

PUBLIC
LAW

THE NEW FRAMEWORK-LAW ON FOUNDATIONS

On July 9th it was published Law no. 24/2012 which approves the “Framework-Law on Foundations” and amends the Civil Code on this matter, as envisaged in the Economic and Financial Assistance Programme to Portugal. The purpose of the approval of this legal regime is to rationalize the public costs, reducing the “Parallel State”, usually identified with institutions, foundations, corporate public entities and public companies.

This law establishes a temporary regime to adjust the current situation to the new reality that is intended to be regulated. In this context, **the existing foundations have a six months period after the entry into force of this law for the mandatory adjustments to be done to their statutes and to their ruling bodies, as well as for the confirmation of the public utility status that has been subject to administrative allocation, under the penalty of its expiry.**

The Framework Law, applicable to Portuguese foundations and to foreign foundations which develop their purposes in the national territory, is structured in three Titles: General Provisions, Private Foundations and Public Foundations.

Among the General Provisions applicable to all foundations, we highlight as relevant novelties the following matters:

- i) **Submission of the foundations to the fulfillment of a set of transparency obligations**, such as, among others, the obligation to approve and to publicize conduct codes that self-regulate good practices, the obligation to communicate to the services of the Presidency of the Council of Ministers the structure of their ruling bodies and to forward a copy of the annual accounts and activity reports and also the obligation to submit accounts to an external audit¹ (*see* article 9);
- ii) Establishment of limits on human resources and administration costs for the foundations that receive public funding or to those which have tax benefits (*see* article 10²);
- iii) Authorization of the relevant authority for the recognition for the sale of property included in the foundation’s primary heritage and which are of special significance for their purposes (*see* Article 11. °).

¹ It should be noted that private foundations are subject to the declaratory regime established on Decree-Law no. 8/2007 of January 17, which establishes the Simplified Business Information (IES).

² In the case of private foundations with public utility status and public foundations, human resources and administration costs cannot exceed the following limits: a) as to foundations whose activity is to grant financial support or benefits to the community, the limit corresponds to one tenth of its annual income and at least two thirds of such income shall be spent on the direct pursuit of the statutory purposes; b) as to foundations whose activity is to support services to provide to the community, the limit corresponds to two thirds of their annual revenues.

The existing foundations have until 14 January 2013 to adjust to the new legal regime

Title II, relating to private foundations, contains general provisions concerning to the nature, purpose, creation and legal regime, to the processes of recognition and acquisition of public utility status; to the organization and modification, merger and dissolution of private foundations.

As for the recognition and acquisition of public utility status, it should be noted, as a novelty, that such status is granted for a five years period, renewable, being necessary the submission of a renewal application for this purpose (*see* article 25, no. 5).

With regard to the statutory organization, we emphasize a new provision that establishes two executive bodies: a board of directors and a governing or executive body, with current management functions. Moreover, as the supervisory body, it can be constituted by an auditor or a by supervisory board (*see* article 26).

Given the specificities of the universe of charitable foundations, of the foundations of cooperation for development and foundations that have as purpose creating private higher education institutions, this law establishes specific rules for each of these situations.

Title III establishes the legal regime applicable to public foundations, whether regulated by public or private law, which are generally subject to the legal regime of public legal persons, namely to the Framework-Law of Public Institutions.

The public utility status is granted for a five years period, renewable, being necessary the submission of a renewal application for this purpose

It is also established that the **State, Autonomous Regions, local municipalities, other legal persons** of the autonomous administration and other public legal persons shall become restrained to create or to be part of new public foundations under private law (*see* article 57, no. 1).

The public foundations of private law already incorporated and recognized shall be subject to the public foundations regime, with some specificities.

Contact
Fernanda Matoso | fmatoso@mlgts.pt



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ASSOCIADOS
SOCIEDADE DE
ADVOGADOS

LISBON

Rua Castilho, 165
1070-050 Lisbon
Telephone: (+351) 213 817 400
Fax: (+351) 213 817 499
mlgtslisboa@mlgts.pt

OPORTO

Av. da Boavista, 3265 - 5.2
Edifício Oceanvs – 4100-137 Oporto
Telephone: (+351) 226 166 950
Fax: (+351) 226 163 810
mlgtsporto@mlgts.pt

MADEIRA

Avenida Arriaga, Edifício Marina Club, 73, 2º
Sala 212 – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt

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