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## **Slovakia: Changes in the legal environment for foundations and public benefit centers**

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As of March 1<sup>st</sup>, 2002, the legal environment for Foundations and for Not-for-Profit Organization Providing Public Benefit Services (non-membership establishments providing services of public benefit - let us call them hereafter only “Centers”) has changed –new laws adopted by the Slovak National Council (Parliament of the Slovak Republic) entered into power:

- **The Act No. 34/2002, on Foundations and the Change of the Civil Code as Amended by Later Acts** replaced the former Act No. 207/1996, on Foundations in the text amended by the Act No. 147/1997.
- **The Act No. 35/2002** amended substantially the Act 213/1997, **on Non-Profit Organizations Providing Generally Beneficial Services.**
- **The Act No. 13/2002, on Conditions of Transformation of Certain Budgetary Organizations and Subsidiary Organizations into Non-Profit Organizations Providing Generally Beneficial Services (Transformation Law) and on Amendment and Change of the Act No. 92/1991, on Conditions of the Transfer of the State Property on Third Persons in the Text of Later Amendments** made it possible to Centers from governmental organizations.

What are the main changes made by the new laws?

1. Both Foundations and Centers must reregister and supply additional data to the newly created registering offices established at the Ministry of Interior for Foundations and at regional offices and a Central Register being maintained also at the Ministry of Interior – the two Registers are accessible to general public and contain identification and other data, which are needed by third parties to conclude contracts with Foundations and Centers with full information about the persons acting on behalf of these organizations and about the public benefit statutory purposes or services to be provided, respectively.
2. The Foundations must maintain an Endowment – a core of their property, whose value may not be lowered and may not be less than SKK 200,000 (about USD 4,500).
3. The Foundations are allowed to create Trusts by their own decision or in agreement with a third person; the Trusts are treated as a separate part of the property of a Foundation, which is to be used under specified conditions for a specified public benefit purpose. The Trusts do not acquire their own legal personality. The Foundation is entitled to be remunerated for management of the Trust.
4. The Foundation’s main activity is to **provide monetary and non-monetary grants to third parties for the public benefit purpose; The Center’s main activity consists in providing public benefit services under equal and preliminary defined conditions to all users. The lists of public benefit purposes and services are included in the laws – they are extensive and may be considered as open lists, but that would depend on the o interpretation of the registering office.**
5. The Foundation may not conduct business, except for renting real estates, organizing cultural, educational, social or sport activities, if these activities contribute to more effective use of its property and if these activities comply with the public benefit purpose of the Foundation. The Foundation may not enter into agreement on silence partnership.

6. The Centers may be engaged in business activities according to special regulation<sup>1</sup> under the condition that such activity allows for more effective use of its property and the quality, extent and availability of services, for which the non-profit organization was established, will not be endangered. The Center may not take part in the business of other persons or to conclude an agreement on silent partnership; its incomes are subjected to income tax according to general tax laws. The Center may not condition the provision of its public benefit services on acceptance of donations from natural or legal persons.
7. The property of the Foundation or the assets of the Center may not be used for financing the activity of political parties or political movements or for the benefit of a candidate for an elected post.
8. Both Foundations and Centers have a Board of Directors, as minimum composed of three members, as its supreme body. Besides, they may have a Supervisory Board, which is mandatory, when the property exceeds certain level. Otherwise, the checking duties of the Supervisory Board rest with a single Inspector. The operational executive powers in a Foundation rest on its Administrator, while in the Center on its Executive Manager; both these executive officers are elected and recalled by the Board of Directors.
9. The Board of Directors decides in both a Foundation and a Center about the budget and particularly about the amount of assets, which may be used for administrative purposes of the organization.
10. Both Foundations and Centers must publish Annual Reports, in which their activity is described and a detailed overview of the status and use of the property is provided; under specific conditions depending on the sum of incomes and expenditures or on acceptance of certain amount of donations from public budgets by the Center, the annual balance sheet of incomes and expenditures must be certified by an independent licensed auditor.
11. Foreign organization branches may qualify as a Foundation or a Center by providing to the Registering Office the evidence on being legal entities with activities corresponding to the provisions of the respective Slovak law and other data as required from local Foundations or Centers.
12. Either the Board of Directors or the court may initiate under conditions set by the respective Law the voluntary or involuntary termination, respectively. The Laws regulate in detail the liquidation of property of the Foundation or the Center in cases of involuntary termination or complete cessation of the existence of the organization.
13. The Center may be endowed by a property from the State as its founder (as regulated by the Transition Law). This represents the so-called Priority Property of the Center. The priority property must be used exclusively for securing the public benefit services, it may not be used as a security or otherwise used to secure the obligations of the Center or a third person, it must not be sold, donated, rented nor lent. The priority property is not subject to liquidation. Real estates forming the priority property must be registered with material burden to the benefit of the State in the Cadaster (Register of Real Estates).
14. Upon decision of the Board of Directors, the Center may split into several Centers, as well as to merge with or fuse into another Center of a Foundation. This is done without liquidation and with full transfer of obligations and rights to the resulting Center of Foundation.

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<sup>1</sup> E.g. the Civil Code, the Act No.455/1991, on Trading, in the text of later amendments.

15. Upon decision of the Board of Directors, the Foundation may merge with or to fuse into another Foundation. It may be also transformed into a Non-Investment Fund (regulated by the **Act No. 147/1997, on Non-Investment Funds**). This is done without liquidation and with full transfer of obligations and rights to the resulting Foundation or Non-Investment Fund, however the Endowment of the Foundation must be transferred to another Foundation with similar purpose.
16. For both the Foundation and the Center the respective Law introduces a state supervision through the registering office and the Ministry of Interior.
17. The founder of existing Center must submit necessary data to the regional Registering Office not later then on June 30<sup>th</sup>, 2002; if not done or if the motion is rejected, the Ministry of Interior may submit a motion to the court requiring the termination of the Center.
18. The Foundation's Administrator must submit the necessary data to be registered in the Register of Foundations kept by the Ministry of Interior not later then on December 31<sup>st</sup>, 2002 or to decide on transforming the Foundation into a Center. Otherwise the existing Foundation shall be deemed to terminate with liquidation as of January 1<sup>st</sup>, 2003.
19. Beginning from January 15<sup>th</sup>, 2002, the Central Administration Bodies may decide on selecting their budgetary or subsidiary organizations for transformation into a Center. For this purpose there must be prepared a Transformation Project, which is submitted to the Slovak Government through the Ministry of Management and Privatization of State property. In the case of a positive Governmental decision, the Central Administrative Body together with other interested parties (employees of the original governmental organization, medical or social care professionals and churches or other legal persons, who may prove being active in the field of health care, social care or humanitarian assistance of their own or through a Center established by them) shall endow property to the newly founded Center; the rights, obligations and liabilities of the original governmental organization are transferred to the Center.

Note, that these and other more detailed changes in the laws make the Slovak legal environment on one side closer to and on the other side more elaborated then that of the Czech Republic. There may be put nearly equal sign between the notions of Slovak and Czech Foundation, Slovak Center and Czech Public Benefit Corporation and Slovak Non-Investment Fund and the Czech Fund without Endowment. However, by introducing Trusts as a possible and negotiable part of the Foundation's property, as well as by providing more economic and governance freedoms, the Slovak laws surpass those of the Czech Republic equivalents. The Slovak Transformation Law has yet no equivalent in the Czech Republic, although a similar procedural legislation has been planned already in 1995, when the Czech Act No. 248/1995, on Public Benefit Corporations has been drafted and discussed in the Czech Parliament. On the other hand, the state supervision, as introduced by the new Slovak laws, goes beyond the scope of public supervision provided by the Czech laws.

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