



This document has been provided by the International Center for Not-for-Profit Law (ICNL).

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at
<http://www.icnl.org/knowledge/library/index.php>
for further resources and research from countries all over the world.

Disclaimers

Content. The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

Translations. Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

Warranty and Limitation of Liability. Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

Legal and economic analysis

At the present time, a foundation as an institution is dealt with in the Civil Code. This is, however, only a general and piece meal arrangement which anticipates that the details on foundations will be dealt with by a special law of the Federal Assembly. As of the date the federation had been dissolved, such a law still had not been approved.

1. The current lack of the detailed foundation regulation is felt as a legal vacuum, both as it concerns the foundation's actual practice as well as the activity of the appropriate state bodies. In particular, it is objected that as a consequence, many entities which are registered as foundations, have the characteristics of trading companies or various civic associations which aim to monitor private (business) interests or the interests of their members. From the legislative perspective the objection is that clear limits have not been established for the foundation's economic activities or for the obligation to provide public control of foundations, etc..

The primary objective of the proposed arrangement is to react to these inadequacies. Simultaneously, in accordance with the need for a policy of development of the so-called non-profit sphere in the area of public interest and needs, the proposal aims to enhance the trustworthiness in the foundation's activity which should contribute towards its development. It may be expected that there will be a rise in the material support by citizens and legal entities for foundations oriented towards the public interest.

2. Within the presented proposal, a foundation is delineated by two terminological characteristics :

A foundation is hereby declared to be an associated property which has the status of a legal entity. The proposal bases this characteristic on the general characteristic of legal entities as stipulated in the Civil Code. It also conforms to the meaning of a foundation as presented in the laws of developed democratic countries.

Another characteristic of a foundation is the determination of its objective for which the property may be associated and used. Such an objective may be, in accordance with the proposal, attaining generally

beneficial goals. The proposal outlines the term "generally beneficial goals" only through a sample list of certain areas. It is a general outline which is supposed to serve as a legal criteria to determine whether in the specific case it involves a foundation or not. Such a determination will be made by the court which had decided to register the foundation. (At the same time, both characteristics of a foundation also differentiate a foundation from other organizationally legal forms, including the so-called non-profit legal entities within the new law under preparation).

The characteristics which form the legal basis of the foundation's structure serve as the basis for formulating other principles of the proposal.

The foundation is a legal entity with rights of privacy.. Concurrently it appears that, from the point of view of the practical use of the foundation's assets, it will be necessary that certain questions be subjected to an increased public legal regulation, particularly in the case of the foundation's establishment, its economic management, publicizing the results of its economic management and the resolution of other related questions, such as its liquidation and the management of the liquidation balance.

The economic management rules are dealt with in principles nos. 11 and 12. In particular, these principles disallow a foundation, that means the foundation's administrator, to undertake any business activity in his own name with the foundation's assets. At the same time, this law does not exclude the possibility of a necessary and practical increase in the foundation's assets through its participation in the business activity of other entities (owning and purchasing securities, shares and bonds, owning business shares). The property participation in the business activity of other persons, however, may not exceed a stipulated percentage share, which would represent a danger for the foundation's assets that such assets could not be used for the foundation's specified basic purpose. The same aim is followed by the prohibition against putting up the foundation's assets as security, as well as a prohibition against making the foundation's assets the subject of other forms of security for an obligation. The protection of the foundation's assets is also implemented through the mandatory selection of one of the legally identified criteria which limit the cost of the foundation's administration.

The proposed principles also contain a solution aiming to ensure that the foundation's economic management will be clear and transparent. Primarily it

introduces a mandatory audit for foundation's which are obligated to have a double entry accounting system. It also imposes on the foundation, that is on its bodies, the obligation to work out an annual report which would provide a comprehensive overview of all of the foundation's activities and any changes in its assets during the particular year. The annual report, including the annual accounting statement, will be filed with the court which had registered the foundation. It is a public record which is accessible to all.

The principles also deal with the foundation's bodies. The administrator of the foundation's assets is the Administrative Council which is also the foundation's statutory body.

The Administrative Council is a council which has to consist of at least three physical entities. A member of the foundation's Administrative Council has to fulfill the legally stipulated conditions. The proposal delegates authority to the Administrative Council relating to the execution of its administration, particularly approving the budget, the annual accounting statement and the annual report, deciding about the foundation's property participation in the business activity of other entities and the purchase or sale of securities, immovable or movable assets and, last but not least, approving the statute and its changes.

The foundation's second body is the Supervisory Council or an inspector. It has the control authority in accounting and verifies the accuracy of the accounting statement and the annual report. The existence of the Supervisory Council (inspector) and its rights and obligations is another element of the foundation activity's control mechanism, in addition to the previously mentioned public control made possible by the accessibility of the annual report to the public.

The activity of the foundations established in accordance with the current legal arrangement, will be resolved by the temporary provisions of the proposed law. Such foundations will be provided with a time period within which to register in the Foundation Index, under the condition that they will adjust themselves to the demands of this law. If the foundation will be inactive or if it will not adjust itself to the conditions, it is proposed that the court should cancel such a foundation, unless the foundation's statutory body had decided within the stipulated period as to its cancellation and liquidation.

It is not anticipated that the proposed legal arrangement will cause an increase in the demands placed on the state budget. The transfer of the authority for the foundation registration from the district municipalities to the courts should merely be a transfer of the resources between the budgetary chapters.

In Prague, on this day May 10, 1995

Prime Minister

Deputy Prime Minister
authorized to direct the
Bureau for Legislation and Public Administration