Poland

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation

Five main social issues addressed by these organizations: Primary and High School Education, Arts and Culture, Health and Medical Research, Basic Needs, Sports

Average time established by law to register a philanthropic organization: 61-90 days

The Court has 7 days from the day the document is submitted to examine the application, for both a foundation and an association. It is not possible to define precisely the time to register a PO. In practice, the duration of the registration process depends, above all, on whether the application is filed correctly. The absence of mistakes in the forms, well-prepared documents, signatures of the right persons, and payments made as required are fundamental elements of a correct application.

Average cost for registering a philanthropic organization: US $0

The registration fee charged for a foundation is PLN 250 (approximately US $63). As of 20 May 2016, the associations that have not been entered into the Register of Entrepreneurs do not pay court fees. The fee charged for removing both types of organizations from the Register of Entrepreneurs is PLN 150 (approximately US $38), while the fee for placing an announcement in the Court and Commercial Gazette is PLN 250 (approximately US $63).

Government levels primarily regulating the incorporation of philanthropic organizations: State Government, Local Government

Non-governmental organizations (NGOs) or other entities involved in public benefit activity obtain the status of a public benefit organization when they are registered in the State Court Register, and after fulfilling the statutory requirements referred to in Article 20 of the Act on Public Benefit and Volunteer Work of 24 April 2003. Associations and foundations must register with the regional Registry Court – also called the State Court Register. An ordinary association is registered at the Poviat Starost’s Office or at City Hall. An ordinary association has no legal personality, as it is the so-called legal entity without a corporate status. It may assume obligations, sue, and be sued in court.
Philanthropic Environment Scores:

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I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 5.0

Polish law permits individuals to act collectively through unregistered groups or organizations. Article 12 of the Constitution of the Republic of Poland from 1997 provides that “The Republic of Poland shall ensure freedom for the creation and functioning of trade unions, socio-occupational organizations of farmers, societies, citizens' movements, other voluntary associations and foundations.” POs are free from legal impediments from the state and from onerous registration requirements.

The primary forms for nonprofit, nongovernmental organizations are associations and foundations. Associations, as well as foundations, must register with the Regional Registry Court – an apolitical, independent, and transparent body of justice. The registration process is clear and consistent, requiring a reasonable amount of time and resources. Associations may be formed by Polish citizens or by foreigners who are domiciled in Poland. A special form, known as the “simplified association,” is somewhat easier to create than a regular association.

Polish citizens or foreigners who are of legal age, or domestic or foreign legal persons may form a foundation. Foundations may be established through a notarized document expressing the wish of a founder to form a foundation, or by a will.

Generally, the law does not determine a minimum or maximum value for the initial endowment; however, where a foundation plans to engage in economic activities, it is required to set aside at least PLN 1,000 (approximately US $250) for those activities. A foundation may engage in business activity within the scope of its aims. The law requires a clear, closed list of reasonable documentation. The Court has seven days from the day of the document submission to examine the application, both for a foundation and an association. It is not possible to precisely define the time of registration.

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 5.0

Polish law allows for sufficient discretion as regards the process of setting up and governing a PO. According to Polish Law, it is forbidden to establish associations that require from its members absolute obedience to the governing bodies of an association. No person may be forced to become a member of an association or have his or her rights limited with regard to leaving an association. No one can be responsible for the negative consequences of membership or non-membership in an organization.
The highest governing body of an association is the general meeting of its members. An association must have a board and an internal audit body. Only the statute may define the way of representation for an organization. If the organization board includes more than one person, only the statute of the association may govern the way of representation. The statute also regulates the management of a foundation. It determines the way of appointing the board. The donor alone is not entitled to remove the members of the foundation body if the statute does not authorize him or her to it.

The statute also defines the obligations and rights of the board and its members. The foundation board manages its activity and represents the organization outside. If there is a flagrant contradiction between the resolution of the board and an aim of the foundation, the provisions of its statute or the law, the supervisory body may file a motion to the court for its repeal. The supervisory body may take similar actions if the organization’s activity violates the law or the provisions of the statute.

Foundations submit annual reports on their activity, which are publicly available, to the supervisory body. Associations do not have this obligation, but they prepare these kinds of reports for their own needs, and in order to present them at the general meeting of members. In terms of financial reporting, all POs have an obligation to report to the tax office once a year.

**Question 3: To what extent is there government discretion in shutting down POs?**

The issues related to the termination, dissolution, and liquidation of a PO are strictly regulated by the Polish law, which upholds the rights guaranteed by the Constitution. Clear and fair legal regulations exist to guide the involuntary dissolution of an organization. Pursuant to the provisions, an association may be dissolved on the basis of its own resolution, which is when the members of its board are the liquidators of the association. The court may dissolve an association at the request of the supervisory body or the prosecutor only when its activity demonstrates blatant or persistent violation of the law or the provisions of the statute, and there are no conditions to return to the activity compliant with the law or the statute. The liquidator’s duty is to carry out liquidation in the shortest time possible in a way that secures the assets of the association in liquidation against unjustified depletion. When an association is dissolved, whether by its own resolution or by a court, the remaining assets are distributed pursuant to the association's statute or its liquidation resolution. In the absence of such a directive, the court appropriates the assets to a social purpose.

A foundation can be dissolved if its purposes have been achieved or if its financial assets have been exhausted. If the statute does not provide for the liquidation of the foundation or its decisions in this respect are not executed, the supervisory body files a motion to the court asking for the liquidation of the foundation. If its statute does not specify how assets are to be distributed upon dissolution, the court decides, taking into account the purposes served by the foundation. A PBO is dissolved according to the rules of the underlying form, whether association or foundation. If an association or a foundation loses its PBO status but continues operating, it must promptly spend all income it received through its earlier public fundraising as a PBO on public benefit activities.
II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

Both individuals and corporations can deduct certain donations from their taxable basis. A donation is deductible if the recipient organization conducts public benefit activities. The limits on deductibility are 6 percent of taxable income for individuals and 10 percent for corporations – the ceilings on such incentives are moderately high. There are no strict limitations regarding the type of organization to which donations may be made. The only restriction is that, in order to qualify for tax exemption, a donation may not be made to natural persons, entities engaged in the production of alcoholic beverages, fuels, tobacco, electronic devices, precious metals, or entities engaged in the trade of precious metals. Organizations receiving donations from legal persons are obliged to make this information public if a single donation exceeds PLN 15,000 (approximately US $3,700), or if the cumulative value of a donor’s donations during a year exceeds of PLN 35,000 (approximately US $8,600).

Entrepreneurs are able to classify the cost of manufacturing or acquiring food products that are offered to a public benefit organization as tax-deductible costs. Thus, food donations to charitable public benefit organizations are fully tax-deductible. Other (non-food) donations remain deductible at the current level, up to 10 percent of the income.

Another deductible mechanism in this area is the 1 percent mechanism, a special form of support for public benefit organizations. By means of this mechanism, a personal income taxpayer is able to allocate 1 percent of his/her tax payment to a public benefit organization in a fiscal year. POs enjoy the status of public benefit organizations that must have been continually involved in the public benefit activity for a minimum of two years before applying for the public benefit status. The areas of public benefit activity are listed in the Law on Public Benefit Activity. These areas include social and charity work, promotion of integration/reintegration, among others.

Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Just like all other entities, POs are subject to various legal obligations. POs do not enjoy an unconditional tax exemption; however, there are legal provisions that may exempt these organizations from the obligation to pay taxes. Such exemptions are related to specific situations and must be considered separately for each kind of tax due. A PO with public benefit status is exempt from corporate income tax (as well as real estate tax, civil actions tax, stamp duty, and court fees) on all income devoted to the public benefit objectives listed in the law. Because the law limits public benefit organizations to those activities, it appears that public benefit organizations are generally exempt from corporate tax altogether, with one possible exception: a public benefit organization that
unlawfully engaged in activities beyond those listed in the law might be liable for tax on those activities immediately, even before the initiation of proceedings to revoke the organization’s public benefit status.

In addition, there is an exemption from the corporate income tax for income of organizations whose statutory objectives consist of activities in the fields of: science, technology and education, including tuition of students; culture; physical education and sports; environmental protection; supporting public projects in building roads and telecommunication networks and water supply systems in rural areas; charity; health care and social welfare; occupational and social rehabilitation of the disabled; and religious worship. A PO must pay corporate tax on all income, including grants, devoted to any objectives not listed above. In addition, foundations and associations (and legal entities in general) are not subject to the heritages and donations tax in Poland. The process of receiving the tax exemption status is clear and predictable.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 5.0

Tax regulations allow a reduction of the taxable basis by the amount of donations transferred for the so-called ‘noble aims,’ both for individual taxpayers and for legal persons. Cross-border charitable donations can be transferred without any additional costs. Similar tax incentives can be obtained for international charitable donations as for domestic donations.

The process of transferring charitable donations abroad is clear and consistent, requiring a reasonable amount of resources and time. Polish taxpayers who transfer donations to foreign NGOs may, having complied with several conditions, declare it in an annual tax form.

Pursuant to the regulations, a taxpayer may deduct a donation for an organization working for the benefit of the public in the area of public tasks in other EU or EEA member states, provided that this organization has been defined in the provisions in force regulating the activity of public benefit organizations. It is required to provide adequate documentation demonstrating that as of the day of the donation, the organization was equivalent to those referred to in the Public Benefit Organizations Act. In addition, there must be legal grounds, resulting from the Double Taxation Avoidance Agreement or other ratified international agreements to which Poland is a party, for the Polish tax body to obtain tax information from the tax body of the state where the organization is based. If both conditions are fulfilled, donations made to foreign organizations may be deducted on the tax forms filed in Poland. The maximum deductible amount may account for 6 percent of the total annual income of the donor who is a natural person. For legal persons, including NGOs, this proportion is 10 percent of the annual income in total.
Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Associations and foundations as legal persons do not pay an inheritance tax or donation tax. Cross-border charitable donations can be received without additional cost and without additional approval through government procedures. There are no restrictions on receiving cross-border charitable donations. Donations must be registered by a transfer into a bank account and evaluated. Cash is evaluated according to its nominal value, and funds obtained in a foreign currency are converted to the Polish Zloty.

The average exchange rate for a given currency announced by the National Bank of Poland on the day preceding the day of the donation is applied for the evaluation purposes. The value of a non-financial donation should be best defined in the agreement. Should it not be the case, the value of a given element of assets should be determined on the basis of a market price, i.e. the selling price of the relevant item (or one similar to it). When it is impossible to determine the net selling price of a given element, its value should be estimated using other methods (e.g. using the services of an appraiser).

Transnational Giving Europe (TGE) facilitates the process of giving and receiving foreign donations in Poland. It is a collaborating network of European foundations and associations from Belgium, Bulgaria, France, the Netherlands, Ireland, Luxembourg, Germany, Poland, Romania, Slovakia, Slovenia, Switzerland, Hungary, the United Kingdom, and Italy. They provide agency in transferring donations from foreign individuals and enterprises to NGOs and public and private institutions that carry out social projects. In Poland, TGE is represented by the Foundation for Poland.

IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

After the change of the governing party in Poland, the direction of collaboration between public institutions and NGOs organizations as well as the entire philanthropic sector changed. In the 2015 general election in Poland, the Law and Justice (PiS) party won 37.58 percent of the vote. Also the President of Poland, Mr. Andrzej Duda, had been a Law and Justice member before he was elected. A shift in the policy and approach to organizations can be observed following the results of the general election. Both the Government Plenipotentiary for Civil Society and Equal Treatment in Poland and the politicians of Law and Justice support the cancellation of the Convention for preventing and combating violence against women, even after it was ratified by Poland in 2016.
Since there are few organizations in Poland that have their own assets to support the noble causes they wish to endorse, organizations are supported by public funds, which they spend on their statutory activities (as discussed above). Nowadays, organizations engaged in the area of human rights, equality, and combating violence have lower chances of obtaining resources to fund their activities. In addition, the efforts related to promoting important laws, such as the law on the National Center for the Development of Civil Society, have been and continue to be apparent in nature. Public media (Channel 1 of Polish Television) broadcast materials aiming to deprecate the work of the leaders of the sector imputing unlawful connections and unclear use of public funds.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**  

**Score: 3.0**

Although the government does not restrict the philanthropic activity of donors, it does not undertake activities aiming to promote philanthropy, or to emphasize the importance of the mission of philanthropic organizations for civil society. The government keeps what appears as a neutral position in this respect, but at the same time, does not provides equal support for POs. Public funding to support philanthropic initiatives is dependent on political influence, which has definitely increased in the past few years. For example, regardless of the high rating of the systemic projects in the Civic Initiatives Fund competition, the minister selected the projects that received subsidies as part of the so-called strategic evaluation.

Another example is the contract for the task “ZERO violence – Involvement, Education, Advocacy against gender-based violence” implemented by the Autonomy Foundation using the financial support of the Civic Initiatives Fund, a government program that was dissolved for no clear reason by the Ministry of the Family, Labor and Social Policy in December 2016. In addition, the Center for Women’s Rights, an organization combating violence against women, for the second time did not receive a subsidy from the Ministry of Justice. These issues are now extensively debated in the third sector.

**V. Socio-Cultural Environment**

**Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?**  

**Score: 4.0**

Philanthropy in Poland has a long tradition dating back to medieval times. There are strong philanthropic traditions and societal values that encourage giving. Traditionally, people entirely trust POs and recognize their positive and important role in society. Although by the end of 2016 NGOs became a topical subject in Poland due to public media coverage of well-known foundations and associations that put them in a very unfavorable light, this did not seem to have hurt the image of the sector. Sixty percent of Poles declared that they trusted foundations, 53 percent had confidence in associations, and, in general, 55 percent of people trusted NGOs. This means that there has been a slight increase of confidence in the third sector since 2014 when 56 percent of people trusted foundations, 50 percent of people trusted associations, and 44 percent of Poles declared confidence in NGOs.
Just because Poles state in surveys that they trust foundations, associations, and NGOs, this does not mean that they are ready to donate money or time, or that they would choose them as service providers out of a group of other institutions. However, surveys have shown that NGOs seem to evoke more positive feelings among Poles than other organizations.

The opportunities to get involved in philanthropic causes are open. Individuals have equal opportunities to engage in philanthropic activities as donors and/or recipients. Accumulated social and human capital provide a very beneficial context for the sector development. One good example of the philanthropic involvement of Poles is the yearly results in terms of money raised by the organization of the Grand Finale of the Great Orchestra of Christmas Charity. The “Wielka Orkiestra Świątecznej Pomocy” (WOŚP) is a very popular NGO in Poland. The Grand Finale is one-day national and transnational public fundraising event organized by the Foundation of the Great Orchestra of Christmas Charity to fund medical equipment for pediatric wards and to provide medical assistance to seniors. Each Grand Finale has a different medical objective dealing with relevant medical issues (especially those dedicated to children).

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

Poland is a country of extensive tradition and deeply rooted values, such as working for the common good, social solidarity, and self-help. In crises, and when common good so requires, Poles become united and help one another. This is an important foundation for the development of philanthropy. Nevertheless, Polish society, in general, is still poor, and often referred to as “working its way up.” This is why Poles do not support organizations to a financially desirable extent, as they do not have the necessary means.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- In the previous 24 Grand Finale events, the Great Orchestra of Christmas Charity raised and donated over PLN 720 million (approximately US $180 million) to support Polish medicine;

- In 2014, the amount raised to purchase specialist equipment for pediatric emergency wards and to support decent senior care was US $17,224,553.53. The amount raised to maintain high standards of the treatment of children in pediatric and oncological wards, and to keep decent medical care for seniors in 2015 was US $13,277,424. The amount raised in 2016 to purchase medical equipment for pediatric wards and to ensure decent medical care for seniors was US $18,135,587.26; and

- In 2014, the Polish Humanitarian Action collected PLN 130,000 (approximately US $32,500) to provide humanitarian assistance to civilian victims of the conflict in Syria and Syrian refugees in neighboring countries (e.g. Turkey, Lebanon, and Jordan), Assistance includes
access to water and the necessary sanitary conditions, medical care, access to food, shelter and basic items necessary to survive. In 2015, the organization raised US $13 million to fund its statutory activity.

Future development trends in the philanthropic landscape

Public fundraising events are an effective fundraising mechanism in Poland. This is when Poles are willing to donate money to support the goals of NGOs. Another effective mechanism is a tax write-off of 1 percent (a tax deduction for physical persons). Although it is not strictly philanthropy, as taxpayers donate 1 percent of the tax due which they would have to pay the State Treasury anyway, they may determine which cause they wish to support. This mechanism makes it possible to promote the principle of sharing and the culture of giving.

Three key recommendations to improve the environment for philanthropy

- No amendments to tax regulations or provisions on competition procedures should be made under political pressure;

- The centralization of funding to NGOs through the establishment of the National Center for the Development of Civil Society, which coordinates the expenditure of the state in its relations with the third sector, should stop; and

- The application of the subsidiarity principle should not be restricted. The nongovernmental sector in Poland has been admired for a number of years in Central Europe for its public benefit activity law that defines the principles of collaboration between public institutions and NGOs. Access to public funds is possible only through open calls for proposals that are transparent and clear. An effective system should not be changed – it may be improved but it should not be deconstructed.