

**DEMOCRATIC REPUBLIC OF THE CONGO**  
**LAW N° 004/2001 OF 20<sup>TH</sup> JULY 2001**

ATTACHING GENERAL ENFORCEABLE PROVISIONS  
TO NON-PROFIT MAKING ORGANISATIONS AND  
CHARITABLE CORPORATIONS

Legislative and constituent Assembly – transition parliament has passed,

The President of the Republic promulgates the law the exact terms of which are as follows:

**PART I: NON-PROFIT MAKING ORGANISATIONS (ASBL)**

**CHAPTER I: GENERAL PROVISIONS**

**Section I: From the definition and classification of non-profit making organisations (ASBL)**

Article First: the non-profit making organisation is one which does not engage in industrial or commercial operations, even incidentally, and does not seek to procure material gain for its members.

The non-profit making organisation is non-political.

Article 2: The non-profit making organisation is the very nature of its activity and its objective is:

1. A cultural, social, educational or economic organisation ;
2. A non-governmental organisation ONG by abbreviation;
3. A denominational organisation.

**Section II: Conditions for obtaining legal personality**

Article 3: Legal personality is granted by the Minister of Justice following approval of the Minister who has jurisdiction over the specified sector of activities.

Article 4: The request for legal personality duly signed by the members of staff charged with the administration and management of the organisation is to be sent in duplicate, with acknowledgement of receipt to the Minister of Justice via the Minister who has the jurisdiction of the specified sector of activities. It must be sent with

- a. A list showing the names, post name, first names, domicile or residence of all the organisation's members of staff. This list is signed by all the members of staff who shall be charged with the administration or management of the organisation;
- b. A declaration signed by the majority of staff members showing the names, professions and domicile or residency of these people, who whatever their title, shall be charged with the administration or management of the organisation;

- c. Officially recorded articles of association and duly signed by all members of staff charged with the administration or management of the organisation;
- d. Certificates of good conduct, lifestyles and morals from all members of staff charged with the administration or management of the organisation;
- e. A statement concerning the resources the organisation anticipates it will need in order to carryout its objectives to which it assigns itself.

This declaration must be renewed at the end or beginning of each term by application of article 19.

This request is signed by all members of staff charged with the administration or management of the organisation.

Article 5: Whilst awaiting the obtaining of the legal personality, approval from the Minister who has jurisdiction over the specified sector of activity is deemed to be a valid provisional authorisation for operation. As regards the recorded non-profit making organisations in the province, provisional authorisation is granted by the Governor of the province.

Provisional authorisation is valid for six months; once this period has elapsed, legal personality is supposed to be granted. In this case, the Minister of Justice is responsible for issuing the order which grants legal personality in the following month.

Article 6: The number of staff members working for the non-profit making organisation cannot be less than seven.

Article 7: The articles of association of the non-profit making organisation cannot contain any provisions which are against the law, morality or public order.

They must mention:

1. The name followed or preceded by the words “non-profit making organisation” by abbreviation “ASBL”;
2. The organisation’s head office; this must be based in the Democratic Republic of the Congo;
3. The organisation’s aim;
4. The provinces or areas where the organisation shall carry out its activities;
5. The various categories of members;
6. Terms of membership, withdrawal or exclusion of members;
7. Organisation of the administration or management of the organisation, methods of nomination and dismissal of persons charged with this administration, the length of their mandate and the extent of their power, the manner in which the organisation is represented towards third parties;
8. Methods of producing annual accounts;
9. Regulations to abide by when modifying the articles of association;
10. Allocation of assets and liabilities in the event of dissolution of the organisation.

Article 8: No non-profit making organisation can use the same names, abbreviations or other distinctive signs which belong to another organisation irrespective of their nature.

Article 9: The articles are only valid vis-à-vis third parties once they have been published in the Official Gazette of the Democratic Republic of the Congo.

Publication is done carefully by the Minister of Justice within forty five days.

## CHAPTER II: Non-profit making organisations according to Congolese Law

### Sub-section I: Members and articles

Article 10: People charged with the administration or management of the non-profit making organisation are chosen or revoked by the majority of staff members. They can only be designated by the aforementioned members.

Article 11: Any change that takes place within the personnel charged with the administration or management must be done by way of a declaration that is signed by the majority of staff members and sent to the Minister of Justice within a month and a copy must be sent to the Minister who has jurisdiction for the specified sector of activity.

Article 12: Each member of the non-profit making organisation can withdraw at any given moment in time. Each resigning or excluded member has no right to the social funds and cannot claim reimbursement for the subscriptions they would have made.

Article 13: The articles of association of the non-profit making organisation can only be modified by a majority decision of staff members.

Article 14: The Minister with jurisdiction for the specified sector of activity is advised of any modification to the articles.

The publication in the official gazette is conducted by the Minister of Justice.

### Sub-section II: Immovable property of the non-profit making organisation “ASBL”

Article 15: The non-profit making organisation can only possess property or other necessary immovable properties to carry out its social objectives for which it was created.

Acquisitions and disposals of immovable properties as well as any other operation conferring the use or enjoyment or entailing the loss of use or enjoyment must be declared in writing to the Minister of Justice and a copy must be sent to the Minister of Finance within 3 months starting from the date it occurred. The acquisition or disposal price must be shown on the declaration.

Article 16: All transactions, invoices, publications and other items emanating from the non-profit making organisation must mention the business name which must be immediately preceded or followed by these words which are to be legibly written in all correspondence: “non-profit making organisation” in abbreviation form “ASBL”.

Article 17: The Regional Court in the jurisdiction where the organisation has its head office, can order at the request of either a member of staff, or a third party or the State Prosecution Service, the cancellation of all transactions fulfilled by its agencies that would be contrary to the articles, law, public order and good morality.

Article 18: The organisation is responsible for faults which are attributable to its employees and those people who act on their wishes. The administrators or managers do not have any personal contractual obligation concerning the organisation's undertakings.

Their responsibility is limited to the execution of the mandate they received and to the mistakes they make in their management.

Sub-section III: The dissolution of a non-profit making organisation

Article 19: A majority of two thirds of the members of staff can order the dissolution of the non-profit making organisation.

The allocation of properties is determined by the majority of staff members if the provisions made in the articles are not realizable.

The winding up is carried out by one or several designated liquidators either by application of the articles or by virtue of a majority staff decision, either by default or by virtue of a court judgement brought about by any interested party or by the Public Prosecutor.

Article 20: The non-profit making organisation which no longer fulfils its commitments or which earmarks its assets and liabilities or the income is used for something other than what it had been earmarked for, or which contravenes either the articles or the law, or public order, morality, can be dissolved at the request of either a member of staff or a third party, or even the Public Prosecutor through the Regional Court.

In the event that the request for dissolution is refused, the court can nevertheless declare the decision void.

Article 21: In the event of a judicial dissolution of a non-profit making organisation, the Regional Court will designate one or several liquidators who having made a settlement of the liabilities will determine the relevant regulations of the properties. In default of this, the liquidator or liquidators shall give the properties an allocation which shall be conducted as soon as possible to reconcile them to the use for which the non-profit making organisation had created them.

Staff members, creditors and the Public Prosecutor can lodge an appeal before the Regional Court against the liquidator(s) decision.

Article 22: The Minister of Justice or the Governor of the Province can suspend for a period not exceeding three months, the activities of any non-profit making organisation which has upset public order or which has violated standards of morality.

Article 24: A maximum custodial sentence of six months and a fine of five thousand Congolese Francs or just one of these punishments shall be administered to whoever will have taken part in the maintenance or direct/indirect reconstruction of a non-profit making organisation that was dissolved by application of article 19, paragraph 1.

Article 25: Staff majority decisions concerning the dissolution, terms of the winding up and the appointment of liquidators are conveyed to the Minister of Justice and a copy is sent to the Minister who has jurisdiction for the area where the specified activity is carried out.

After checking their lawfulness, the Minister of Justice secures it by publishing it in the official gazette.

The decisions to appoint the liquidators must show the names, first names, post names, professions and domiciles or residencies of the latter.

Article 26: Allocation of assets can only be carried out once an audit of the liabilities has been done. This allocation shall be published in the official gazette.

This cannot prejudice the rights of third parties.

Debt action is recommended five years after this publication.

Article 27: Unpublished decisions are not valid vis-à-vis third parties whose rights and obligations were born before publication. Nevertheless, these third parties can rely on them.

Article 28: Publication expenses:

Articles and their modification;

-declarations designating staff members charged with the administration or management of the organisation; decisions specified in article 19; and decisions concerning the allocation of properties; are incumbent upon the non-profit making organisation.

Section II: Non-profit making organisations with foreign rights

Article 29: In the sense of the current law, a non-profit making organisation which has its head office abroad is deemed a foreign non-profit making organisation.

Article 30: No foreign organisation can exercise its activities in the Democratic Republic of the Congo without the authorisation of the President of the Republic given by decree and motioned by the Minister of Justice.

Article 31: In so far as its economic, cultural, educational and social character is concerned, the foreign organisation first requires the approval and registering with the Minister who has jurisdiction over the area where the specified activities are to be conducted.

In the event where approval is given, the request for authorisation is sent to the Minister of Justice.

To be admissible, the request for authorisation must conform to the provisions set out in article 4 of the current law.

Article 32: The denominational non-profit making organisation sends its request for registering and authorisation to the Minister of Justice.

Article 33: Every foreign organisation duly authorised in accordance with article 30 of the present law can take part in court proceedings in the Democratic Republic of the Congo.

Article 34: Authorised foreign organisations have the legal capacity which is recognised by the law of the land where they hold their head office.

However, they cannot have more rights than the non-profit making organisations of the Congo.

### CHAPTER III: SPECIAL RULES FOR NON-PROFIT MAKING ORGANISATIONS

#### Section I: Non-governmental organisation “ONG” by abbreviation

Article 35: A non-governmental organisation “ONG” by abbreviation is deemed a non-profit making organisation endowed with a legal personality whose aim is to work towards social, cultural and economic development of the local communities.

Sub-section: Non-governmental organisations under Congolese law.

Article 36: In order to be registered with the Minister who has jurisdiction of the areas where the specified activity will take place, the organisation must fulfil the following conditions:

1. Conform to the provisions set out under article 4 above.
2. Be driven by humanitarian concerns.
3. Define within the articles the chosen areas of intervention within the national framework for economic, social and cultural development.

#### Sub-section II: Foreign non-governmental organisations

Article 37: Without prejudice to the provisions of article 35 above, the foreign organisation must:

1. Have representation in the Democratic Republic of the Congo.
2. Conclude a framework agreement with the Minister who is in charge of Planning for the area.
3. Produce a statement of good conduct, lifestyle and morals for the expatriate personnel duly legalised by the embassy or consulate of the democratic Republic of the Congo in the country where the head office is located;
4. Employ a workforce which is made up of at least 60% of local people.

### Sub-section III: Relationship between the State and non-governmental organisations

Article 38: The State associates non-governmental organisations to the conception and realisation of its policy of local, regional and national development.

Article 39: The State grants non-governmental organisations certain administrative and fiscal concessions, in particular:

1. Tax exemptions as provided by legislation currently in force;
2. Relief from import duties for goods and equipment they need for their work;
3. Help in obtaining resident permits for foreigners and their families;
4. The right to use equipment and radio frequency;
5. Simplified clearance procedures at the Congolese custom's office.

The facilities are expressly determined by the Minister with jurisdiction of the area, after having obtained legal personality. The granting of the facilities of an administrative, technical and financial nature is recorded by an interdepartmental order between the Ministers of Planning and Finance following prior approval from the competent ministers concerned.

Article 40: The State upholds, within the limits of its means, the ONG development actions and does not interfere in its running.

### Sub-section IV: The undertakings of non-governmental Organisations

Article 41: Non-governmental organisations take part in the notion and implementation of the basic policy of development. To this end, they take in to account local needs and they conform to the government's stance on development when they intervene.

Article 42: Foreign non-governmental organisations guarantee the training and promotion of nationals within the framework of their program with a view to favour the nationals being put in charge of projects.

Article 43: Non-governmental organisations must encourage the voluntary involvement of the core communities in defining and implementing development action plans which concern them.

Article 44: Non-governmental organisations inform the Minister of Planning about their development activities, projects for implementation and the financial resources they have raised in order to carry out these activities.

Article 45: Without undermining their autonomy, non-governmental organisations will periodically send their report on activities to the Minister of Planning who has jurisdiction over the area in which they are conducting their activities, for a physical evaluation.

Moreover, they will work on a technical basis with the Minister of Planning and with the Ministers responsible for the specific area of intervention.

## Section II: Religious worship

### Sub-section I: General points

Article 46: There is no State religion in the Democratic Republic of the Congo.

Everyone has the right to freedom of thought, conscience and religion.

Everyone has the right to practice their religion or express their convictions either individually or as a group, both in public and in private and religious teaching, practising the ceremonies and the state of religious life are protected under the public order and good morals act.

Article 47: Every religious denomination must be endowed with one or several places of worship or convenience guaranteeing the tranquillity of the surrounding population.

Article 48: Every religious denomination can only exist as a non-profit making organisation endowed with legal personality.

None of them can receive donations, gifts, legacies or alms in the name of a religious organisation unless it has legal personality or provisional authorisation to operate.

### Sub-section II: Conditions to be a founder of a religious denomination in the Democratic Republic of the Congo.

Article 49: In order to be a founder of a religious denomination, the following conditions must be met:

1. To be of sound mind;
2. To be of good moral standing;
3. To be at least 30 years of age;
4. Demonstrate knowledge of a sophisticated religious doctrine.

### Sub-section III: Conditions for being a legal representative of a religious denomination in the Democratic Republic of the Congo

Article 50: In order to be a legal representative of a religious denomination in the Democratic Republic of the Congo, the following conditions have to be fulfilled:

1. To be of sound mind;
2. To be of good moral standing;
3. Not to have been sentenced to prison for a period in excess of 5 years; sentences covered by the rehabilitation program or by amnesty are not however taken in to consideration;
4. To be at least 30 years of age;
5. Proof of educational training in religion by way of a certificate of higher education, university or equivalent level as issued by a registered body.

### Sub-section IV: Conditions to be a representative of a foreign religious denomination in the Democratic Republic of the Congo.



Article 51: To be a legal representative of a foreign religious denomination in the Democratic Republic of the Congo, this organisation must have legal personality in the country where its head office is located and it must conform to articles 29, 30, 31 and 33.

The legal representative of a foreign religious organisation in the Democratic Republic of the Congo is responsible among other things for the fulfilling of the terms as provided under article 50 above.

Sub-section V: Conditions for obtaining legal personality.

Article 52: Apart from the terms set out in articles 4, 6, and 7 of the present law, the non-profit making organisation must fulfil the following conditions:

1. Produce a file containing the basic principles as well as the main issues that shall be taught in religious education so as to give a clear image of the petitioning religious organisation's doctrine.
2. Refrain from decreeing rules or giving instructions which would go against the laws, morality and public order.
3. Refrain from practices and rules which would damage the life or health of its members.

Sub-section VI: Penalties

Article 53: Besides the terms of dissolution provided under articles 18, 19 and 20, when the activity of a religious organisation threatens the national or exterior security of the State, the Minister of Justice can suspend by way of an order all the organisation's activities for a period not exceeding three months.

After an inquiry and if he deems that the continued activity of the religious organisation is harmful to the security of the State, the Minister will give the Public Prosecutor an order to bring the matter before the Regional Court in order to obtain the dissolution of the organisation.

Article 54: When there is a conflict at the heart of a religious organisation which threatens public order, the Minister of Justice can suspend by way of a reasoned order, all the activities carried out by the religious organisation concerned until a settlement is reached in respect of the said conflict.

Through the intervention of the Minister for the Interior he gives the administrative authority of the judicial district where the head office to the religious organisation is located some directives which are aimed at achieving a possible settlement in the conflict.

In the case where no agreement is reached, the Minister of Justice orders the Public Prosecutor to bring the matter before the Regional Court in order to obtain dissolution of the organisation.

Article 55: Any person who has received donations, gifts, legacies or alms in the name of a religious organisation without having legal personality or authority to operate, shall

be punished by way of a maximum jail sentence of two years and a fine ranging from fifty thousand to two hundred thousand Congolese Francs or by just one of these punishments.

Article 56: Any person who will have re-launched the activities of a suspended religious organisation shall by application of current law be punished by a maximum prison sentence of one year and a fine ranging from twenty five thousand to one hundred thousand Congolese Francs or by just one of these punishments. Any person who will have been involved in the maintenance or reconstruction of a dissolved religious organisation shall by application of current law be punished by way of a one to two year prison sentence and a fine ranging from fifty thousand to two hundred thousand Congolese Francs or by just one of these punishments.

#### CHAPTER IV: EXPENDITURE

The Public treasury shall receive expenses from non-profit making organisations in the following ways:

1. As regards non-governmental organisations, social organisations, cultural and educational organisations under Congolese law:
  - Costs of lodging and registering of a request: 500 Congolese francs (five hundred Congolese Francs);
  - Publication costs as provided in articles 8, 14, 24, 25 and 26 and 28 of the current law: 250 Congolese Francs (two hundred and fifty Congolese Francs).
2. As regards non-governmental organisations (ONG) cultural, educational and social organisations under foreign law:
  - Costs of lodging and registering the authorisation file to exercise: 2,500 Congolese Francs (two thousand five hundred Congolese Francs);
  - Costs of publishing every decision in accordance with articles 8, 14, 25 and 26 and 28 of the current law: 250 Congolese Francs (two hundred and fifty Congolese Francs).
3. As regards non-profit making religious organisations represented by Congolese law:
  - Publication costs as provided under articles 8, 14, 25, 26 and 28 of the current law: 250 Congolese Francs (two hundred and fifty Congolese Francs);
  - Costs relating to the notices approving the modification of the articles or the nomination of persons charged with the administration of the organisation: 500 Congolese Francs (five hundred Congolese Francs) for the persons.
  - Costs relating to the notices approving the declaration of acceptance of donations, legacies and concessions: 2,500 Congolese Francs (two thousand five hundred Congolese Francs).

4. In respect of non-profit making religious organisations under foreign law:
- Costs for lodging and registering: 2,500 Congolese francs (two thousand five hundred Congolese Francs)
  - Publication costs as provided by articles 8, 14, 25, 26 and 28 of the current law: 500 Congolese Francs (five hundred Congolese Francs).
  - Costs relating to notices approving the modification of the articles or the nomination of people charged with the administration or management of the organisation; 500 Congolese Francs (five hundred Congolese Francs). The same applies to expenses for approving the declaration of receipt of donations, legacies and concessions.

The above mentioned expenditures can be modified by decree by the President of the Republic following deliberation in the Council of Ministers.

### PART III: ESTABLISHMENTS OF PUBLIC INTEREST

#### CHAPTER 1: THE DEFINITION OF ESTABLISHMENTS OF PUBLIC INTEREST

Article 58: Establishments which are deemed to be of public interest are those which make no material gain but tend solely to carry out work of a philanthropic, scientific, artistic or educational nature.

Article 59: Any person can earmark by notarial deed or by holograph will all or part of his properties for the creation of an establishment for public interest.

#### CHAPTER II: PROCEDURE AND CONDITIONS OF GRANTING LEGAL PERSONALITY

##### SECTION 1: PROCEDURE

Article 60: Any person wanting to create an establishment for public interest must inform the Minister in charge of the sector of specified activities by way of a declaration done in legal format seeking approval.

If the founder should die before the Minister receives the notice, or in the absence of an executor of the will, the heirs or claimants must inform the Minister in charge of the area where the activities should take place, either by legal notice or by provisions made in the will.

Until approval is given, the founder can retract his statement. This right does not extend to the heirs or claimants.

If the intention to create an establishment of public interest is the result of a final wish, the testator can appoint an executor of the will to carry out this wish.

Article 61: Having examined the declaration and articles and attachments, the Minister in charge of the allocation of sector of specified activities grants authorisation for provisional operation.

Article 62: The articles must mention:

1. The purpose for which the institution has been created;
2. The naming of the social head office;
3. The names, first names, post names, professions, domicile and nationality of the administrators. At least half of the administrators must be of Congolese nationality.
4. Allocation of the properties in the event of dissolution.

SECTION II: Conditions for granting legal personality.

Article 63: Legal personality is granted by decree by the Minister of Justice following approval by the Minister who has jurisdiction of the area where the activities shall take place, within a twelve month timescale dating from the provisional authorisation. After this period, the establishment concerned can take part in court proceedings or assume any other act under the same title as that of being bestowed with a legal personality.

Save for contravening the founder's will, the rights of an establishment for public interest are born the day provisional authorisation is obtained.

CHAPTER III: OPERATING AN ESTABLISHMENT OF PUBLIC INTEREST

Article 64: The articles of an establishment of public interest can only be modified by the majority of administrators and approved by the Minister of Justice following approval from the Minister who has jurisdiction of the allocations in area of activity.

After a period of six months starting from the date of lodgement, the modifications are deemed approved.

Article 65: The articles, their modifications, nominations, dismissals or revocations of an administrator are published in the official gazette. Publication costs are charged to the establishment under the same terms as those provided for non-profit making organisations.

Article 66: The administrators of an establishment of public interest are responsible for providing the Minister in charge of allocations for a sector of activity specified by the petitioner, with the budget and all annual accounts.

This budget and annual accounts are to be sent to the Minister of Justice for publication in the Official Gazette of the Democratic Republic of the Congo. The publication costs are chargeable to the establishment as prescribed in paragraph 2 of the preceding article.

Article 67: The establishment of public interest cannot own any other property or any thing else other than the buildings that it needs for the conduct of its work.

Apart from cases where land has been awarded to it, either by ordinary concession or by long lease as in accordance with the law, it cannot acquire, nor transfer rights of concession or long lease of land without authorisation from the government. The State

grants the same advantages and facilities to establishments of public interest as set out in articles 34, paragraph 3, 39 and 40.

Article 68: The creation of an establishment of public interest and the existence of concessions inter vivos through a will to the gain of such an establishment, does not prejudice the rights of creditors or heirs who are statutorily entitled to a portion of the estate, founders or testators.

The latter can pursue through the Regional Court the cancellation of fraudulent transactions which violate their rights, and possibly the dissolution of the establishment of public interest and the liquidation of its properties.

Article 69: Mandates and powers of the administrators of an establishment of public interest are determined by the articles. They represent the establishment in judicial and extrajudicial matters.

Article 70: The establishment of public interest is legally responsible for the errors made by its employees, administrators and other bodies or persons who represent it in the course of their duties.

Article 71: The Minister in charge of allocations in the sector of activities specified makes sure on behalf of the government that the properties pertaining to an establishment of public interest are used for the purposes for which they were created. Without prejudice to penal sanctions, the Regional Court which is in the same place as the establishment's head office, can at the request of the public prosecutor, pronounce the non-compliance of the administrators who would have been proven to be seriously negligent or incompetent, and who failed to fulfil the obligations imposed on them by law or by the articles, and who would have used the properties belonging to the institution otherwise than in accordance with their purpose and against public order.

In these cases, new administrators will be appointed in accordance with the articles, or where the court decides, by the Government and by order of the Minister (in execution of this court ruling) who has jurisdiction over allocations in the area where the specified activity takes place.

#### CHAPTER IV: DISSOLUTION

Article 72: In the event of an establishment of public interest not being able to render the services for which it had been instituted, the Regional Court at the request of the public prosecutor or the majority of the administrators will be able to pronounce the dissolution of said establishment.

In this case, the court appoints one or several liquidators who after discharging the liabilities give the properties the intended use as provided by the articles.

If this intended use cannot be realised, the liquidator(s) authorised by the court will yield the properties to the government.

The government will restore these properties to the purpose for which they were intended as soon as possible.

Article 73: All the decisions taken by the Regional Court by application of articles 70 and 72 above are subject to appeal.

### PART III: TRANSITORY AND FINAL PROVISIONS

Article 74: Current law recognises non-profit making organisations and establishments of public interest which have already obtained legal personality.

The latter who have obtained authorisation for provisional operation no longer need to restart the procedure. They are however responsible, if the need arises, to fulfil the new conditions as prescribed by the present law. Beyond this period, they are deemed dissolved. However, this timescale can be extended by order of the President of the Republic.

Article 75: Legislative decree N° 195 of the 29<sup>th</sup> January 1999 attaching regulation for non-profit making organisations and establishments of public interest as well as former provisions contrary to present law are revoked.

Article 76: Current law came in to force on date of signing.

Done in Kinshasa, 20<sup>th</sup> July 2001.