

### 5.3.2. Particular types of foundations

#### The business foundation (*fondation d'entreprise*)

By their nature, business foundations are very similar to public utility foundations: They also pursue a public utility purpose and do not intend to make any profits; moreover, endowments to a business foundation are also irrevocable. The duration of a business foundation is limited at the outset. However, it must be set up for a minimum period of five years subsequently extendable for at least another three years. Business foundations only pursue short- and medium-term objectives.

They are established by one or several companies which endow the foundation with an amount defined in the foundation statutes. The minimum capital resources of a foundation are EUR 150,000. Any adjustments to the specified amounts require a change in the foundation statutes and, as a result, an approval by the relevant public authority. The foundation acquires its legal capacity upon the publication of its establishment in the *Journal Officiel*. The business foundation is not allowed to receive any gifts unless these gifts are made by the staff of a company which has co-founded the foundation<sup>26</sup>.

The Act 87-571 stipulates in Art. 19-8 which sources of financing are permissible. Permissible sources are in particular endowments by the founders, subsidies by the state and regional or local authorities, remunerations for services provided or income related to these services (such as interest received).

Business foundations are dissolved either as a result of time lapse or a unanimous decision of the founders (provided that the endowments guaranteed at the establishment were effectively made). The state authorities may also revoke their approval.

In principle, business foundations are subject to the same tax rules as public utility foundations. Upon the establishment of a foundation, companies may deduct 60% of their endowments to the foundation; however, the total amount deducted must not exceed 5‰ of the company revenues. Payments by the company staff are tax-deductible to the extent of 66%; the deductible amount is limited to 20% of their taxable income pursuant to Art. 200 *Code Général des Impôts*.

As regards the taxation of foundation assets, business foundations with a non-profit purpose are subject to a reduced corporate tax rate of 25%; the corporate tax rate for income from rent and lease, agriculture and forestry and securities is only 10%.

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<sup>26</sup> Cf. Hellio et al (2007), p. 901.

## **Foundations operating under the aegis of other foundations (*fondation sous égide*)**

In its Art. 5, the law on the development of patronage sets forth the advantages granted in the event of the establishment of a trust structure comparable to that of the Anglo-Saxon trust. Pursuant to this law, foundations pursuing public utility purposes may receive endowments to support another foundation (*fondation sous égide*) having the same purpose but which are not recognised as serving the public interest. In this case, the funds of the foundation are administered by another institution (*fondation abritante*).

## **Foundation with special status (*fondation à statut particulier*)**

Such as the business foundation, this type of foundation is a legal person governed by private law and subject to the provisions on public utility foundations. The *fondation du patrimoine* is one example for this foundation.

### **5.4. Dissolution**

If a foundation is endowed with irrevocable funds, it is considered as established on a permanent basis. In this case, the founders cannot reserve the right to reclaim their endowments in the event of dissolution. Liquidation proceeds may not be distributed among the founders, if applicable<sup>27</sup>.

Public utility foundations cannot change their legal form (in particular, they cannot be transformed into a public utility association).

### **5.5. The International context**

The foundation is deemed to be based in the country where it has its registered seat. The registered seat may in principle be transferred to another country if an adequate agreement exists between this country and France.

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<sup>27</sup> Cf. *ibid*, p. 903.