



## **This document has been provided by the International Center for Not-for-Profit Law (ICNL).**

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at  
<http://www.icnl.org/knowledge/library/index.php>  
for further resources and research from countries all over the world.

### Disclaimers

**Content.** The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

**Translations.** Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

**Warranty and Limitation of Liability.** Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

## LEGAL PERSONS

**9. Protection of pseudonyms.** A pseudonym, used by a person in such manner as to have acquired the importance of a name, can be protected under the terms of Article 7.

**10. Abuse of another person's likeness.** Whenever the likeness of a person, or of his parent, spouse, or child, has been exhibited or published in cases other than those in which such exhibition or publication is permitted by law, or in a manner prejudicial to the dignity or reputation of such person or relative, the court, upon request of the interested party, can order the termination of the abuse without prejudice to the right to damages.

### 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. (Repealed)<sup>(3)</sup>**

**13. Companies.** Companies are regulated by the provisions contained in Book Five (2247 ff.).

### CHAPTER II

#### Associations and Foundations

**14. Founding act.** Associations and foundations must be established by public act (1350, 2699).

Foundations can also be established by will (600).

**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 (2331).

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 (46), as well as the rules concerning its organization and management (1387). 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 (27) and disposition of its assets (21, 31, 32) 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 (21).

**17. (Repealed)<sup>(4)</sup>**

**18. Liability of administrators.** Administrators are liable to the institution (2941 No. 7) according to the provisions governing mandate (1710 *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 (2260<sup>2</sup>, 2392<sup>3</sup>).

**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 (1396, 2207, 2298, 2384).

**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 (2364<sup>2</sup>).

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 (2367).

**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 (2368). On second call, a resolution is valid whatever the number of those present (2369). The administrators have no vote (2373<sup>3</sup>) in resolutions concerning approval of the balance sheet and in those involving their own liability (22).

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 (16<sup>3</sup>, 34, 2365).

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 (21, 2393) and are prosecuted by the newly elected administrators or liquidators (25<sup>3</sup>).

**23. Annulment and suspension of resolutions.** Resolutions of the meeting which are contrary to law, to the founding act or to the by-laws can be annulled at the request (1442<sup>1</sup>) of the officers of the association, any member, or the public prosecutor (25, 1109, 137, 2377<sup>2</sup>).

## LEGAL PERSONS

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 (25<sup>2</sup>, 1445, 2377<sup>3</sup>).

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 when serious reasons exist. The decree ordering the suspension shall set forth the reasons and shall be communicated to the administrators (2378).

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 (2284, 2322).

A member can always withdraw from the association (1373), 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 (2285).

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 (2286).

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 (37).

**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 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 (23<sup>4</sup>); 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 (23<sup>3</sup>, 1445, 2377<sup>3</sup>).

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 (18, 22).

26. Coordin  
ernment car  
their admin  
the founder

27. Extin  
templated i  
its purpose

Associatio  
No. 4).

28. Modifi  
come imp  
the gover  
provide f  
founder (

Modifica  
the act o  
tribution

The pro  
apply to  
ilies (69

29. Pre  
transac  
the legi  
tion, o  
ing of  
person

30. Li  
lution  
the pr

31. T  
dispe

Whe  
assig  
ciati  
the  
sam

Cre  
yea

TH

**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 (28<sup>3</sup>).

**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 (2272 No. 2, 2448 No. 2).

Associations are also extinguished when, they have lost all their members (2272 No. 4).

**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 (16, 26).

Modification is not permitted when the facts that would justify it are considered in the act of foundation (16) 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 (699).

**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 has been adopted by a meeting of the members. If they violate this prohibition, the administrators are personally liable *in solido* (18, 1292 ff., 2274, 2279, 2449).

**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.<sup>(5)</sup>

**31. Transfer of assets.** The assets of a legal person remaining after liquidation are disposed of in accordance with the founding act 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 (2964), demand payment from those persons

## LEGAL PERSONS

to whom the assets have been transferred, in proportion to and within the limits of what such persons received (2312<sup>2</sup>, 2324, 2456<sup>2</sup>).

**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. (Repealed)**<sup>(6)</sup>

**34. (Repealed)**<sup>(6)</sup>

**35. Penal provision.** Administrators and liquidators who do not request the recording prescribed are punishable by an administrative sanction of twenty thousand to one million lire.<sup>(7)</sup>

## 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 (12) 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 (41<sup>2</sup>, 1387).

**37. Common assets.** Contributions of members and property acquired with these contributions constitute the common assets of the association (2659<sup>1</sup>). As long as the association lasts, individual members cannot request partition of the common assets nor claim a share in case of withdrawal (24<sup>4</sup>).

**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 *ff.*) for such obligations (33<sup>4</sup>, 41<sup>1</sup>, 2267, 2291, 2317, 2320<sup>1</sup>, 2331<sup>2</sup>, 2508).

**39. Committees.** Relief or charitable committees, and committees for the promotion of public works, monuments, expositions, 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 *ff.*) 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 (12), its members are personally liable *in solido* (1292 *ff.*) for the obligations undertaken (33<sup>4</sup>, 38, 2267, 2291, 2317, 2320<sup>1</sup>, 2331<sup>2</sup>, 2508). 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 (36<sup>2</sup>, 1387).

**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 (31, 32).

### Title III

#### DOMICILE AND RESIDENCE

**43. Domicile and residence.** The domicile of a person is in the place where he has established the principal center of his business and interests.

The residence is in the place where the person has his habitual abode.

**44. Change of residence and domicile.** A change of residence cannot be asserted against third persons in good faith, unless it has been declared in the manner prescribed by law.

When a person has his domicile and residence in the same place and transfers the residence elsewhere, with respect to third persons in good faith the domicile is also deemed to have been transferred, unless a different statement has been made in the declaration of transfer of the residence.

**45. Domicile of spouses, minors and interdicted persons.** Each of the spouses has his domicile in the place where he has established the principal center of his business and interests.

A minor has his domicile in the place of residence of his family (144) or in that of the guardian (343 *ff.*). If the parents are separated (150) or their marriage has been annulled (117 *ff.*) or dissolved (149) or its civil effects have ceased<sup>(8)</sup> or, in any event, they do not have the same residence, a minor has the same domicile as the parent with whom he lives.

An interdicted person (424) has the domicile of the guardian.<sup>(9)</sup>

**46. Legal address of legal persons.** Whenever under the law certain consequences are dependent upon residence or domicile, with respect to legal persons (11) regard is had to the place in which their legal address (16) is established.