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LUXEMBOURG

A. Associations

I. Regulation

The legal rules on associations are laid down in Article 26 of the Constitution, the Non-Profit-Making Associations and Foundations Act (amended) of 21 April 1928 and the Freedom of Association Act of 11 May 1936.

Trade unions, political parties and churches come under special legislation, even though some churches adopt association status.

II. Definition

1. Under section 1 of the Act of 21 April 1928, a non-profit-making association is one which is not engaged in industrial enterprise or business and does not seek material gain for its members.

2. There is no exhaustive list in law of the purposes which an association may pursue.

3. There are various categories of association:

- *de facto* associations, which do not have legal personality;
- non-profit-making associations (Act of 21 April 1928);
- non-profit-making associations recognised as charities by Grand-Ducal decree.

III. Setting up of associations

1. An association may be set up by any individual or public-law or private-law entity, whether of Luxembourg or foreign nationality. A founding document containing statutes, which may be a notarially recorded instrument or a private document, is required.

3. There is no prior administrative check.

4. Associations must register their statutes with the appropriate registration authority (the Administration de l'Enregistrement et des Domaines) (an administrative fee is payable) and must file them with the Register of Businesses and Companies.

5. The statutes are published in the official gazette (the "Mémorial"), in a separate section for societies and associations ("Mémorial C"). An annual updating is compulsory. Anyone may request a photocopy, for which an administrative fee is charged.

IV. Organisation and functioning

1. Non-profit-making associations set up in the legally prescribed manner have legal capacity, which is subject only to the following restrictions: they are allowed to own only property necessary to their purposes as specified in the statutes, and all donations exceeding LUF 500,000 must be authorised by Grand-Ducal decree.

2. Associations may engage only in business activity secondary to their main activities and revenue from which is used solely to attain their purposes as specified in the statutes.

3. The organs are the general meeting (empowered to amend the statutes, appoint or dismiss members of the board, approve the budget, etc) and the board of management

(which represents the association, draws up the accounts and budgets, etc). Members of the board have the same liability as appointed representatives generally.

V. *Dissolution and liquidation*

Judicial liquidation is ordered by a civil court, which appoints one or more liquidators on a request from an association member or interested third party or on an application from the public prosecutor where the association has ceased to pursue the purposes specified in the statutes or pursues purposes which are illegal or contrary to public policy. The judgment dissolving the association is subject to appeal.

Voluntary liquidation is decided by the general meeting subject to any requirements, in law or the statutes, concerning a quorum, voting arrangements or approval by the courts. The liquidators are appointed by the meeting.

The court judgment or resolution of the general meeting, together with details of distribution of the assets, are published in extract form in "Mémorial C".

VI. *Tax arrangements*

Under Article 161 of the Tax Code there is an exemption from corporation tax in respect of bodies directly and solely pursuing purposes which are cultural or charitable or in the general interest. Such bodies are taxable if they engage in industrial or business activity.

By Grand-Ducal decree issued on the recommendation of the Conseil d'Etat charitable status may be conferred on a non-profit-making association whose purposes are in the general interest and of a philanthropic, religious, scientific, artistic, educational, social, sporting or tourist nature. An association then qualifies for preferential tax treatment under the tax legislation.

Gifts exceeding LUF 5,000 per year to recognised charities from individuals or corporate bodies legally resident in Luxembourg are tax deductible up to 10% of total net income. Gifts to foreign associations are not tax deductible.

Associations may qualify for exemptions from indirect taxation (eg activities run by youth hostels, or sporting, scientific, cultural or educational events).

VII. *Estimated number of associations*

There are 4,209 non-profit-making associations.

B. Foundations

I. *Regulation*

The legal rules on foundations are laid down in the Non-Profit-Making Associations and Foundations Act of 21 April 1928.

II. *Definition*

1. Foundations are institutions which, mainly by means of income from capital set aside to found them or collected since, engage, on a non-profit-making basis, in any work of a philanthropic, religious, scientific, artistic, social, tourist or sporting nature.

2. There is no list in the legislation of the purposes which foundations are allowed to pursue.

3. There is only one type of foundation.

III. *Setting up of foundations*

1. Foundations may be set up, under a will or inter vivos, by any individual or public-law or private-law body, whether of Luxembourg or foreign nationality. Where the State is the founder or co-founder of a foundation, it must have legislative authorisation.

2. a. Statutes have to be drawn up in a notarial document.
b. There is no minimum-capital requirement.

3. The foundation's setting up and statutes must be approved by Grand-Ducal decree. The decision of the Minister of Justice, who is bound by the authorisation requirements legally laid down, is subject to appeal.

4. Foundations must register with the appropriate registration authority (the Administration de l'Enregistrement et des Domaines).

5. The statutes, any amendments to them, accounts and budgets (which in addition must be sent to the Ministry of Justice) have to be published in "Mémorial C" and a full list of members of the board must be filed with the Register of Businesses and Companies. Anyone may obtain a photocopy from the Register of Businesses and Companies on payment of an administrative fee.

IV. *Organisation and functioning*

1. Non-profit-making foundations set up in the manner prescribed in law have legal capacity as soon as they are approved by Grand-Ducal decree, and that legal capacity is subject only to the following restrictions: they may only own real property necessary to the purposes specified in their statutes and gifts exceeding LUF 500,000 must always be authorised by Grand-Ducal decree.

2. Foundations are allowed to engage only in business activity secondary to their main activities and the income from such business activity must be used solely for the foundation's purposes as specified in the statutes.

3. The board has the powers vested in it by the statutes. It represents the foundation for judicial and non-judicial purposes.

4. All checking subsequent to setting up is performed by the Ministry of Justice and is concerned with, among other things, management of the assets.

5. No distinction is drawn between foundations carrying out a work programme of their own and those which fund other bodies' activities.

V. *Dissolution and liquidation*

Judicial liquidation is ordered by the civil courts, which appoint one or more liquidators, on a request from a foundation member or an interested third party or on an application from the public prosecutor where the foundation has become incapable of performing the work for which it was set up. The judgment dissolving the foundation is subject to appeal.

Voluntary liquidation is decided by the board, subject to the formal and substantive requirements laid down in law and the statutes.

VI. *Tax arrangements*

Under Article 161 of the Tax Code, bodies directly and solely pursuing cultural, charitable or general-interest objectives are exempt from corporation tax. They are taxable if they engage in industrial or business activity.

By Grand-Ducal decree on a recommendation from the Conseil d'Etat charitable status may be conferred on non-profit-making foundations pursuing general-interest objectives of a philanthropic, religious, scientific, artistic, educational, social, sporting or tourist nature. Such foundations qualify for preferential tax treatment under the tax legislation.

Gifts exceeding LUF 5,000 per year to recognised charities from individuals or corporate bodies legally resident in Luxembourg are tax deductible up to 10% of total net income. Gifts to foreign foundations are not tax deductible.

VII. *Estimate of the number of foundations*

There are 182 foundations.

C. **General comments**

- As associations and foundations are not subject to the usual accounting regulations, administrative checks on annual accounts are difficult.
- No legislative reform is planned.
- A special law applies to NGOs whose work has to do with development aid (Development Co-operation Act of 6 January 1996). Section 26 (1) of the Act of 21 April 1928 recognises associations and foundations validly established abroad.
- There is no specialist documentation centre on associations and foundations.