



ANDRZEJ LULKA & PARTNERS
Law Firm



Mec. Błażej Szczęsny - attorney managing the NGO
Department of the law firm Andrzej Lulka i
Wspólnicy Kancelaria Prawna sp.k.

CREATE A FOUNDATION

How to Start Doing Good in an Organised Form – a Few Words on Establishing a Foundation

Within all of us there are greater or lesser reserves of goodness, sensitivity to injustice and willingness to help. These qualities are usually shown through small but thoughtful gestures, such as doing the shopping for an elderly neighbour, or dropping a few coins into a volunteer's collection box or an online fundraiser. But what if the desire to provide support or assistance is so strong that it could become a way of life and a means of self-fulfilment? What if an occasional act of goodwill becomes a hobby that ends up occupying most of our time? What if, one day, we look in the mirror and, to our surprise, we see an activist – someone ready to fight for certain values or a particular cause?

Of course, it is possible to work with various existing organisations, but this may not be sufficient for everyone, often due to the need to conform to their rules or where they are not fully aligned with the goals we wish to pursue. On the other hand, conducting charitable activities informally, without institutionalising them, may fail to inspire trust among entities from whom we seek funding or potential partners for our projects.

Our law firm is often approached by such individuals, who have taken their ideas and good intentions to other entities, only to be met with the ubiquitous question: “Who exactly are you?” At that point, they recognise the need to “institutionalise” themselves – a long word that captures the need to create an entity and give it a name, enabling them to answer such questions with pride and to be treated as a “serious organisation.” This leads to questions about how to proceed and, above all, which legal form to choose for conducting such activities. Everyone has heard of limited liability companies, limited partnerships, associations, foundations, and so forth. We encounter these terms daily, especially on receipts or the details of bank transfers. However, establishing one's own entity is a completely new experience for those who have never run such a business before. Such people often come to our firm for guidance.

After a few preliminary questions, it usually turns out that establishing a foundation may be a suitable solution – particularly if the individuals wish to carry out charitable activities on their own terms, naturally within the framework of applicable laws, and if they want to increase their chances of building trust and credibility with donors. Undoubtedly, the vast majority of people have heard of foundations, but not so many know how to actually set one up. Contrary to appearances, it is not an especially complicated matter, though to avoid unpleasant pitfalls, it is advisable to have the support of professionals, such as the NGO team at our law firm.



The legal framework governing the establishment and operation of foundations is set out in the rather old Act on Foundations, which dates back to 6 April 1984. It is one of the shortest statutes currently in force, comprising just 20 articles. Is that too few? Personally, I do not think so, as it regulates only the fundamental issues related to the activities of foundations, leaving many aspects to be determined in the foundation's statutes, which then allows the foundation to be tailored to the founder's own needs and adapted to the intended type and scale of activity. On the other hand, leaving many matters open can sometimes lead to an excess of imagination while drafting the statutes, which – due to inadvertent breaches of provisions of other laws – may not necessarily be welcomed by the registration court examining the content of the statutes and registering the foundation in the National Court Register (KRS).

At the stage of creating a foundation, the most important role is naturally played by the founder, whose primary duty is to submit a declaration of intent to establish the foundation (in the form of a notarial deed), to determine the content of the statutes, and to transfer assets to the foundation enabling it to fulfil its objectives. The range of entities that may act as founders is very broad – they can be individuals or legal entities, Polish or foreign. Already at the stage of drafting the statutes, it is necessary to consider what further role, if any, the founder will have in the foundation's activities. Will the founder cease to have any influence over the foundation after establishing it, leaving everything in the hands of the foundation's governing bodies? Or will the foundation remain largely controlled by the founder, for example, by the founder being the sole member of the management board, or by having the power to perform certain acts in relation to the foundation, such as appointing and dismissing board members, approving amendments to the statutes, or deciding on the liquidation of the foundation?

It is worth noting that, if there are formal-legal or purely practical obstacles to fulfilling the role of founder – which is often the case with foreigners, for example when sworn translations of documents are required, or the founder has difficulty appearing before a notary because they reside in another country – and once the foundation has been established the founder has no powers towards it, then the founder can be practically anyone. For instance, our law firm advised an American legal entity on establishing a Polish foundation; to facilitate the entire process, one of our lawyers assumed the role of founder, while naturally granting the US entity all the relevant powers concerning the foundation in the statutes.

As can be inferred from the above information, the foundation's statutes are of key importance for its functioning. Of course, many templates for foundation statutes are available online, but these should be approached with great caution as it is never clear who exactly created them, and they may not necessarily be tailored to our needs.



It is better to use them as inspiration rather than to adopt ready-made, unverified solutions as one's own. The act specifies what must and what may be included in the statutes, but it leaves considerable freedom and a wide scope for the founder regarding substantive provisions, which, as mentioned earlier, can be helpful but may also pose risks.

The first step is to carefully consider and define the core of the future foundation, namely what objectives the foundation aims to achieve and how it intends to achieve them, specifically what activities it plans to undertake in this regard. To some extent, our clients, when confronted with the questions we pose, begin to “shape their foundation” mentally during meetings at our law firm; it is then that they gain a clearer understanding of their plans, expectations and the actions they wish to pursue. However, they usually know the primary goal or mission before they come to us. For example, a foundation's objective might be the protection of animals, with the means of achieving this being the operation of shelters for homeless animals. In our experience, those drafting the statutes do not always correctly define the foundation's objectives and forms of activity from a legal standpoint, which can result in the refusal to register the foundation in the National Court Register (KRS). A common mistake is also failing to specify whether the foundation's activities are to be carried out on a non-profit basis (i.e. activities for which the foundation does not charge remuneration) or on a fee-paying basis (i.e. activities for which the foundation charges remuneration, but not exceeding the cost of the activity).

The second extremely important issue is to consider which governing bodies will operate within the organisation, what their powers will be and who the first board members will be. If we plan to establish just a management board, which is the only mandatory body, the matter does not seem particularly complicated. However, if we have greater human resources and wish to establish additional bodies (such as supervisory or advisory boards), we have to carefully analyse their powers, the rules for appointing and dismissing members, their mutual influence on one another and the methods for resolving potential conflicts. Finally, we also have to consider the founder's powers, especially as, for example, he may not be on the management board, but has certain rights in relation to the foundation – without a specialised lawyer, this is barely manageable (you are welcome to consult us).

It is well known that money is not everything, but everything without money is... nothing. It is simply impossible to conduct charitable activities without adequate funding. The initial assets of the foundation come from the founder, who, immediately after the foundation is registered in the National Court Register (KRS), should transfer to the foundation the resources specified in their declaration of intent on establishing the foundation. This will usually be a specified sum of money, but there is nothing to prevent the initial assets being other property, in particular movable or immovable assets.



We are often asked what the minimum founding fund of a foundation is. Unlike, for example, a limited liability company, the law does not set a minimum amount – there is just one small caveat, which we will turn to shortly. When determining this amount, it should be borne in mind that it usually takes some time before a newly registered foundation is able to secure regular funding, such as donations, grants or subsidies, but the costs related to its operation (e.g. employee salaries, office expenses and accounting) must be borne in the meantime. Therefore, when establishing a foundation, the founder should endow it with sufficient assets to ensure its ability to operate until it becomes financially self-sufficient.

When it comes to securing funds for the foundation's statutory activities, it is crucial to consider whether the foundation will rely solely on the generosity of third parties, and thus engage exclusively in non-profit or fee-paying activities, or whether it will also generate its own resources by conducting business activities. The law does permit a foundation to conduct business activities, provided that the scale of these activities furthers the foundation's objectives, and that the foundation's assets allocated to business activities is valued at not less than one thousand zlotys. This is the exception to the lack of a statutory minimum founding fund we mentioned above and applies in the case of foundations conducting business activities. In practice, these requirements mean that the assets allocated by the founder for the foundation's statutory activities should be greater than those allocated for business activities. Further statutory requirements for conducting business activities include the obligation to allocate the greater part of the profit from such activities to the foundation's statutory purposes, as well as a prohibition on conducting business and fee-paying activities in relation to the same area of activity (i.e. covered by the same business activity code (PKD/NACE)). Conducting business activities also requires the foundation to be entered into the commercial register of the National Court Register (KRS), incurring higher court fees, more extensive reporting and accounting obligations. Therefore, it is worth considering whether engaging in business activities is justified, given the increased workload involved.

Of course, this is not an exhaustive list of issues that the foundation's statutes should or may regulate. The statutes should at least specify the name of the foundation. In this regard, it is advisable to search the National Court Register (KRS) to verify whether an entity with the same or a similar name to the planned foundation already exists. Similarity of names may result in the refusal to register the foundation. The statutes may include various other provisions tailored to the type of activities the foundation will undertake, as well as the needs of the founder and the governing bodies. These may include provisions on the permissibility and conditions of merging the foundation with another foundations, changing the foundation's objectives or statutes, or its liquidation. From the perspective of potentially obtaining public benefit organisation status in the future, appropriate provisions should ideally be included at the stage of drafting the statutes, although the required amendments can also be made at the time of applying for such status.



Interestingly, due to the sparse statutory regulation, what is known as a “county law” often applies in registration courts, meaning that different courts (and even different commercial divisions of the KRS within the same court) may apply different practices regarding the admissibility of certain statutory provisions or their content. Sometimes a particular provision is accepted in one court, while in another court or division the applicant will receive a request to remedy deficiencies, or a decision to deny the application due to the inclusion of the same statutory provision. Only the most experienced lawyers will know which provisions to be wary of and how to ensure their acceptance (once again, we invite you to consult us on this).

Once the key documents – the declaration of intent to establish the foundation and the statutes – have been drafted or reviewed by lawyers, a few simple documents (declarations, consents and resolutions) still need to be prepared before the application to register the foundation can be submitted to the National Court Register (KRS). Foundations may continue to submit applications in traditional paper form for some time, though even a minor error (such as failing to cross out a blank field in the application form) can result in the application being returned. One solution to this problem is to submit the application electronically, which is intended to become the only permissible method of submission in the future. For non-professional representatives, this method has one significant drawback – the original documents must still be sent to the court. If one of the lawyers at our firm is granted the appropriate power of attorney in this regard, you need not worry; we will submit the application on your behalf.

Once the application for registration has been submitted, all that remains is to wait. There is no fixed rule regarding the waiting time for registration – it usually takes one to two months – but we also know what can be done in certain situations to have the registration completed within a week, or even the next day. In the final stages, all that remains is to register the foundation in the Central Register of Beneficial Owners, open a bank account for the foundation, submit a few documents to the tax office, and then you can begin doing good, implementing your ideas, and fighting for the values or causes close to your heart, using an organised legal form.

If, after reading this article, you feel that charitable work, activities promoting and developing culture or sport, or activism are something you wish to pursue in life, and at the same time you want to be confident that the process of establishing a foundation will proceed smoothly and successfully, we invite you to contact the lawyers at our firm.

