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Excerpts from Civil Code ITALY

Title II

LEGAL PERSONS

CHAPTER I

GENERAL PROVISIONS

11. Public legal persons. Provinces and communes, as well as public bodies recognized as legal persons, enjoy rights according to the statutes and usage recognized as public law.

12. Private legal persons. Associations, foundations, and other private institutions acquire legal personality through recognition by decree of the President of the Republic.

For specified categories of institutions operating within the limits of a province, the Government can delegate to prefects⁽³⁾ the authority to recognize them by decree.

13. Companies. Companies are regulated by the provisions contained in Book Five (2247-2642).

CHAPTER II

ASSOCIATIONS AND FOUNDATIONS

14. Founding act. Associations and foundations must be established by public act (2699).

Foundations can also be established by will.

15. Revocation of founding act of foundation. The founding act of a foundation can be revoked by the founder before

recognition (12) or before he has caused the contemplated program of activity to begin.

The right of revocation does not pass to the heirs.

16. Founding act and by-laws. Amendments. The founding act and by-laws must contain the name of the institution, a description of its purpose, its assets, and the legal address, as well as the rules concerning its organization and management. They must also, with respect to associations, define the rights and obligations of their members and the conditions for their admission and, with respect to foundations, the criteria and methods of distribution of income.

The founding act and the by-laws can also contain the rules concerning dissolution of the institution and disposition of its assets and also, with respect to foundations, those concerning their modification (28).

Amendments to the founding act and the by-laws must be approved by governmental action in the manner stated in Article 12.

17. Acquisition of immovables and acceptance of gifts, inheritances, and legacies. A legal person cannot acquire immovable property, accept gifts or inheritances, or receive legacies without governmental authorization.

In the absence of such authorization the acquisition and acceptance are without effect.

18. Liability of administrators. Administrators are liable to the institution according to the provisions governing mandate (1703 ff.). However, any administrator who has not participated in the act causing damage is exempt from liability unless, being aware that the act was to be performed, he failed to make his dissent known.

19. Limitations on power of representation. Limitations on the power of representation which do not appear in the register referred to in Article 33 cannot be asserted against third persons, unless it is proved that they had knowledge of them.

20. Convocation of meeting of association. A meeting of the association to approve the balance sheet shall be called once a year by the administrators.

A meeting shall also be called whenever it is deemed necessary or whenever a request, stating the reasons therefor, is made by at least one-tenth of the members. In the latter case, if the administrators fail to call such meeting, the convocation can be ordered by the president of the tribunal.°

21. Resolutions of meeting. Resolutions of the meeting are adopted by a majority of votes and with the presence of at least one-half of the members. On second call, a resolution is valid whatever the number of those present. The administrators have no vote in resolutions concerning approval of the balance sheet and in those involving their own liability.

To amend the founding act and the by-laws, unless otherwise provided therein, the presence of at least three-quarters of the members and the favorable vote of a majority of those present are required.

The favorable vote of at least three-quarters of the members is required to decide on the dissolution of the association and the disposition of its assets.

22. Actions to enforce liability of administrators. Actions to enforce the liability of the administrators of an association for their acts are resolved upon by the meeting and are prosecuted by the newly elected administrators or liquidators.

23. Annulment and suspension of resolutions. Resolutions of the meeting which are contrary to law, to the founding act (16) or to the by-laws can be annulled at the request of the officers of the association, any member, or the public prosecutor.°

Annulment of a resolution does not affect rights acquired by third persons in good faith on the basis of acts performed in pursuance of such resolution (1445).

The president of the tribunal or the examining judge,° after having heard the administrators of the association, can, at the request of the party who initiated the annulment proceeding, suspend the carrying out of the questioned resolution

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when serious reasons exist. The decree ordering the suspension shall set forth the reasons and shall be communicated to the administrators.

The carrying out of resolutions contrary to public policy or to morals can also be suspended by governmental action.

24. Withdrawal and expulsion of members. Membership is not transferable unless the transfer is permitted by the founding act or the by-laws.

A member can always withdraw from the association, unless he agreed to remain a member for a fixed period of time. The declaration of withdrawal shall be communicated in writing to the administrators and is effective at the termination of the current year, provided that it is made at least three months in advance.

The expulsion of a member can be resolved by the meeting only for serious reasons; the member can complain to the court within six months from the date on which he has been notified of the resolution.

Members who have withdrawn or have been expelled or who for any reason have ceased to belong to the association cannot recover the contributions paid, nor have they any right in the assets of the association.

25. Control over administration of foundations. The government exercises control and supervision over the administration of foundations; it provides for the appointment and replacement of administrators or representatives whenever the provisions contained in the founding act (14) cannot be carried into effect; it annuls, by a final decree after hearing the administrators, resolutions contrary to mandatory rules, to the founding act, or to public policy or morals; it can dissolve the administration and appoint a special commissioner whenever the administrators do not act in conformance with the by-laws or the purposes of the foundation or the law.

Annulment of a resolution does not affect rights acquired by third persons in good faith on the basis of acts performed in pursuance of such resolution (1445).

Actions to enforce the liability of administrators for their acts are subject to governmental authorization and are prosecuted by a special commissioner, liquidators, or newly appointed administrators.

26. Coordination of activities and consolidation of administration. The government can direct the activities of more than one foundation to be coordinated, or their administration to be consolidated, respecting, as far as possible, the intent of the founder.

27. Extinguishment of legal person. In addition to termination for reasons contemplated in the founding act and by-laws, the legal person is extinguished when its purpose has been achieved or has become impossible.

Associations are also extinguished when, they have lost all their members.

Extinguishment is declared by governmental action at the request of any interested person, or *ex officio*.

28. Modification of foundations. When the purpose has been achieved or has become impossible or of little utility, or when the assets have become insufficient, the government, instead of declaring the extinguishment of the foundation, can provide for its modification, departing as little as possible from the intent of the founder.

Modification is not permitted when the facts that would justify it are considered in the act of foundation as a cause of extinguishment of the foundation and distribution of the assets to third persons.

The provisions of the first paragraph of this article and those of Article 26 do not apply to foundations established only for the benefit of one or more specified families.

29. Prohibition of new transactions. The administrators cannot enter into new transactions after they are notified of the decree declaring the extinguishment of the legal person or ordering, under the terms of the law, dissolution of the association, or after a resolution to dissolve the association

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has been adopted by a meeting of the members. If they violate this prohibition, the administrators are personally liable *in solido* (1292).

30. Liquidation. After a declaration of extinguishment of a legal person or dissolution of an association, liquidation of the assets is carried out in accordance with the provisions for implementation of the code.⁽⁴⁾

31. Transfer of assets. The assets of a legal person remaining after liquidation are disposed of in accordance with the founding act (14) or the by-laws.

When these contain no provision the Government shall, in the case of foundations, assign the assets to other institutions with analogous purposes; in the case of associations, resolutions of the meeting providing for dissolution shall apply and, in the absence of such resolutions, the Government shall dispose of the assets in the same manner as for foundations.

Creditors who failed to assert their claims during the liquidation can, within one year from the close of the liquidation, demand payment from those persons to whom the assets have been transferred, in proportion to and within the limits of what such persons received.

32. Disposition of assets having special destination. When assets have been given or left to an institution to be used for a purpose other than that of such institution, the Government shall, in case of modification or dissolution of such institution, transfer such assets, to be used for the same purpose, to other institutions having analogous purposes.

33. Registration of legal persons. A public register of legal persons is established in each province.

The register shall show the dates of the founding act and of the decree of recognition (12), the name, purpose, assets, duration, when it is stated, the legal address of the legal person, and the surname and name of the administrators, with an indication of those who have power of representation (1387 *ff.*).

Registration can also be provided *ex officio*.

The administrators of a non-registered but recognized association or foundation are personally liable *in solido* (1292), together with the legal person, for the obligations undertaken.

34. Registration of acts. Amendments of the founding act and of the by-laws, after governmental approval, as well as a change of the legal address and the establishment of branch offices, the replacement of administrators with mention of those having the power of representation, resolutions to dissolve, decrees ordering dissolution or declaring extinguishment, and the surname and name of the liquidators shall also be recorded in the register.

If the recording does not take place, the facts indicated cannot be asserted against third persons unless it is proved that they had knowledge of them.

35. Penal provision. Administrators and liquidators who do not request the recording prescribed by Articles 33 and 34 within the time and in the manner set forth in the provisions for implementation of the code^o are punishable by an administrative penalty of twenty thousand to one million lire.⁽⁵⁾

CHAPTER III

NON-RECOGNIZED ASSOCIATIONS AND COMMITTEES

36. Organization and management of non-recognized associations. The internal organization and management of associations which are not recognized as legal persons are regulated by agreements among the members.

Such associations can be parties in judicial proceedings, being represented by those upon whom the presidency or management is conferred under such agreements.

37. Common assets. Contributions of members and property acquired with these contributions constitute the common assets of the association. As long as the association lasts, individual members cannot request partition of the common assets nor claim a share in case of withdrawal.

38. Obligations. Third persons can enforce their rights against the common assets of the association for obligations undertaken by the person representing it. Persons who have acted in the name and for the account of the association are also personally liable *in solido* (1292) for such obligations.

39. Committees. Relief or charitable committees, and committees for the promotion of public works, monuments, exhibitions, exhibits, celebrations, and the like are regulated by the following provisions, except as otherwise prescribed by special statutes.

40. Liability of organizers. The organizers and those who undertake to manage the funds collected are personally liable *in solido* (1292) for the care of the funds and for their employment for the stated purpose.

41. Liability of members. Representation in court. If the committee has not acquired legal personality, its members are personally liable *in solido* (1292) for the obligations undertaken. The subscribers are bound only to make the contributions promised by them.

The committee can be a party in judicial proceedings, being represented by its president.

42. Different destination of funds. When the funds collected are not sufficient for the purpose, or when the purpose is no longer attainable, or when, after the attainment of the purpose, there is a balance of funds left over, the Government shall direct the disposition of the funds unless provision was made at the time the committee was established.