# **FAQ: Foundations (including charitable foundations in Armenia)**

This blog discusses the most common issues related to the creation and operations of foundations (including charitable foundations) in Armenia.

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| **1. What is the legal status of the Foundations according to the Legislation of the Republic of Armenia?** |

The main source of law regulating the activities of a foundation (among other applicable common laws such as the Civil Code of Armenia) is the Law on Foundations.

The RA Law on Foundations stipulates:

**A foundation** is a non-profit organization established on the basis of voluntary property contributions from citizens and (or) legal entities and does not have a membership, pursuing social, charitable, cultural-and- educational, scientific, medical, environmental and (or) other socially useful goals.

A Foundation is a legal entity and has a separate property from the founder’s property, which is registered on a separate balance sheet.

**The exact purposes and beneficiaries of the Foundation must be specified in the Charter of the Foundation. Once established, these purposes can be changed only in very exceptional cases in a judicial procedure.**

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| **2. Does the Legislation of the Republic of Armenia establish special requirements for the name of foundations? Can a foundation have a symbol?** |

The Legislation of the Republic of Armenia establishes mandatory requirements for the name of Foundations: in particular, the name of the Foundation must contain the word “Foundation”, the name of the Foundation must be different from the name of other foundations, including foundations, which were liquidated during the last year before the registration.

A foundation may use the name of a known natural person in its name only with the written consent of that person, and in the case of the death of a natural person - with the written consent of all his/her heirs. In the absence of heirs, it is allowed to use the name of a person in the name of the foundation, if the person’s reputation is achieved in the field, which coincides with the main field of activity of the foundation.

In addition to those listed above, the Civil Code of the Republic of Armenia states that the name of a non-profit organization must contain a reference to its purpose, i.e. cultural, charitable, etc.

As regards symbols։ a foundation may have a symbol. The image and description of the symbol may be included in the Charter of the Foundation, but the symbol of the Foundation must not coincide with the state symbols of the Republic of Armenia. The Foundation may also have stamps and letterheads with its name, as well as other means of personalization.

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| **3. How is the Foundation established? Can the Foundation be established by one person?** |

A foundation can be established by the founders, as well as through the reorganization of the existing foundation(s) or the reorganization of non-profit organizations in accordance with the legislation.

A foundation is created through establishment under the decision of the founders. A foundation may be established by one person.

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| **4. Can foreign legal entities and individuals establish a foundation in the Republic of Armenia?** |

The RA Law on Foundations stipulates that founders of a foundation may be citizens of the Republic of Armenia, foreign citizens, stateless persons, legal entities of the Republic of Armenia and foreign legal entities, with the exception of persons whose participation in the foundation is prohibited or restricted by law. Procedural differences are not prescribed by the law.

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| **5. Content of the founder’s decision on establishment: Is it required to approve the composition of all bodies of the foundation at the time of establishment and specify the full address of the location of the foundation to be established?** |

When adopting a decision on the establishment of the foundation, the founders must unanimously approve the Charter of the foundation and appoint the head of the executive body of the foundation (hereinafter referred to as the manager) or the acting head of the executive body (hereinafter referred to as the interim head). The decision must contain information about the founders.

The Board of Trustees is formed within three months after the registration:

The Charter stipulate:

1) the name, location, and purposes of the foundation.

2) list of types of economic activities, which the foundation can engage in personally.

3) information on the founders (founder):

- For individuals: citizenship, name, surname, passport data, address of residence or registration,

- For legal entities: country of incorporation, full name (corporate name), state registration details, location address

4) procedure of management and disposal of the fund’s property.

5) beneficiary groups of the foundation.

6) term of the foundation’s activity, if the foundation is established for a certain period of time.

7) The procedure for forming the bodies of the foundation, the number of members of the board of trustees, the powers of the bodies of the foundation, the procedure for taking decisions by them, including issues on which decisions are taken unanimously or by qualified majority vote.

8) procedure of liquidation of the Foundation.

11) other provisions that do not contradict the law.

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| **6. What management bodies should be mandatorily formed in the Foundation upon its establishment? What is the minimum number of members of such bodies? Is it possible to combine positions in the bodies by one person? What is the role of the founder in the Foundation, can he/she be a member of the management/controlling bodies of the Foundation and in what capacity?** |

The management bodies of the Foundation are:

1. The Board of Trustees

2. Head (director, executive director or general director, rector).

3. The Foundation with untouchable capital has an auditor. Other bodies (including collegial executive bodies) can be determined by the Charter of the Foundation.

The supreme body of management and control of the foundation is the board of trustees of the foundation.

The number of members of the Board of Trustees cannot be less than 3 members. Members of the Board of Trustees of the Foundation may be persons over the age of 18 years, including the founders. Members of the Board of Trustees of the Foundation may not be members of any other body of the Foundation. The term of office of the members is not limited, unless otherwise stipulated in the Charter.

**IMPORTANT NOTE:** The RA Law on Foundations stipulate that the Foundation Board of Trustees is created in the manner prescribed by the Charter, and if no such procedure is prescribed by the Charter, then on the principle of one member of the Board of Trustees for each founder. It is very important to create a renewable Board of Trustees, otherwise, if the powers of all members of the Board of Trustees are terminated (for example, death of the founder or declaring him incompetent) and the Board of Trustees is not restored, the Minister of Justice of the Republic of Armenia shall appoint a temporary board of 3 members within two months. Therefore, it is always recommended to specify in the Charter the process by which the Board of Trustees can always be re-formed, even in the absence of the founder, so as to always maintain the management of the foundation by the board.

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| **7. Can foreign citizens be members of the management bodies of the Foundation?** |

There are no restrictions and, according to the law, both RA citizens and foreigners and stateless persons can be members of the Foundation.

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| **8. Can the founders of the foundation make changes to the Charter upon its approval?** |

The founders of the foundation may amend the Charter by unanimous decision. The Board of Trustees may amend the Charter of the foundation in the manner prescribed in the Charter, if the Charter provide for such amendments, however, it must be noted that these amendments to the Charter may not affect to the purposes or beneficiaries of the foundation.

**IMPORTANT NOTE:** The Law also stipulates that if the maintenance of the Charter unchanged may lead to such consequences which could not have been foreseen when establishing the foundation, and the Charter does not provide for the possibility of amending them, or the changes affect the purposes or beneficiaries of the foundation, the right to amend is exercised by the court based on the application of the founding bodies or one of the founders or the temporary Board of Trustees established in accordance with the RA Law on Foundations.

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| **9. Does the legislation of the Republic of Armenia attribute the support of third parties’ activities/the Charity Foundation’s own activities in the sphere of culture and education to charitable activities?** |

The Law of the Republic of Armenia on Charity stipulates that among the objectives of charity is the support of implementation of programs in science, education, art, literature, healthcare, sports, and physical education. The law defines charity as the provision of voluntary, disinterested, material and spiritual assistance (hereinafter referred to as the charity) to citizens, healthcare, and non-profit organizations to achieve the goals established by law by individuals and legal entities, which are not prohibited by law.

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| **10. Does the RA Legislation allow a Charity Foundation established in Armenia to carry out charitable activities not only in Armenia, but also outside Armenia?** |

Charitable Foundations are entitled to carry out international charity.

International charity is carried out through the development and implementation of international charitable programs, participation in the work of international charitable organizations, cooperation with foreign, particularly Armenian Diaspora partners in the relevant field of charity, if it does not contradict the Legislation of the Republic of Armenia and the international treaties of the Republic of Armenia.

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| **11. Can the Charity Foundations render charitable assistance to foreign persons in the form of donations, provision of property for free use (the latter in the territory of the Republic of Armenia or outside of it)?** |

According to the Paragraph 1, Article 3 of the effective Law of the RA on Charity of 08.10.2002, the notion of “charity” is defined, according to which Charity is the provision by individuals and legal entities of voluntary, disinterested, not prohibited by law (gratuitously or on preferential terms) material and spiritual assistance (hereinafter referred to as charity) to individuals and non-commercial organizations for the implementation of the objectives of Article 2 of this Law, which specifies the goals of charity.

 The purpose of charity is:

1) assistance to those individuals (disabled, orphans, unemployed), and low-income families who are unable to provide for their own material and spiritual needs.

2) Assistance to non-profit and other organizations.

3) provision of material assistance to persons affected by war, natural disasters, infectious diseases, epidemics and other emergencies and participation in the elimination of their consequences.

4) assistance, through creation of jobs or retraining of the unemployed, with regard to employment of the unemployed in need of social assistance.

5) promotion of programs in the fields of science, education, art, literature, health, sports and physical education.

6) assistance in the implementation of programs for the protection and reconstruction of historical, architectural, cultural and artistic monuments.

7) assistance in the implementation of activities for the protection and improvement of the nature and the environment.

8) assistance in the implementation of social programs approved by the Government of the Republic of Armenia

Article 3 (2) of the same law stipulates that giving money or other material resources to parties or commercial organizations is not deemed charity.

Clause 1 of Article 20 of the RA Law on Charity stipulates that Philanthropists have the right to carry out international charity.

The implementation of international charity is regulated by Clause 2 of Article 20 of the above mentioned Law, according to which international charity is implemented through the development and implementation of international charitable programs, participation in international charitable organizations, cooperation in relevant charitable fields with foreign partners, particularly partners from the Armenian Diaspora, if it does not contradict the legislation of the Republic of Armenia and international treaties of the Republic of Armenia

**NOTE**: Summarizing the above norms, as well as taking into account the constitutional principle “Everything that is not prohibited - is allowed”, there is an opportunity for charitable foundations operating in the Republic of Armenia to provide charitable assistance to foreign citizens or non-profit organizations in the form of donations, providing property for free use in the Republic of Armenia and outside it, in the prescribed manner.

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| **12. Is there a requirement for mandatory approval of charitable programs, what is the procedure for their approval, amendment, termination, is registration of such programs required in the RA state bodies in order to receive tax benefits by the Charity Foundations and its beneficiaries?** |

Article 13 of the RA Law on Charity stipulates that there is a procedure for qualifying a program as a charity.

In accordance with clause 12 of the procedure set out in Appendix N 3 of the RA Government Decree N 910-N of July 27, 2017, programs submitted for consideration by the Charity Programs Coordination Committee are qualified as preferential if they simultaneously meet the following criteria:

1) The program will involve transactions for the supply of goods, provision of services and performance of works within the meaning of the Tax Code of the Republic of Armenia.

2) The amounts of value added tax for the operations of supplying goods, rendering services and performing works carried out within the framework of the program are not envisaged by the state budget of the Republic of Armenia.

3) The programs presented are aimed at ensuring economic growth and creation of new jobs in the areas of information technologies, tourism, agriculture, science, education, energy and environmental protection.

4) The preferential qualification of the program does not result in discriminatory approaches to taxation compared to other economic entities operating in the same field.

Further, regarding the requirements for registration of preferential programs, it is informed that in accordance with paragraphs 5 and 9 of the procedure established by Appendix 3 of RA Government Decree No. 910-N of July 27, 2017, programs funded from other sources outside the state budget of the Republic of Armenia, for preferential qualifications or changes to the program qualified as preferential, or for termination of the program as preferential qualifications, an application must be submitted to the commission. The application must be submitted at least 2 months prior to the start of the program. The submitted application describes the goals of the project, the planned activities, the sources of funding, its executors and beneficiaries, the expected results, as well as the rationale for the effectiveness of the program and the direction of economic development of RA. The program also includes an estimate of the projected revenues and expenditures and defines the stages and timelines of the project implementation. The program may include a description of other circumstances, facts, data, and other justifications deemed important by those implementing the program. The maximum time for consideration of the application by the commission is 15 working days. In case of the necessity of additional consideration of the application the review of the application may be postponed by the decision of the commission. The commission shall discuss the application with the participation of the executor of the program. The executor of the program shall be informed of the day, time and place (address, premise) of the discussion at least two days in advance. The absence of a duly informed representative of the state administration implementing the program is not an obstacle to the discussion.

Clause 13 of the same order stipulates that the commission’s conclusion on recognizing the Program as preferential, on rejecting the qualification and the order of the Minister of Finance of the Republic of Armenia on approving it shall be sent to the public administration body that submitted the application within 5 working days. Rejection of the application or suspension of the review of the application shall be executed in a protocol with an indication of the respective grounds.

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| **13. Is state registration of foundations required in the Republic of Armenia? Within what period of time after execution of constituent documents is it required to register the foundation in the registry of legal entities?** |

In the Republic of Armenia foundations are subject to state registration.

Not later than 2 months from the date of the decision to establish a foundation, an application for state registration should be submitted to the State Register Agency of Legal Entities. Supplements and amendments to the Charter and the Charter approved in the new edition are also subject to state registration.

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| **14. What documents must be submitted to the State Register Agency of Legal Entities in order to register a foundation? Is it possible to submit the documents through an authorized person?** |

It is necessary to provide a copy of the founder’s passport (if it is a foreign passport, notarized and apostilled). If the founder is a legal entity, it is necessary to submit its constituent documents (if it is a foreign company, notarized and apostilled). Along with the application, it is necessary to submit a declaration on beneficial owners.

Also, the below documents shall be submitted to the State Register Agency of Legal Entities for the registration of foundations

1) Application for state registration, signed by the foundation manager or interim manager.

2) The Charter of the Foundation, at least in two copies.

3) Decision on establishment of the Foundation.

4) A receipt on payment of the state duty for registration.

If the name of the Foundation contains the name of a known natural person, it is necessary to submit a consent.

The application can be submitted through an authorized person. Physical presence is not required, the registration process can be carried out through a representative on the basis of a power of attorney executed in the simple written form.

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| **15. Can the state registration authority refuse to register the foundation, if yes, on what grounds?** |

Registration of the Foundation may be denied on the following grounds, if:

1) the statutory procedure for establishment of the Foundation has been violated.

2) the Charter of the Foundation contradicts the law.

3) the name of the Foundation coincides with the name of another previously registered foundation.

4) not all documents, necessary for the state registration, defined by the legislation, have been submitted.

Registration authority has no right to reject the registration of the Foundation on the grounds of inexpediency of its creation. It should be noted that the refusal to register the Foundation is not an obstacle to submit a new application for state registration. In any case, the denial of state registration of the Foundation may be appealed in court.

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| **16. What types of statements (in addition to the standard ones) does the Foundation submit in the Republic of Armenia and within what terms? Is there a requirement for public reporting of the Foundation?** |

Annually, no later than July 1 following the reporting year, in the system prescribed for statements published by foundations, the foundation must publish:

1. statement on its activities, which must contain information on the implemented projects, the sources of funding, the total amount of funds used in the reporting year and the amount of expenses aimed at the implementation of statutory tasks, names of founders, members of the board of trustees, the manager, if they used the funds and services during the reporting year, as well as the number of persons included in the Foundation,

2. financial statements, prepared in accordance with the law.

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| **17. Are tax incentives applicable to the Foundations?** |

Article 108 (1), (11) of the Tax Code of the Republic of Armenia stipulates that the founder’s contributions to the statutory capital, as well as donations from third parties for statutory, non-profit activities, including donations of money or other property, cultural values from foreign persons for non-profit organizations, particularly for foundations, are not considered income, and, therefore, are not subject to income tax.

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| **18. Are donations from the Foundation/granting the property of the Foundation to individuals and non-profit organizations in Armenia and abroad exempt from taxes? What are the conditions for application of tax privileges?** |

**According to Article 64, Part 2, Clause 7 of the RA Tax Code:**

2. The following transactions and operations defined by Article 60 of the Code are exempt from VAT:

7) free supply of goods, free performance of works and (or) free provision of services by public, charitable and religious organizations.

**According to Article 108, Part 1, Clause 11 of the RA Tax Code:**

1. For the purposes of determining the base of taxation with profit tax, the following are not considered income for profit taxpayers:

11) assets (including membership fees), works and services received free of charge by non-commercial organizations.

**According to Article 112, Part 1, Clause 8 of the RA Tax Code:**

1. For the purposes of determining the base of taxation with profit tax, the following are not considered expenses for profit taxpayers:

8) expenditure on assets (including membership fees), works and services received free of charge by non-commercial organizations, or expenditure made at their expense, other deduction or incurred loss.

**According to Article 147, Part 1, Clause 14 of the RA Tax Code:**

1. For the purpose of determining the tax base, the following are considered deductible incomes:

14) assets, works, services received free of charge from non-commercial organizations.

NOTE: Summarizing the above norms, donations from the fund/providing for free use of Charity funds property to individuals and non-profit organizations in Armenia and abroad (citizens of the Republic of Armenia and foreign citizens, non-profit organizations established and operating in the Republic of Armenia or abroad) are exempt from VAT, Tax on profit, income tax of individuals. But, if the funds have employees who have an employment or civil law contract, then, according to the norms of the Republic of Armenia, Charitable Funds, as well as other employers, are obliged to withhold income tax (PIT) and social security payments from the income paid to their employees or to individual contractors (salary, benefits, premiums, compensation for temporary unemployment, compensation for maternity leave, etc.). From 2022, PIT is applied at a single fixed rate of 21%. In 2023, this indicator will be reduced to 20%. The conditions for applying tax benefits are determined by the type of activity (charitable fund), compliance with all norms listed in the RA Law on Charity, as well as the RA Law on Foundations.

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| **19. What is the procedure of liquidation of the Foundation (who makes the decision)? Where can the property of the Foundation be directed in the process of liquidation?** |

The decision on the liquidation of the Foundation may be made only by the court based on the application of the interested parties. The Board of Trustees shall appoint a liquidation commission (liquidator) and in accordance with the RA Civil Code and the Law on Foundations determines the procedure and terms of liquidation. From the moment of the appointment of the liquidation commission, the authority to manage the Foundation shall be transferred to the liquidation commission. The liquidation commission shall act on behalf of the liquidated foundation in court.

In case of absence of liabilities towards creditors the property of the foundation shall be transferred to contributors in accordance with the amount of contributions made by them but not more than the amount of contribution, and if it is not possible the contributed amount shall be transferred to the state budget, and the other property shall be transferred into the ownership of the Republic of Armenia Government, with the exception of cases as prescribed

Information on the liquidation process (the beginning and the end of the liquidation process, the composition of the liquidation committee) shall be entered into the State Register of Legal Entities based on the application of the liquidation committee.