Civil Code should provide a unification of the entire area of private law. It should formulate the fundamental principles and be sufficiently general that frequent amendments are not necessary. Most important and decisive, however, will be the quality of the proposed code and its applicability in practice.

The new Civil Code entered into force on 1<sup>st</sup> January 2014. An Act on public-benefit status is still in the drafting phase (in 2013 it was denied by Parliament).

## **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)?**

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

No, there is not.

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?**

### **4. Public fundraising**

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

The granting of public subsidies is partly regulated by law<sup>96</sup> and partly a matter of the policy of the central or local government authorities. The funding conditions are mostly not set down by law. The grant rules are set by individual ministries and public funds, e.g. the State Fund for the Environment, the Grant Agency of the Czech Republic etc. Following the reform of the public administration carried out at the beginning of the new millennium, the situation has improved. Nowadays, even regional units and municipalities have their own policies on providing subsidies. Centrally, the principles for distributing the subsidies are submitted to the Advisory Board for NGOs, which is an advisory body to the government of the Czech Republic which may influence the government's decisions. Special rules for the provision of subsidies have been set in the agreement on the provision of contributions from the NIF (Foundation Investment fund). The subsidies are provided on the basis of agreements on the provision of contributions. It is also possible for contracting parties to agree on other rights and obligations. Any violation of such rules may be sanctioned by, e.g. the duty to return the contribution made.

### **Useful contacts**

Czech Donors Forum

[www.donorsforum.cz](http://www.donorsforum.cz)

[donorsforum@donorsforum.cz](mailto:donorsforum@donorsforum.cz)

[www.law.muni.cz](http://www.law.muni.cz)

The Ministry of Finance

[www.mfcr.cz](http://www.mfcr.cz)

The Association of Tax Advisors

[www.kdpcr.cz](http://www.kdpcr.cz)

Masaryk University, Faculty of Law, dept. of Civil Law

[www.law.muni.cz](http://www.law.muni.cz)

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<sup>96</sup> Act No. 218/2000 Coll. - the Act on Budgetary Rules, and the Act No. 250/2000 Coll. on Budgetary Rules of Regional Budgets

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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](http://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.