

## 5. FRANCE

### 5.1. General

In international comparison, the number of foundations is relatively low in France. Moreover, these foundations only have a comparatively small amount of assets at their disposition. Among the roughly 1,200 existing foundations, approx. 500 are foundations for public utility (*fondation reconnue d'utilité publique*), 70 are business foundations (*foundation d'entreprise*) and 1,530 are foundations operating under the aegis of other foundations (*fondation abritée par une fondation reconnue d'utilité publique*); in contrast, there are approx. 800,000 associations in France. The small number of foundations is explained, among other things, by the tax system which provides only few incentives for the establishment of a foundation. The institution of the foundation was not designed for the purpose of asset management<sup>22</sup>.

Foundations are governed by the Act 87-571 of 23 July 1987 on the development of patronage (*Loi du 23 juillet 1987 sur le développement du mécénat*), which was recently changed by the Act 2003-709 from 1 August 2003 as well as by the related application decree 91-1005 from 30 September 1991.

### 5.2. Establishment

If explicitly stated, the following provisions refer to public utility foundations. Foundations can be established by natural full age persons or by one or several legal persons, either by means of an endowment or a transfer of assets to the foundation. In most cases, an association is set up in the first place, which is then replaced by a foundation. Also foreign natural and legal persons can set up a foundation in France, unless otherwise provided by their national law.

According to French law, the founder has to pursue a particular purpose when endowing the foundation with assets. This purpose may be to directly realise income or to use the funds for a specific aim. Moreover, the founder is obliged to provide sufficient funds to effectively pursue the purpose of the foundation.

The public utility status and the assets of the foundation are subject to approval by the state regulatory authorities. The control of the foundation is in principle the responsibility of the Ministry of the Interior, which is assisted by other ministries concerned.

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<sup>22</sup> Cf. Hellio et al (2007), p. 885.

Endowments *inter vivos* are effected by means of a gift. To become effective, the gift must be certified by a notary according to the general rules governing gifts.

If a foundation is established *causa mortis*, the testator bequeaths particular assets to the foundation to be established for public utility purposes. The assets, rights and funds are transferred to the foundation exclusively for public utility purposes and without the aim of profit-making<sup>23</sup>. The definition of “public utility” is very broad and includes philanthropic, educational, scientific, social, humanitarian, sport- or family-related or environmental purposes. However, when the purpose of the foundation benefits solely the family of the founder or where it is political or religious in nature (in the sense of serving a political party or religion), it can no longer be deemed a public utility purpose.

The organisational structure of public utility foundations consists of an administrative board (*conseil d'administration*) or a supervisory board (*conseil de surveillance*) working together with a board of directors (*directoire*). The foundation statutes need to be approved by the Ministry of the Interior. In addition to these bodies, a foundation needs to have sufficient funds to pursue its purpose. The recognition of the foundation is established by means of a decree by the *Conseil d'Etat* and published in the *Journal Officiel*<sup>24</sup>.

### **5.3. Types of foundations**

#### **5.3.1. Public Utility foundation (fondation reconnue d'utilité publique)**

Given their public utility, these foundations may claim public subsidies. Subject to approval by the regulatory authorities, the foundation can receive endowments as long as these are made without consideration. The foundation becomes a legal person upon publication of its establishment.

In principle, foundations benefit from the same tax advantages as organisations with non-profit purpose or public utility associations.

Private persons may deduct 66% of their donations to public utility foundations from income tax, but not more than 20% of their taxable income. Companies can deduct 60% of their donations, but not more than 5‰ of their revenues. Excess amounts can be carried forward for five financial years, if applicable.

To the French tax authorities, not the registered seat, but the place where the foundation carries out its activities is relevant. These have to be performed in France, at least partly. The same rule applies to donations to foundations based abroad that carry out a small part of their activities in favour of a limited number of persons in France. Here, the tax deductibility depends on whether the foundation is recognised as a public utility foundation under the

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<sup>23</sup> Cf. *ibid*, p. 888.

<sup>24</sup> Cf. *ibid*. p. 897 et seq.