

Memorandum

TO	UN Refugee Agency	DATE	23 March 2022
COPY TO		FILE REF	
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NGO REGISTRATION

In this memorandum we have set out the following:

- (i) the option for carrying on activity in Poland (with the recommendation that a structure known in Polish as a foundation is used);
- (ii) the documentation and procedure for setting up a foundation;
- (iii) relevant employment law issues;
- (iv) relevant taxation issues; and
- (v) some guidance on taking up real estate.

1. CARRYING ON ACTIVITY

- 1.1 It is possible to conduct public service activities (that do not constitute business activities) in Poland without formal form of establishment (in particular when it comes to entities from the European Economic Area). However, it is highly recommended to establish a structured presence of foreign non-governmental organisation in Poland. This structure will allow the organisation to effectively cooperate with local Polish entities and stakeholders.
- 1.2 Polish law does not really provide a viable way for a foreign NGO to establish a branch or a representative office in Poland (i.e. that operates as part of the foreign legal entity). Such option may be available for those foreign organisations that are registered as business entities in their home countries. Therefore, foreign organisations that wish to have legal presence in Poland may either establish a local foundation or cooperate with another local organization e.g. association (that is often presented to the public as a local branch).
- 1.3 While, in theory, more options may be available, the most common forms used by NGOs in Poland are Polish registered foundations and associations, we believe that a

foundation may be the best choice for a foreign NGO that wishes to establish its presence in Poland.

1.4 A foundation is a form of non-governmental, not-for-profit organisation which (if registered not only in the register of foundations, associations and other non-governmental entities but also in the commercial register) can conduct business activity, but all the profits shall be used exclusively for the purpose of pursuing its statutory activity. It is a non-membership organisation created to pursue social purposes such as, in particular, protection of public health, development of the economy and science, education, culture and art, welfare and social assistance, environmental protection and protection of monuments. A foundation will allow the foreign organisation that sets it up, to appoint management board and therefore indirectly control the management aspect of the work conducted. This should be contrasted with an association which is a membership organisation created and managed by a group of individuals.

1.5 When registered, a foundation has separate legal personality similar to a corporate entity.

2. DOCUMENTATION FOR A FOUNDATION

2.1 A foundation is established by a founder, which can be either a Polish or foreign individual or legal person. One founder is sufficient.

2.2 The founder has to provide a declaration on establishing the foundation executed before a Polish notary (the "Founding Act") and its articles of association, and allocate assets thereto. To sign the Founding Act either: i) regular authorized signatories for the founder would need to come to Poland to meet the notary (and evidence their authority to sign with an extract from the relevant register if one exists), or ii) the founder could appoint persons to sign on its behalf by a power of attorney (in the form of a notarial deed if such form is available in the home country). Unfortunately putting together the relevant documents including sworn translations can be time consuming.

2.3 The Founding Act should set out the purpose of the foundation (its statutory activity) and assets intended for its implementation (such as cash, securities, movables or real estate). If the foundation intends to pursue business activity, it has to establish a separate fund for this purpose with a value of at least PLN 1,000. Additionally, the Founding Act must specify which governing minister is competent to supervise the foundation based on its purpose(s). For example, a Minister of the Interior and Administration will supervise the foundation providing help and assistance to refugees and victims of armed conflicts and wars.

- 2.4 The foundation has a management board that must consist of at least one person. Other corporate bodies (e.g. Foundation Council, Advisory Board, Supervisory Board) are optional. Thereafter the management should file for the registration of the foundation in the National Court Register to establish the foundation.
- 2.5 The founder should also appoint the first members of the management board.
- 2.6 A person to be appointed to the management board does not need to be a Polish citizen or resident. However, as the management board would need to comply with certain local reporting duties, each member of the management board (if not a local Polish resident that has access to special local ePUAP signing platform operated by the Polish government) needs to obtain eIDAS compliant qualified electronic signature (preferably before appointment). This is because certain duties apply on just a few days after the foundation is registered. Note that numerous regular e-signature platforms used in practice by many organisations (e.g. standard version DocuSign) cannot be used for this purpose.
- 2.7 A foundation also has to adopt articles of association (the "Articles of Association") which have to contain, as minimum, the following:
- (a) its name;
 - (b) its registered seat (which must be in Poland);
 - (c) its assets (such as cash, securities, movables or real estate);
 - (d) its purpose (such as providing assistance to victims of armed conflicts and wars);
 - (e) its principles of operation;
 - (f) its forms and scope of activity;
 - (g) the composition and organisation of the management board, and method of appointment thereof; and
 - (h) the duties and powers of the management board and its members.

3. REGISTRATION PROCESS

- 3.1 The following documents shall be submitted together with the application for the registration of the foundation in the National Court Register:
- (a) The Founding Act;

- (b) The Articles of Association;
 - (c) The declaration on the appointment of the management board;
 - (d) Statements of the members of the Management board consenting their appointment and including an address for service (which need not be a home address); and
 - (e) Proof of payment of the registration fee. The fee is PLN 250 (approximately EUR 55) when the foundation does not intend to pursue business activity and PLN 600 (approximately EUR 130) when it does intend to do so.
- 3.2 The application would need to indicate an address in Poland so prior to filing for the registration the founder should secure that the foundation will be able to use such address following its registration (please see Real Estate section below for more details).
- 3.3 Typically, the registration process takes four to six weeks, but there is a chance that the National Court Register may register the foundation faster if the arguments highlighting the urgency of its registration are submitted with the application.
- 3.4 Upon registration with the National Court Register, the foundation is granted legal capacity, i.e. as of this day it starts to legally exist. The founder is not liable for the foundation's liabilities and does not have to actively participate in its decision-making process. However, the Articles of Association of the Foundation may provide that certain actions taken by its Management Board require the consent of the founder.
- 3.5 A foundation wishing to conduct business activities must, in addition to the registration in the Register of Foundations and Associations, be registered in the Business Register. This is part of the same Commercial Register run by the National Court Register, which may require additional administrative formalities. A business activity that an NGO might conduct would be an activity generating revenue (such as operating a shop).
- 3.6 Within 7 days of registration, the foundation must report its ultimate beneficial owner to the Central Register of Ultimate Beneficiary Owners (CRUBO). This is usually the first reporting duty that requires an electronic filing signed with either an ePUAP or a qualified electronic signature.
- 3.7 Shortly after registration the foundation would need to open a bank account so that the founder(s) could make their contribution. It is worth noting that banks would need to apply their KYC processes which would usually involve submitting various documents in originals or certified copies and would require the management board members to

either meet employees of a bank in person in Poland or sign all documents in front of a notary (if outside of Poland, some banks may even request an apostille).

- 3.8 It is highly recommended to select a bank and start the KYC process as soon as a decision to establish a presence in Poland is made as this may turn out to be one of the most time consuming processes.
- 3.9 Within 21 days of registration, the foundation must submit to the competent tax office an NIP-8 form, containing data such as the place where its accounting records are kept, a list of its bank accounts, and information regarding the obligation to pay social insurance contributions.
- 3.10 A foundation is obliged to annually submit a report regarding its activities to the competent minister. Public Benefit Organisations (see section V) are exempt from this obligation if such report is published in the Public Information Bulletin in accordance with the provisions of the [Law on Public Benefit Activity and Volunteerism](#). However, this is possible only after the first 2 years of the foundation's existence.

4. EMPLOYMENT ASPECTS

General overview

- 4.1 While service agreements and self-employment model of cooperation is very common in Poland, it is not the case with respect to the NGO sector, where traditional employment contracts prevail. NGOs can hire employees in Poland on exactly the same basis as other employers. Employees in Poland benefit from quite extensive protection resulting from the Labour Code and other labour law regulations. These rules are, however, more liberal in some aspects than many of western EU jurisdiction. For example, it is fairly simple to terminate an employment contract with the employee, unless the employees are specially protected against termination, eg due to parenthood rights or pre-retirement age. On the other hand, Polish labour law is rather formalistic and imposes a number of bureaucratic administrative formalities regarding HR and payroll aspects. To meet these requirements, employers in practice have to either hire an experienced specialist or use on services of an external service provider).
- 4.2 There are three types of employment contract: for a probationary period, for a fixed period and for a indefinite period of time. A contract for a probationary period cannot last longer than 3 months. A contract for a fixed period of time cannot exceed a total of 33 months and there can be no more than 3 contracts concluded in such period.

- 4.3 All contracts can be generally terminated with our without notice. In the case of a contract for a fixed period of time and in the case of a contract for indefinite period of time, the period of notice depends on the length of employment and is: (i) 2 weeks, if the employment last up to 6 months; (ii) one month, if the employment last between 6 months and 3 years; and (iii) three months, if the employment last more than 3 years. It is important to note that employees hired under contract for a probationary and fixed term do not enjoy protection against termination – the employer can terminate their contract without stating any reasons justifying dismissal. For a contract for indefinite period of time, termination need to be justified.
- 4.4 EU citizens and citizens of number of other countries (in particular, Ukrainians, who legally stay in Poland and other members of the EEA) can work without any administrative permits. However, in the case of persons from of other countries, the employee should, as a rule, have either a work permit or so called unified permit for work and stay in Poland, issued prior to commencement of work. The process of obtaining such permits can take several months in Warsaw, so in practice hiring such foreigners is not a recommended option for NGOs, which wish to commence their Polish operations as soon as possible.
- 4.5 The following models of employment are potentially available:
- (a) The foreign NGO hires the new employee;
 - (b) The local Polish NGO (e.g. foundation) hires the new employee;
 - (c) The foreign NGO post a foreign employee to Poland;

Hiring a new employee by a foreign NGO entity

- 4.6 While the parties to the employment contract can in theory chose to select the law governing the contract, the Polish labour rules would apply in any case, to the extent they are more beneficial to the employee than Polish law, if the employee performs work mainly in Poland. Consequently, it would be very impractical for the employment contract of an employee hired in Poland to be governed by foreign law (e.g. Danish law). It is recommended that such contract is only governed by Polish law.
- 4.7 The foreign employer is obliged to fulfil all the standard employers obligations resulting from Polish law, except tax withholding duties. The employee receiving income from a foreign employer is personally obliged to pay all taxes and makes relevant filings with the Polish tax office. An employer is, however, obliged to insure an employee in the Polish social and health security system within 7 days from the

commencement of employment, which also means that a foreign employer must be registered as a payer of social security contributions (which should be preceded by applying for a tax identification number (known as NIP), which is issued for a foreign employer especially for this purpose. The process of registration of a foreign employer into the Social Security System may take up to three weeks. An employer from an EU country may, however, agree with the employee in the employment contract or separate written agreement that the employee will take over all the requirements related to payment of the contributions and making of all relevant filings. This option is however rarely accepted by the employees.

Hiring a new employee by a local Polish NGO entity

- 4.8 This is the most straightforward model. It is, however, possible only when a local Polish NGO (eg foundation) is established (i.e. registered in the National Court Register), so it may not be immediately available for an NGO which wishes to launch its operational activity in Poland as soon as possible.

Posting of employees to Poland:

- 4.9 A foreign NGO (whether or not having a local Polish office) can post its employee to work in Poland. The rules applicable to such secondment depends on whether it is a so called a short-term secondment (not exceeding 12 months with a possibility of extension to up to 18 months) or a long-term secondment (more than 12/18 months).
- 4.10 An employment contract for a foreign employee on a short-term secondment to Poland can be governed by foreign law, except that the foreign employer must observe minimum Polish labour law requirements related to certain aspects. In particular, the working time of a seconded employee cannot exceed 40 hours weekly on average and the employee has a right to at least 26 days of holidays per year during work in Poland. Employees on a long-term secondment to Poland benefit from the full protection of Polish labour law.
- 4.11 Exceptionally, when an employee, including an employee from outside of the EU, is seconded to Poland for less than 30 days within a 6-month period, no work permit is required. However, the immigration rules regarding the legality of his/her entry and stay on the territory must be complied with.
- 4.12 As a general rule, an employee posted to Poland should be registered for social security insurance in Poland. However, employers from the EU can continue to pay social and health insurance contributions in the country from which the employee was posted (generally for up to 24 months, but this period can be extended), provided that they

apply to their local social security institution for an A1 certificate confirming insurance coverage.

- 4.13 As regards coordination of social security contributions, a person recruited with a view to being posted to another Member State will be considered as remaining affiliated to the social security system of the Member State in which the employer is established only if, immediately before the start of his employment, the person concerned is already subject to the legislation of that Member State. In practice, the Administrative Commission for the coordination of social security systems considers that a worker satisfies such requirement if he or she has been affiliated to the legislation of the sending Member State for at least one month before the start of the posting.
- 4.14 Secondment is also possible with regard to a consultant, or a worker engaged on a basis of contract of mandate or any other civil law contract.
- 4.15 As regards personal income tax, the position depends very much on the individual circumstances of the person concerned. To summarize, in the case of an employee posted to work in Poland, three situations can be distinguished, which will have different consequences for the taxpayer:
- (a) during the tax year, the posted employee stays in Poland for less than 183 days and does not have a center of vital interests in Poland (scenario 1);
 - (b) during the tax year, the posted employee stays in Poland for more than 183 days, but does not have a center of vital interests in Poland (scenario 2);
 - (c) during the tax year, the posted employee becomes Polish tax resident (this is, has a center of vital interests in Poland)(scenario 3).

Scenario 1 will not result in any tax obligation in Poland. The income of the a foreign employee will be taxed abroad. Scenario 2 will result in a tax obligation only in relation to the income earned in Poland. Scenario 3 will result in a tax obligation in Poland on the entire world wide income of the employee. In Scenarios 2 and 3, employee would be personally obliged to pay taxes to the Polish tax office (it cannot be done by the foreign employer on the employee's behalf).

- 4.16 A center of vital interests involves possession of a particularly strong link with the country and comprises things such as the family, the property, the place in which the person carries out employment or business activity.

Volunteers

- 4.17 Volunteer work is not strictly governed by employment law. A contract with a volunteer is usually signed in the form of civil law agreement to protect the volunteer from potential abuses by the entity a volunteer is working for. Volunteer work may, but does not have to be, remunerated. The agreement can however be negotiated to include reimbursement of costs or include private medical insurance. This form of contract does not give rights to the person engaged to social security or public insurance benefits.
- 4.18 However, another form of civil contract known as mandate contract may be used to give protection to volunteers. Under this agreement the work is paid for. Therefore, statutory rules regarding minimum wages applicable in Poland apply to it. It gives to the person engaged the benefit of social security and public insurance. There is no time limit regarding the duration of such a contract.

Freelance – self-employed

- 4.19 This is a simple form of cooperation commonly used in Poland due to its relative flexibility. However it is important that the person engaged on this basis has independence in the work relationship (in particular, such person should not provide services under strict supervision of the entity and should have full or at least large flexibility in terms of determining working hours and. place of provision of the services). Registration under this status takes up to one week for EU citizens. For non-EU citizens, registration is subject to possession of residence title that allows that person to carry on business activities in Poland.

5. STATUS OF PUBLIC BENEFIT ORGANISATIONS

- 5.1 The [Law on Public Benefit Activity and Volunteerism](#) (the "**PBA Law**") allows foundations to be granted the legal status of a Public Benefit Organisation ("**PBO**"), which allows a foundation to take advantage of a number of legal and tax privileges such as:
- (a) the possibility to receive 1% of personal income tax donations from national taxpayers,
 - (b) exemption from real property tax on the premises used for conducting unpaid statutory public benefit activity, and
 - (c) free of charge communication about the foundation's activities via public mass media, i.e. on national television and radio. PBOs are subject to specific obligations such as submitting annual performance reports on their activities and financial statements.

5.2 PBO status is granted to entities conducting public benefit activities aimed at a particularly vulnerable group of society, uninterruptedly, since the moment of their registration as a foundation in Poland, for a period of at least 2 years. This include, such as, among other things, providing assistance to victims of armed conflicts and wars.

5.3 Certain other requirements are imposed such as:

- (a) the foundation's management board members must not have criminal record;
- (b) the PBO must have a statutory protection of the foundation's assets;
- (c) the PBO must have a supervisory body.
- (d) Furthermore, a PBO must ensure that the business activity conducted by it is merely complementary to its public benefit activities and all income earned from this business activity is fully devoted to support its public benefit activities.

5.4 The status is granted upon submission of an application to the competent court which will verify the compliance of the statutory provisions and submitted documentation with the legal requirements imposed on PBOs.

6. **TAXATION ASPECTS**

6.1 A foundation is not required to pay **corporate income tax** when the income from its economic activity is allocated for statutory purposes specified by the Polish tax regulations, such as charity, health protection and social aid.

6.2 A foundation must, therefore, precisely define the scope of its activities in its articles of association and that scope has to be compliant with these exemptions.

6.3 Foundations are exempt from tax on subsidies received from local governments funds, government or foreign institutions in the form of non-returnable aid, subsidies from the state budget or local governments, as well as amounts received from government agencies, if the agencies received funds for this purpose from the State budget.

6.4 Public Benefit Organisations are exempt from corporate income tax. To some extent also they are exempt from property tax, stamp duties, court fees, tax on civil law transactions when the transaction is related to public benefit activities, and, in some cases, tax on goods and services (VAT).

6.5 Namely, there is no specific VAT exemption for foundations including those acting in the form of Public Benefit Organisations, which means that general rules apply. So, the

foundation will be obliged to register for VAT purposes, if it conducts VAT-able supply, i.e. supply of goods or services for remuneration. However, its activity may be (i) outside the scope of VAT, if it is free of charge statutory activity or (ii) exempt from VAT, if its annual turnover does not exceed PLN 200,000 or it provides services for remuneration which exempt from VAT under art. 43 of the VAT Act, such as health care services. In case the entire activity of the foundation benefits from the exclusion/exemption from VAT, no registration for VAT is required. Consequently, in such case the foundation is not entitled to deduct any input VAT incurred on purchases.

- 6.6 Apart from situations where the foundation is obliged to register for VAT, the registration for VAT purposes may be considered if it conducts VAT-able activity but it is not obliged to register due to turnover below PLN 200,000. In such case the "voluntary" registration would increase the price for goods and services supplied by the foundation by applicable VAT (which may not be deductible for the beneficiaries), but may allow the foundation to deduct to some extent input VAT incurred on purchases.

7. REAL ESTATE

- 7.1 Formally, a foundation does not have to have a physical headquarters to be able to conduct its business. It may operate virtually or host meetings in public places. However, for registration purposes a foundation needs to have an established registered seat and address for the delivery of any correspondence to it.
- 7.2 The registered seat must be specified in the foundation's Articles of Association. In theory, the registered seat of the foundation can be registered in any premises to which the foundation has some sort of legal title, such as the home of one of the members of the foundation's management board. A foundation can also use a virtual office – a service commonly offered to commercial companies operating on the market, which do not need a physical office for their operations.
- 7.3 On a side note, for the purpose of obtaining a Tax Identification Number (NIP) by a foundation, the tax office may request a document confirming the foundation's legal title to its registered seat. In case set out above, this would most likely be a lease agreement or a lending for use agreement.
- 7.4 In terms of the process of the foundation's registration in the National Court Register – a document confirming the foundation's title to the relevant real property is not necessary, although the registry court may request such document pursuant to the Act on the National Court Register.

- 7.5 Assuming that the NGO requires a physical location, headquarters in Poland will need to be established. There are various ways for securing office space for a foundation, the most common being:
- (a) A lease agreement – commercial space can be leased from private owners or local authorities, but in the latter case this would require the foundation to participate in tender or open competitive procedures (often lengthy and dependent on bureaucracy).
 - (b) A lending for use agreement – substantially similar to a lease agreement, whereas in this case the commercial space is given for use free of charge.
 - (c) Lease of premises on preferential terms –upon receiving the status of a PBO, a foundation may be eligible to apply for a lease of commercial premises owned by the local authority (known as a 'gmina' in Polish), which may be leased to the foundation (i) without the need to participate in tender or open competitive procedures, and (ii) for rent substantially lower than the regular rates for such commercial premises available on the market. Information on commercial premises owned by a municipality (if available) should be published by the relevant local authorities on their websites. However, it is a discretionary decision of the local authorities whether or not such premises are designated for commercial purposes and can be leased by PBOs.
- 7.6 A foundation may be a party to a lease agreement or a lending for use agreement only after it is registered in the National Court Register and obtains legal capacity. Having said this, a foundation still needs to have a registered seat for registration purposes, as described in section 3 above.

**THIS MEMORANDUM REFLECTS THE POSITION AT THE GIVEN TIME
AND IS FOR INFORMATION ONLY.**

Clifford Chance Warsaw