



CORPORATE

OCTOBER 2015

AMENDMENT OF THE FRAMEWORK LAW OF FOUNDATIONS

Three years after its approval, the Framework Law of Foundations (Law 24/2012 – “FLF”) has been amended by Law 150/2015, which will come into force on 10 October. There are a few amendments to detail which, nevertheless, result in a clearer definition of certain notions by the legislature, and there are other amendments that have introduced some noteworthy changes.

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Important changes have been made to the legislative definitions of “financial support” and “income”. The former definition remains very broad, but its scope has been reduced. In general terms, benefits, indemnities, compensation, provisions, assignments and payments are no longer deemed to be financial support granted by the State. This change is easily understandable because, in these situations, we are not strictly looking at financial assistance or advantages for the foundations. The definition of “income” has also been amended and now includes the contributions that the founders make to the foundations’ endowment funds.

The legislature has also decided to relax the previous requirements for transparency of foundations (article 9 of the FLF). As a result, Portuguese foundations and foreign foundations that carry on their activity in Portugal are no longer required to make an up-to-date list of the members of their corporate bodies and the start and end dates of their respective terms of office permanently available on their website. Besides this (in light of Ministerial Order 75/2013), foundations with annual income below €2 million continue to be exempt from submitting their accounts

to an external audit and are no longer required to provide certain information on their websites. This information includes (i) copies of the founding and recognition acts, (ii) the identification of the founders, (iii) the up-to-date membership of the corporate bodies and the start and end dates of their respective terms of office, (iv) the management and accounting reports and opinions of the supervisory body for the last three years, and (v) the external audit report.

A further important change is the clarification given to the rules on the limits on own expenditure for private foundations officially recognised as being of benefit to the public (*fundações privadas com utilidade pública*) and for public foundations. Under article 10(2) of the FLF, it is now clear that, if the amounts are the same (as provided for in article 10(1)), the rule most favourable to the foundation will apply. However, it is important to note that there is now an express provision that a foundation may lose its status of being of benefit to the public if it does not respect the spending limits set out in article 10(1) of the FLF.

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The main change introduced by the amendments to the FLF relates to the rules on recognition of foundations. The law makes it clear that it is necessary to register the articles of association of private foundations and any amendments to them. If amendments to the articles of association are not registered, they will not take effect against third parties (article 17(4) of the FLF). Besides this, the law provides for simplified recognition of foundations (article 22 (6) of the FLF). This means recognition can be completed in 30 days rather than the 90 days for non-simplified recognition. To benefit from simplified recognition, *(i)* the foundation must be set up only by private law persons. The purpose of the foundation may not be an IPSS (private charitable institution) and it may not pursue the objectives of a cooperation foundation for development or a foundation to create a higher education institutions; *(ii)* the initial endowment must be made solely in cash; and *(iii)* the text of the articles of association must be approved in advance by order of the member of the Government responsible for foundations.

Finally, one of the legislative amendments affects the disposal of assets that formed the foundation's initial endowment. This amendment provides that, in these cases, a public foundation or a private foundation officially recognised as being of benefit public can only dispose of these assets if this is authorised in advance by the entity responsible for recognising foundation.

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The Lawyer European Awards, 2015-2012

 Iberian Law Firm of the Year
Who's Who Legal, 2015, 2011-2006
Chambers European Excellence Awards, 2014, 2012, 2009

 Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2014-2011