



CORPORATE

FRAMEWORK LAW ON FOUNDATIONS

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First of all, the Framework Law on Foundations has established a transitional period of six months to enable foundations already in existence, if necessary, to bring their name (in the case of public foundations) and articles of association into line with the new rules and to confirm their status as a public service.

As to the different types of foundations at issue, the Framework Law on Foundations presents legislative definitions and provides that it will apply to the following three types of foundations:

i) Private Foundations: those that are created predominantly by private individuals or entities. In the context of foundations, this means that there may be founders that qualify as public legal entities but they may not, however, hold a dominant influence over the foundation in question. A dominant influence is deemed to be exclusive or majority power over the distribution of the assets that make up the collection owned by the foundation, or power to appoint or dismiss the majority of the members of the foundation's management body;

ii) Public Foundations under Private Law: these are the opposite of the preceding situation in that there will be a dominant influence exercised by one or more legal public entities and,

iii) Public Foundations under Public Law: foundations exclusively created by legal public entities.

One crucial aspect of any look at foundations relates to their respective legal personality. Legislation did, in fact, already exist on this issue prior to the entry into force of the Framework Law on Foundations. However, the Framework Law on Foundations establishes that, from now on, recognition of private foundations (the legal act that determines the acquisition of the foundation's legal personality) is in the power of the Prime Minister (with the ability to delegate). In the case of public foundations, their legal personality is the direct result of the act that creates them (in most cases, a legislative act).

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The award of public service status to private foundations is also in the power of the Prime Minister (with the ability to delegate the power). The Framework Law on Foundations introduces rules on this fundamental area of the law on foundations and also establishes a time limit of five years for the award of this status.

Among the new measures brought in by the Framework Law on Foundations, one thing that stands out is a clear legislative concern with the transparency of certain aspects of foundations (especially with reference to foundations with public service status). In fact, the legislator has imposed a duty of disclosure (on the both services of the Presidency of the Council of Ministers and on the respective Internet site) of information related principally to:

- i) The composition of the respective corporate bodies;
- ii) The annual reports on accounts and activities;
- iii) The articles of association;
- iv) Identification of the number and nature of the foundation's legal relationships with its employees;
- v) Annual external audit report (mandatory for foundations with an annual income in excess of the amounts fixed by Order in Council) and,

Under these provisions, foundations must be organised on the basis of a model that includes an administrative body, a management or executive body and an audit committee or sole auditor. Rules on ending lifetime posts are also established.

- vi) Description of the initial assets and itemised description of the financial support received (in the case of foundations with public service status).

In addition to this, the new legislation also introduces a rule that defines the limits on the internal expenses of foundations (with public service status). This means that personnel and management expenses may not exceed, i) one tenth of the foundation's annual income in the case of foundations with public service status, in which the main activity is granting benefits or financial support to the community or ii) two thirds of the foundation's annual income in the case of foundations with public service status, in which the main activity is providing services to the community.

The new legislative provisions on the organic structure of foundations are also noteworthy. Under these provisions, foundations must be organised on the basis of a model that includes an administrative body, a management or executive body and an audit committee or sole auditor. Rules on ending lifetime posts are also established.

In conclusion, it could be said that one of the greatest challenges for foundations (even in the wake of the latest survey of foundations – under Law 1/2012 of 3 January) lies primarily in complying with the rules on i) transparency both in respect of the assets and the organisation of the foundation; ii) limits on personnel and management expenses and iii) organisational structure. The Framework Law on Foundations does not establish a complete and unequivocal system of sanctions and seems to suggest the idea that the “award” or “removal” of the public service status represents the ultimate sanction.

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