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Ordinance #26 of 30 January 2000 on associations and foundations

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Pursuant to provisions under article 107 sections (1) and (3) from the Constitution of Romania and article 1, letter S, point 2, from the Law #206 of 1999 on the ability of the Government to issue ordinances, the Government of Romania issues the following ordinance:¹

Chapter 1. General Provisions

Article 1

- (1) Natural and legal persons aiming to carry out activities of general interest, of local community interest or, if such be the case, of their personal non-patrimonial² interest may establish associations and foundations under the conditions of the present ordinance.
- (2) Associations and foundations established according to the present ordinance are legal persons of private law without patrimonial aim.
- (3) Political parties, trade unions and religious cults are not subject to the provisions of the present ordinance.

Article 2

The present ordinance aims to create the framework for:

- a) exercising the right to free association;³
- b) promoting civic values, democracy and rule-of-law;
- c) achieving a general or, if such be the case, a group interest;
- d) facilitating associations' and foundations' access to private and public resources;
- e) partnering between public authorities and legal persons of private law without patrimonial aim;
- f) observing public order.

Article 3

The legal documents for establishing associations and foundations, such as they be drawn under the provisions of this ordinance, are governed by civil law.

Chapter 2 Establishing associations and foundations

Section 1 Establishing and registering associations

Article 4

An association is a subject of law constituted of three or more persons who, on the basis of an agreement, share, without being entitled to restitution, their material contribution, their knowledge and their lucrative activity, in order to accomplish activities of general interest, of community interest or, if such be the case, of their personal, non-patrimonial interest.

¹ All footnotes and inserted words in brackets provided by the translator—my comments and/or suggestions are not part of the original text of the ordinance, nor are they authorized interpretations of the law.

² "Non-patrimonial" = "not-for-profit."

³ Also known as "freedom of assembly."

Article 5

- (1) An association acquires legal status⁴ upon registration with the registry⁵ open with the clerks' office of the court⁶ in whose territorial circumscription⁷ the association operates.
- (2) According to the constitutional right to [free] association,⁸ natural persons may associate without establishing a legal person when the proposed [pursued/envisaged] goal permits it.⁹

Article 6

- (1) In order to acquire legal status, the associates¹⁰ shall draw the constitutive act and the statute of the association in authentic form,¹¹ otherwise being subject to absolute nullity.
- (2) The constitutive act shall comprise, otherwise being subject to absolute nullity:
 - a) identification data of all associates: name or denomination and, if such be the case, permanent address or headquarters;
 - b) expression of the will to associate¹² and the purpose;
 - c) denomination of the association;
 - d) headquarters of the association;
 - e) [intended] duration of the association—whether for a determined, and then expressly indicating the term, or an undetermined period of time;
 - f) initial patrimony¹³ of the association; the quantum of the patrimonial assets must equal at least the double of the minimum salary¹⁴ at the date of the association's establishment, and may consist of in-kind and cash contributions of the associates;
 - g) nominal composition of the initial leadership, administrative and control bodies¹⁵ of the association;
 - h) the person or the persons mandated to carry out the procedure for acquiring legal status;
 - i) signatures of the associates
- (3) The statute shall comprise, otherwise being subject to absolute nullity:
 - a) the elements required under paragraph (2), with the exception of those under letters g) and h);
 - b) the explicit purpose and the goals of the association;
 - c) the way of acquiring and losing the associate¹⁶ status;
 - d) the rights and duties of the associates;
 - e) the categories of patrimonial resources¹⁷ of the association;
 - f) the destination of the assets in case of liquidation, observing the provisions under article 60.

⁴ Becomes a "legal person," that is.

⁵ This special registry is referred to in subsequent articles.

⁶ The Romanian "judecatorie/a" refers to the lowest instance in the court system, usually referred to as "court of first instance" in other English texts. The Romanian court system, however, also has the tribunals, the Courts of Appeals and even the Supreme Court of Justice function as courts of first instance, depending on the case brought to trial.

⁷ Read "jurisdiction."

⁸ Refer to #2 above.

⁹ In the sense that it does not require natural persons to establish a legal person as a means for achieving their end.

¹⁰ The members, that is.

¹¹ Authentication of such acts is subject to procedures described in other legislative pieces.

¹² This is usually a document also referred to as the constitutive act.

¹³ Patrimony usually refers to the entirety of assets and liabilities; in this case, the initial patrimony should comprise only assets.

¹⁴ The minimum salary usually refers to the monthly sum of money earned pursuant to a labor contract. The text does not refer here (as opposed to art. 15) to gross or net salary. The current minimum net salary is about \$40/month, but checking the reports of the National Commission for Statistics is wiser. As Romania now has an annual income tax system, confusion may arise as to whether "minimum salary" refers to annual or monthly income.

¹⁵ The leadership body should be closer to a "board of administration," but the text is unclear in this respect—subsequent articles refer to a "board of directors" that should be understood as the leadership body of the association. We expressly avoid using the "managing body" phrase, as it may lead to confusions with the "administrative body." The notable difference is that the leadership body, herein referred to as "board of directors," is a decision-making body, whereas the administrative body is just implementing those decisions.

¹⁶ Read "membership."

¹⁷ Expected ways of acquiring revenues and/or assets.

- (4) Upon authentication of the constitutive act and statute of the association, a proof¹⁸ issued by the Ministry of Justice regarding the availability for the denomination of the association shall be submitted.

Article 7

- (1) Any associate, on the basis of the mandate given under the terms of article 6, section (2), letter h), may submit a petition for registering the association at the Registry of the associations and foundations open with the clerks office of the court in whose territorial circumscription the association is to have its headquarters.
- (2) The petition for registration shall enclose the following documents:
- a) the constitutive act;
 - b) the statute of the association;
 - c) supporting documents¹⁹ for the headquarters and the initial patrimony.

Article 8

- (1) The association becomes legal person upon registration with the Registry of associations and foundations.
- (2) Within 3 days from submitting the petition for registration and the documents stipulated in article 7, section (2), the judge appointed by the president of the court²⁰ checks their legality and orders by [written] summation²¹ the association be registered in the Registry of associations and foundations.
- (3) Upon effectively registering the association, the summation ordering the registration will be communicated, automatically, to the local financial²² body in whose territorial circumscription the association has its headquarters, in order to be registered for fiscal purposes; when communicating the summation, the registration number in the Register of associations and foundations will also be mentioned.

Article 9

- (1) In case the legal requirements for establishing the association are not met, the judge shall subpoena²³ the representative of the association in the chamber of council²⁴ by the end of the period stipulated in article 8, section (2), and shall require of him[/her], in writing, to correct the irregularities until the next term, which shall not be later than a week.
- (2) If the noticed irregularities concern provisions of article 37, section (2), from the Constitution, the prosecutor's office with the respective court shall also be subpoenaed²⁵ together with copies of the petition for registration, the constitutive act and the statute of the association. In such a case, the conclusions of the prosecutor are obligatory.²⁶

Article 10

- (1) In case the irregularities are removed at the agreed term, the judge, listening also to the conclusions of the prosecutor and making a note on them in the summation, if such is the case, shall order the registration of the association in the Registry of associations and foundations.
- (2) If the irregularities have not been removed or if, though legally subpoenaed, the representative of the association is unjustifiably missing, the judge rejects the petition for registration with a motivated summation.²⁷

¹⁸ More like a certificate...

¹⁹ Certificates for owner or tenant status, bank account balance, expertise for assets' value, etc.

²⁰ The president of the court is also a judge. The court is divided into sections—criminal, civil, administrative, etc. The ordinance implies that one judge shall be appointed, in every court, to deal specifically with petitions for registering associations and foundations.

²¹ Or "closing remarks," or "conclusions"....

²² Read "local fiscal or tax authorities."

²³ Maybe we should read "summon" instead, although the Romanian text does not support the difference.

²⁴ The procedure is still public and transparent, even though it does not take place in front of the crowd, in the courtroom.

²⁵ See #23 above, with respect to summon/subpoena. Prosecutor's Offices function alongside every court of law in Romania, observing/paralleling the structure implied at #5.

²⁶ This particular clause refers to procedures in court—the prosecutor must write, read and submit his/her conclusions to the judge, and the judge must make a note of that.

²⁷ Pursuant to other pieces of legislation meant to expedite trials, not all summations comprise a motivation or reasoning for the judge's decision.

- (3) Summonations stipulated in this article shall be pronounced within 24 hours after closing the debates, and shall be written within 48 hours after being pronounced.

Article 11

- (1) Decisions of approval or rejection of the petition for registration are only subject to recourse.²⁸
- (2) In case the prosecutor did not take part in solving the petition, copies of the constitutive act and the statute of the association together with the summation [containing the decision] of approval or rejection shall be communicated to the prosecutor's office with the respective court.
- (3) The term for filing recourse is 5 days, starting from the date of pronouncement for those who were present, and from the date of communication²⁹ for those who were absent.
- (4) Recourse is solved by subpoenaing the parties, in the chamber of council, with urgency and priority. The provisions under article 10, section (3), regarding pronouncing and writing the summation apply accordingly.

Article 12

- (1) Registration in the Registry of associations and foundations in compliance to article 8,³⁰ shall be made on the day the decision of approval remains irrevocable³¹; upon request, a registration certificate will be issued, with the name of the association, its headquarters, the duration of operation, the number and the date of registration in the Registry of associations and foundations.
- (2) In relations with third parties, proof of the legal status can be made with the registration certificate, only.

Article 13

- (1) The association may establish branches, for local structures, with a minimum number of 3 members, own leadership bodies,³² and a patrimony distinct from that of the association.
- (2) Branches are entities³³ with legal status and may undertake legal acts of administration and conservation, in compliance with the conditions established by the association in the constitutive act of the branch. Branches may undertake legal acts of disposition in the name, and on behalf, of the association only on the basis of a prior decision of the association's board of directors.³⁴
- (3) The branch is established by authenticated decision of the general assembly of the association. The legal status is acquired on the date of registering the branch in the Registry of the associations and foundations.
- (4) In order to register the branch, the representative of the association will submit the petition for registration together with the decision for establishing the branch and the supporting documents for the headquarters and the initial patrimony at the court in whose territorial circumscription the branch is to have its headquarters. Provisions under articles 9-12 apply accordingly.

Article 14

If the association, by virtue of its purpose or goals, is to carry out activities for which, according to the law, prior administrative authorizations

²⁸ Usually, a judge's decision is subject to appeal and, then, recourse. In this case, appeal is made inapplicable. Procedures for filing recourse are tighter and may be found in the code of civil procedure.

²⁹ Read "notification," as in written communication, although the Romanian text might support even verbal communication...

³⁰ That is, physically writing down the association in the Registry.

³¹ That is, when recourse is no longer available, or when the recourse decision has been "communicated," to all interested parties.

³² Refer to #15.

³³ Read "organizations."

³⁴ Going back to #15, the "board of directors," as the leadership body, makes decisions known as "legal acts of disposition," in Romanian jurisprudence. Executing those decisions is a task deferred to the administrative body that undertakes "legal acts of administration and conservation," whereas the control body is primarily responsible for "legal acts of conservation."

are necessary, these activities will only be initiated, under penalty of dissolution by court decision, after obtaining the respective authorizations.

Section 2

Establishing and registering foundations

Article 15

- (1) A foundation is a subject of law created by one or more persons who, on the basis of an act of will *inter vivos* or for cause of death, establish a patrimony designed permanently and irrevocably for achieving an objective of general interest or, if such be the case, of community interest.
- (2) The initial patrimony of the foundation must include assets in-kind or in cash whose total value should be at least 100 times the minimum gross salary in the national economy,³⁵ on the date the association is created.
- (3) By derogation from the provisions of paragraph (2), foundations whose exclusive goal, under penalty of dissolution by court decision, is fundraising for other associations or foundations, in order to assure that the latter carry out their own programs, the initial patrimony may have a total value of at least 20 times the minimum gross salary in the national economy.

Article 16

- (1) In order to obtain legal status, the founder or, if such be the case, the founders, draw the constitutive act and the statute of the foundation, in authentic form, otherwise being subject to absolute nullity.
- (2) The constitutive act of the foundation shall comprise, otherwise being subject to absolute nullity:
 - a) identification data of the founder or, if such be the case, of the founders: the name or denomination and, if such be the case, their permanent address or headquarters;
 - b) purpose of the foundation;
 - c) denomination of the foundation;
 - d) headquarters of the foundation;
 - e) [intended] duration of the foundation—whether for a determined, and then expressly indicating the term, or an undetermined period of time;
 - f) initial patrimony of the foundation;
 - g) nominal composition of the initial leadership, administrative and control bodies of the foundation, or the rules for appointing such officers;³⁶
 - h) the person or the persons mandated to carry out the procedure for acquiring legal status;
 - i) signatures of the associates.
- (3) The statute shall comprise, under penalty of invalidation:
 - a) the elements provided under paragraph (2), with the exception of those under letters g) and h);
 - b) the explicit purpose and the goals of the foundation;
 - c) the categories of patrimonial resources of the foundation;
 - d) the attributions³⁷ of the leadership, administrative and control bodies of the foundation;
 - e) the procedure for appointing and modifying³⁸ the officers of the leadership, administrative and control bodies along the duration of the foundation;
 - f) the destination of the assets, in case of liquidation, observing the provisions under article 60.

Article 17

- (1) The foundation acquires legal status upon registration in the Registry of associations and foundations with the clerks' office of the court in whose territorial circumscription it has its headquarters.

³⁵ Refer to #14 above, and note that the minimum salary in the national economy is regulated by Government decisions, unless specified in the national budget law.

³⁶ The noun "officers" is not used in the Romanian text, as it has no correspondent in Romanian.

³⁷ Or prerogatives.

³⁸ Read "recalling."

- (2) The petition for registration will enclose the following documents:
 - a) the constitutive act;
 - b) the statute;
 - c) supporting documents for the headquarters and initial patrimony.
- (3) The provisions under article 6, paragraph (4), article 7, paragraph (1), articles 8-12 and article 14 apply accordingly.

Article 18

- (1) The foundation may establish branches, as territorial structures on the basis of an authenticated decision of the board of directors, whereby a patrimony is affected to each branch.
- (2) The branch is managed by its own board of directors, made up of at least three members.
- (3) The provisions under article 13 paragraphs (2) and (4) apply correspondingly.

Article 19

- (1) The heirs, or the personal creditors, of the founders have the same rights in their relation to the foundation as in the case of any other liberality³⁹ made by the founder.
- (2) After registering the foundation in the Registry of associations and foundations, neither the founders nor their heirs can revoke the constitutive act. Likewise, after registration, the constitutive act can no longer be attacked⁴⁰ by the personal creditors of the founders, either.
- (3) If the foundation acquires legal status after the death of the founder, the effects of the liberalities made by the latter in favor of the foundation, previous to its establishment, will come into force from the date of the constitutive act for those foundations created through acts *inter vivos*, and from the date of the testator's death for those foundations created by will.

Chapter 3

Organization and operation of associations and foundations

Section 1

Organization and operation of associations

Article 20

The bodies⁴¹ of the association are:

- a) the general assembly;
- b) the board of directors;
- c) the censor⁴² or, if such be the case, the committee of censors.

Article 21

- (1) The general assembly is the leadership body made up of the entirety of all members.
- (2) The general assembly has the competence to:
 - a) establish the strategy and the general objectives of the association;
 - b) approve of the revenues and expenditure budget and of the [financial] accounting balance sheet;
 - c) elect and revoke members of the board of directors;
 - d) elect and revoke the censor or, if such be the case, the members of the committee of censors;
 - e) establish branches;
 - f) modify the constitutive act and the statute;

³⁹ Act of disposition.

⁴⁰ Read "taken to court."

⁴¹ Usually known as standing committees of the association, when referring letters b) and c) to English or American rules of order.

⁴² Sometimes referred to as "internal auditor," in other translations from Romanian.

- g) dissolve and liquidate the association, as well as to establish the destination of the assets for after the liquidation;
- h) any other prerogatives stipulated by the law or the statute.
- (3) Changing the headquarters can be decided by the board of directors, if this prerogative is explicitly stipulated in the statute.
- (4) The general assembly convenes at least once a year and has a permanent right to control the bodies stipulated under article 20, paragraphs b) and c).
- (5) The rules of order for the organization and operation of the general assembly are established in the statute.

Article 22.

- (1) The associate personally interested in an issue on the agenda of the general assembly, either through his wife, descendants or ascendants, collateral relatives, including relatives of the fourth degree,⁴³ cannot take part in either the discussion/debate or the vote.
- (2) The associate [willingly] breaking the provisions of paragraph (1) is responsible for subsequent damages caused to the association if the required majority could not have been obtained without his/her vote.

Article 23

- (1) The decisions taken by the general assembly, within the limits of the law, that regard the constitutive act and/or the statute are obligatory even for the associates who have not taken part in the general meeting or have voted against.
- (2) The decisions of the general assembly, that are contrary to the law, the constitutive act or the provisions of the statute can be taken to court, by any of the associates who did not take part in the general assembly, or who voted against and demanded their position be noted in the minutes, within 15 days from the date they found out about the decision, or from the date the meeting took place, respectively.
- (3) The petition for annulment is solved in the chamber of council at the court in whose circumscription the association has its headquarters. The decision is only subject to recourse.

Article 24

- (1) The board of directors ensures the execution of the decisions made by the general assembly. The board may include persons from without the association⁴⁴ within the limit of maximum one-quarter of its composition.
- (2) The board of directors has the competence to:
 - a) present the general assembly the activity report on the previous period, the budgetary execution report, the [financial] accounting balance sheet, the proposed revenues and expenditures budget⁴⁵ and the project of programs⁴⁶ for the association;
 - b) draw⁴⁷ legal acts in the name and on behalf of the association;
 - c) approve the staff structure and policy, unless otherwise stipulated in the statute;
 - d) carry out any other attributions stipulated in the statute or decided upon by the general assembly.
- (3) The general rules of order regarding the organization and operation of the board of directors are established in the statute. The board of directors can draft its own internal rules of order.
- (4) Any person serving in a leadership⁴⁸ position with any public institution, if the association has as goal to support the activity of that institution, cannot be a member of the association's board of directors, or if they were, they lose this latter position.

⁴³ To clarify these categories of relatives consult a lawyer.

⁴⁴ Read "non-members."

⁴⁵ For the next period, of course.

⁴⁶ Read "activities."

⁴⁷ Read "close" or "sign."

⁴⁸ Read also "administrative" and "control," as such could be interpreted the Romanian text.

Article 25

Provisions under article 22 apply accordingly to the members of the board of directors. The decisions of the board of directors that are contrary to the law, the constitutive act or the statute of the association, can be taken to court, under the terms stipulated under the article 23.

Article 26

The board of directors can mandate one or more persons with executive positions, including persons not having associate status or from without the association, to exercise the attributions stipulated under article 24 section (2), letters b) and d).

Article 27

- (1) The internal financial control of the association is ensured by a censor.
- (2) For the associations with more than 100 members registered until the date of the last⁴⁹ general assembly, the internal financial control shall be done by a committee of censors.
- (3) The censor or the committee of censors has the competence to:
 - a) check the way the patrimony of the association is administered;
 - b) draw up reports and submit them to the general assembly;
 - c) participate in the meetings of the board of directors without having the right to vote;
 - d) fulfill any other attributions stipulated in the statute or established by the general assembly.
- (4) The committee of censors consists of an odd number of members, whereof the majority is made of associates. The members of the board of directors cannot be censors.
- (5) The general rules of order for the organization and operation of the committee of censors get approved by the general assembly. The committee of censors may draft its internal rules of order.

Section 2

Organization and operation of foundations

Article 28

The bodies of the foundation are:

- a) the board of directors;
- b) the censor or, if such be the case, the committee of censors.

Article 29

- (1) The board of directors of the foundation is the leadership and administrative body.
- (2) The board of directors ensures achieving the purpose and goals of the foundation, having the following attributions:
 - a) to establish the general strategy and the programs of the foundation;
 - b) to approve of the budget and of the [financial] accounting balance sheet;
 - c) to elect and revoke the censor or the members of the committee of censors;
 - d) to establish branches;
 - e) to draw legal acts in the name and on behalf of the foundation;
 - f) to execute the budget of revenues and expenditures;
 - g) to approve the staff structure and strategy of the foundation;
 - h) to modify the statute of the foundation;
 - i) to accomplish any other duties stipulated in the law or in the statute.
- (3) The general rules of order regarding the organization and operation of the board of directors are established in the statute. The board of directors may draft its own internal rules of order.
- (4) The provisions under articles 22 and 24, paragraph (4), apply accordingly to the members of the board of directors. The decisions contrary to the law, the constitutive act or the statute of the foundation can be taken to court, under the terms provided by article 23, by the founder or any member of the

⁴⁹ Read "most recent."

board of directors who was absent, or who voted against and asked his position be noted in the minutes.

- (5) Changing the purpose of the foundation can only be done by the founder or the majority of the founders alive. If none of the founders is still alive, changing the purpose of the foundation can be done only by a four-fifths vote of the board of directors.
- (6) In all cases, changing the purpose of the foundation is done only if it has been totally or partially accomplished or if it cannot be accomplished any more.
- (7) Provisions under article 26 apply accordingly as to the attributions stipulated under paragraphs (2), letters e) and i).

Article 30

- (1) The board of directors consists of at least 3 members appointed by the founder or, if such be the case, the founders upon establishing the foundation.
- (2) In case that, along the foundations' operation, the composition of the board of directors cannot be modified according to the terms provided by the statute, the court indicated in article 17 shall appoint the persons to become members of the board of directors, by presidential ordinance,⁵⁰ upon request by any interested party.

Article 31

- (1) The committee of censors consists of an odd number of members.
- (2) Provisions under article 27 apply accordingly.

Article 32

In case the constitutive act does not include the nominal composition of the initial bodies of the foundation, but only the rules established by the founders for appointing the officers, and if none of the founders is alive at the date when the foundation is established, the provisions under article 30, paragraph (2), apply accordingly.

Chapter 4

Modifying the constitutive act and the statute of the association or the foundation

Article 33

- (1) Modifying the constitutive act and/or the statute of the association is done by registering the modification in the Registry of associations and foundations with the clerks' office at the court in whose territorial circumscription the association has its headquarters, accordingly applying the provisions under articles 8-12.
- (2) The petition for registering the modification will enclose the minutes of the general assembly in authenticated form and, in the case of modifying the headquarters, the minutes of the meeting of the board of directors in authenticated form, as in the situation stipulated in article 21, section (3).
- (3) Measures for authentication of the minutes and for registration of the modifications are undertaken by the board of directors. The formalities at the public notary do not require the presence of other persons than the members of the board of directors or of just some of them, mandated by the general assembly or the board of directors, as may be the case.
- (4) The note concerning the headquarters modification shall be made, if needed, both in the Registry of associations and foundations with the clerks' office at the court in whose territorial circumscription the association had its former headquarters, and the Registry of associations and foundations with the clerks' office at the court in whose territorial circumscription the association has its new headquarters. To this end, a copy of the summation with [the decision approving of] the headquarters modification will be

⁵⁰ This is a court order issued by the president of that court.

communicated, automatically, to the court in whose circumscription the association is to have its new headquarters.

Article 34

Provisions under article 33 apply accordingly in case of modifying the constitutive act and/or the statute of the foundation.

Chapter 5 Federations⁵¹

Article 35

- (1) Two or more associations or foundations may establish a federation.
- (2) Federations acquire legal status and operate under the provisions of the present ordinance for associations without patrimonial aim, the conditions applying accordingly, with the exceptions established in the present chapter.
- (3) The petition for registration is solved by the tribunal⁵² in whose circumscription the federation is to have its headquarters.

Article 36

- (1) The federation acquires legal status upon registration in the Registry of federations with the clerks' office at the tribunal stipulated in article 35, paragraph (3).
- (2) Associations and foundations that form a federation keep their own legal status, including their own patrimony.

Article 37

In case of dissolution of the federation, unless otherwise stipulated by the statute, the assets remaining after the liquidation shall be transmitted, in equal shares, to the constituent legal persons.

Chapter 6 Associations and foundations of public utility

Article 38

- (1) An association or foundation can be recognized by the Government of Romania as being of public utility if the following conditions are met cumulatively:
 - a) its activity is carried out for general or community interest, as may be the case;
 - b) it has been operating for at least three years and achieved part of the proposed goals;
 - c) it presents a report showing the development of significant prior activities, by carrying out programs or projects specific to its purpose, together with balance sheets and budgets of revenues and expenditures for the last three years;
 - d) the value of the patrimonial assets for each year is at least equal to the value of the initial patrimony.
- (2) The Government of Romania can grant, upon advice from the competent administrative authority, a waiver from the terms stipulated in paragraph (1), letters a) and b) if:
 - a) the association or foundation applying for public utility status has resulted from the merger of two or more pre-existing associations or foundations; and,
 - b) each of the pre-existing associations or foundations would have met the two conditions, if they were to apply independently.

⁵¹ Read "union," instead.

⁵² One step up the Romanian court system.

Article 39

- (1) Recognition of an association or foundation of public utility is made by Government decision. To this end, the interested association or foundation submits an application to the ministry or the central public administration authority in whose sphere of competence⁵³ it carries out its activity.
- (2) Conflicts of competence among public authorities stipulated in paragraph (1) with respect to registering the application are solved by the General Secretariat of the Government, upon notification from any of the parties, within 5 days from registering the notification.
- (3) In order to solve the conflict, the public authorities stipulated in paragraph (1) are obliged to give the General Secretariat of the Government all information necessary for resolution. The order⁵⁴ of the secretary general is final.⁵⁵

Article 40

- (1) The competent administrative authority is obliged to examine the application and the fulfillment of the conditions stipulated in article 38, within 60 days. If these conditions are met, the authority shall advise the Government for recognition. If not, the administrative authority shall transmit the applying legal person a motivated answer.
- (2) Within 90 days from the date of submitting the application stipulated in paragraph (1),⁵⁶ the government of Romania shall decide upon the proposal for recognition. If the proposal is rejected, the decision shall be communicated to the association or foundation by the administrative authority where the application for recognition was registered.

Article 41

Recognition of the public utility status confers the association or foundation the following rights and obligations:

- a) the right to be conceded⁵⁷ public services without commercial character, according to the law;
- b) the preferential right to [financial] resources from the state and local budgets;
- c) the right to mention in all the documents that it draws that the association or foundations is recognized as having public utility status;
- d) the obligation to maintain at least the level of activity and performance that determined the recognition;
- e) the obligation to communicate to the competent administrative authority about any modifications to the constitutive act and the statute, as well as the activity reports and annual balance sheets; the administrative body is obliged to ensure that consulting these documents is available to any interested person;
- f) the obligation to publish excerpts after the activity reports and the annual balance sheets in the Official Gazette of Romania, Part IV, as well as in the National registry of legal persons without patrimonial aim.

Article 42

- (1) Recognition of the public utility status is for an undetermined period.
- (2) In case the association or foundation no longer meets one or more of the conditions whereupon recognition of public utility status was based, the Government shall withdraw the recognition act upon advice from the competent administrative authority or the Ministry of Justice.
- (3) The withdrawal shall also occur in case the duties stipulated under article 41 are not fulfilled.
- (4) The circumstances stipulated under paragraphs (2) and (3) may be announced to the competent administrative authority, to the Ministry of Justice or to

⁵³ Read "jurisdiction."

⁵⁴ Read "decision."

⁵⁵ Is not subject to any sort of appeal or recourse.

⁵⁶ This is funny--there is no application stipulated in par. (1). Some real nice confusion will arise, as to whether the advice from the competent administrative authority is considered to be that application, or whether the application at hand is that from art. 39, par. (1).

⁵⁷ "Concession" is a specific contract between a public authority and a subject of private law, whereby the right to carry out specific public services/activities is "sold" for a determined period of time.

the Government, by any other association or foundation or by any interested authority or public institution.

Article 43

In case of dissolution of an association or foundation recognized as having public utility status, the assets remaining after the liquidation will be distributed, by Government decision, to other association or foundation with a similar purpose, or to public institutions.

Article 44

Litigations regarding recognition of public utility status for interested associations or foundations shall be solved according to the Law of administrative contentious #29 of 1999, and its subsequent modifications.

Article 45

Provisions of the present chapter do not apply to federations, unless the law stipulates otherwise.

Chapter 7

Revenues

Article 46

- (1) Revenues of associations or federations come from:
 - a) membership fees/dues;
 - b) interests and dividends resulting from [financial] placements of the available sums, according to the law;
 - c) dividends from commercial companies⁵⁸ established by associations or federations;
 - d) revenues from direct economic activities;
 - e) donations, sponsorships or legacies;
 - f) other revenues stipulated by law.
- (2) Revenues of foundations are those stipulated under paragraph (1), letters b) through g).

Article 47

Associations or foundations may establish commercial companies. Dividends obtained by association or foundations from the activities of these commercial companies, unless reinvested in the same commercial companies, shall be obligatorily used for achieving the purpose of the association or foundation.

Article 48

Associations or foundations may carry out any other direct economic activities, if they have accessory character and are closely connected to the main purpose of the legal person.

Chapter 8

Relations with public authorities

Article 49

- (1) Local public administration authorities shall support legal persons established on the basis of the present ordinance by:
 - a) providing them, inasmuch is possible, with spaces for headquarters, according to the law;
 - b) providing them, inasmuch is possible, with grounds for building constructions necessary for the development of their activities.
- (2) Local public administration authorities draw, upon request from the entitled legal persons, priority lists for appropriating the immovables⁵⁹ stipulated in paragraph (1).

⁵⁸ Could be different from limited or unlimited enterprises, but this is, again, a matter of corroborating various legal texts.

⁵⁹ "Immovables" are both buildings and grounds.

Article 50

Public authorities are obliged to provide the associations, foundations and federations public interest information, according to the law.

Article 51

- (1) Within the Chambers of the Parliament, the Presidency of Romania, the General Secretariat of the Government, the institution of the Ombudsman, the autonomous administration authorities, the ministries, the other specialized bodies of the central and local public administration authorities, organizational structures operate the relation with associations and foundations.
- (2) The public authorities mentioned in paragraph (1) may consult with representatives of associations and foundations carrying out activities in their sphere of competence in order to develop common programs or activities.

Article 52

- (1) After their establishment, the interested associations, foundations and federations will request the autonomous administration authorities, the ministries, the other special bodies of the central and local public administration authorities to be recorded according to the field wherein they operate.
- (2) The public authorities stipulated in paragraph (1) are obliged to keep a record of those associations and foundations that required so.
- (3) Conflicts of competence arising among public authorities stipulated in paragraph (1) with respect to recording associations, foundations and federations are solved, upon request from any of the parties, by the General Secretariat of the Government, within 5 days from the notification date. Provisions under article 39, section (3), apply accordingly.
- (4) In all cases, the Ministry of Justice shall communicate to the competent public authority stipulated under section (1), for information purposes, copies of the [summations containing the] irrevocable court decisions, as well as of the supporting documents, within 5 days from receiving the documents stipulated under article 47.

Article 53

Litigations arising with respect to the provisions of the present chapter are solved according to the Law of administrative contentious #29 of 1999, and the subsequent modifications.

Chapter 9

Dissolution and liquidation

Section 1

Dissolution

Article 54

- (1) Associations and federations get dissolved:
 - a) lawfully⁶⁰;
 - b) by court or tribunal⁶¹ decision, as may be the case;
 - c) by decision of the general assembly.
- (2) The foundations dissolve:
 - a) lawfully;
 - b) by court decision.

Article 55

- (1) Associations get dissolved lawfully:
 - a) when the period the association has been established for has come to an end;

⁶⁰ Read "de jure."

⁶¹ It is very likely that only federations get dissolved by tribunal decision.

- b) when the purpose for which it has been established has been accomplished or can no longer be accomplished, if within 3 months from reaching such conclusion the purpose is not modified;
 - c) when the general assembly or the board of directors can no longer be constituted according to the statute of the association, if this situation lasts for more than a year from the date when, according to the statute, the general assembly and the board of directors should have been constituted;
 - d) when the number of associates has dropped under the limit provided by the law, if the number has not been completed within 3 months.
- (2) Reaching the conclusion that [lawful] dissolution is in order shall be done by decision of the court in whose territorial circumscription the association has its headquarters, upon request from any interested person.

Article 56

- (1) The association is dissolved by court decision, upon request from any interested person:
- a) when the purpose or the activity of the association has become illicit or contrary to the public order;
 - b) when the purpose is accomplished by means illicit or contrary to the public order;
 - c) when the association seeks to accomplish another purpose than that for which it has been established;
 - d) when the association is in a state of insolvency;
 - e) in the case stipulated under article 14.
- (2) The competent instance is the court in whose circumscription the association has its headquarters.

Article 57

The association may dissolve by decision of the general assembly. Within 15 days from the date of the dissolution meeting, the minutes in authenticated form are submitted to the court in whose territorial circumscription it has its headquarters, in order to be registered in the Registry of associations and foundations.

Article 58

Foundation get dissolved lawfully in cases stipulated under article 55 paragraph (1), letters a) and b), as well as in case it is impossible to constitute the board of directors according to the statute of the foundation, if this situation lasts for more than a year from the date when the board of directors should have been constituted, according to the statute. The provisions of article 55, paragraph (2), apply accordingly.

Article 59

The dissolution of the foundation is done by court decision under the terms of article 56, which applies accordingly, as well as in case the provisions of article 15, section(3), are not observed.

Article 60

- (1) In case of dissolution of the association or foundation, the assets remaining after liquidation cannot be transmitted to natural persons.
- (2) These assets may be transmitted to legal persons of private law or public law with an identical or similar purpose, through the procedure established in the statute of the association or foundation.
- (3) If, within 6 months from the liquidation, the liquidators did not succeed in transmitting the assets under the terms of paragraph (2), as well as in case the statute of the association or foundation does not stipulate a procedure of transmitting the assets, or if the stipulation is contrary to the law or to the public order, the assets remaining after liquidation shall be distributed by the competent court to a legal person with an identical or similar purpose.
- (4) In case the association or foundation has been dissolved for reasons provided under article 56, paragraph (1), letters a)-c), the assets remaining after liquidation shall be taken over by the state, through the Ministry of

Finance or, if such be the case, by the commune or city in whose territory the association or foundation had its headquarters, if the latter was of local interest.

- (5) The date of transmitting the assets is that of the delivery and taking over documents, unless an ulterior date is established therein.

Section 2

Liquidation

Article 61

- (1) In cases of dissolution stipulated under articles 55, 56, 58 and 59, the liquidators shall be appointed by court decision.
- (2) In case of dissolution stipulated under article 57, the liquidators shall be appointed by the general assembly, under penalty of lack of juridical effects of the dissolution decision.
- (3) In all cases, the mandate of the board of directors ends once the liquidators have been appointed.
- (4) The liquidators may be natural or legal persons. The permanent representatives-natural persons of the legal person in charge with the liquidation-must be authorized liquidators, according to the law.

Article 62

- (1) Immediately after assuming office, the liquidators shall make the inventory and shall draw a balance sheet that must give an exact situation of the assets and liabilities of the association or foundation.
- (2) Liquidators are obliged to receive and keep the registers⁶² and any other acts of the association or foundation. Likewise, they shall keep a register with all the operations undertaken during the liquidation, in chronological order.
- (3) Liquidators fulfill their mandate under the supervision of the censors.

Article 63

- (1) Liquidators are obliged to continue the juridical operations underway, cash the debts, pay the creditors and, if the cash is insufficient, transform the rest of the assets in cash, proceeding to sell the movables and immovables at public auction.
- (2) Liquidators can accomplish only those new operations that are necessary for finalizing the activities underway.

Article 64

- (1) The sum due the known creditor who refuses to receive payment for his/her debt will be registered in his account
- (2) If the payment of the debt cannot be done immediately or when the debt is disputed, the liquidation shall not be declared finished before the creditors are secured.

Article 65

In any case, liquidators cannot close the operations and remit the administration account to those entitled earlier than 6 months after the dissolution of the association or foundation is published.

Article 66

Liquidators are responsible in solidarity to the creditors for any damage resulting from their negligence.

Article 67

Liquidators are subject to [common] mandate regulations both with respect to the association or foundation, and to the members or the founders.

⁶² Read "accounting books."

Article 68

- (1) After liquidation is over, within 2 months, the liquidators are obliged to submit the balance sheet, the journal register and a memorandum, stating the liquidation operations to the Registry of associations and foundations with the [clerks' office at the] court in whose territorial circumscription the association or foundation has its headquarters.
- (2) Liquidators are obliged to fulfill all the procedures for publishing the liquidation and for erasing the association or foundation from the Registry of associations and foundations.
- (3) Publication of the liquidation is done by posters placed on the door of the court in whose territorial circumscription the legal person has its headquarters, within 2 months since the liquidation is over.

Article 69

If, within 30 free days⁶³ from submitting the balance sheet, no contestation is recorded, the balance sheet is considered definitely approved and the liquidators, by court authorization, shall remit to those entitled the assets and cash remaining after liquidation, together with all registers and acts of the association or foundation and of the liquidation procedure. Only after this, liquidators shall be considered cleared and be issued a certificate to that effect.

Article 70

- (1) Contestations against the liquidators' balance sheet may be formulated by any interested person at the court in whose territorial circumscription the liquidated legal person has its headquarters.
- (2) All contestations shall be solved by only one decision. The sentence pronounced by the court is executory and is only subject to recourse.
- (3) After the liquidation is over, liquidators must ask the association or foundation be erased from the Registry of associations and foundations.

Article 71

- (1) The association or foundation ceases to exist upon erasing it from the Registry of associations and foundations.
- (2) Erasing is done on the basis of the certificate issued to liquidators under the terms under article 69, whereof they are cleared of the assumed duties.

Article 72

Provisions of the present chapter regarding dissolution and liquidation of associations and foundations shall apply accordingly to the dissolution and liquidation of federations. The competent instance is the tribunal in whose territorial circumscription are the headquarters of the federation subject to dissolution and liquidation.

Chapter 10

National Registry of Legal Persons without Patrimonial Aim

Article 73

- (1) The National Registry of the Legal Persons without Patrimonial Aim-associations, foundations and federations-is hereby created in order to keep a centralized record thereof; hereinafter, it is called the National Register.
- (2) The National Registry is held with the specialized department of the Ministry of Justice.

Article 74

- (1) In order to establish and operate the National Registry, the courts are obliged to automatically submit to the Ministry of Justice copies of those court decisions that remain irrevocable and concern the constitution,

⁶³ That may mean about 3 months, as we only have about 10 free days per month (Saturdays and Sundays).

modification or dissolution/liquidation of any association, foundation or federation together with copies of the [respective] supporting documents, within 3 days since each court decision remains irrevocable.

- (2) Associations and foundations recognized as having public utility status must submit to the Ministry of Justice copies of the excerpt activity reports and annual balance sheets, as well as proof issued by the Regie Autonome "Official Gazette" that publication thereof was required in the Official Gazette of Romania, Part IV.

Article 75

- (1) The National Registry of the legal persons without patrimonial aim is public.
- (2) The Ministry of justice is obliged to issue, on the expenses of the person requiring so, certified copies of the registrations made in the National Registry and of the proving documents.
- (3) Documents stipulated under paragraph (2) may be requested and issued by mail.
- (4) Data from the National Registry may be issued and archived also as recordings on microfilms and equipment accessible for automatic data processing.

Chapter 11 Special provisions

Article 76

- (1) Foreign legal persons without patrimonial aim may be recognized in Romania, under condition of reciprocity, on the basis of prior approval from the Government, by registration in the Registry of associations and foundations with the clerks' office at the Bucharest tribunal, if they are validly established in the state whose nationality they possess, and if the purpose in their statute does not run counter the public order in Romania.
- (2) To this end, representatives of the foreign legal persons must enclose with the petition for registration the following acts, in authenticated copies and legalized translations:
 - a) the constitutive act in the state whose nationality the legal persons have;
 - b) the statute (inasmuch it exists as a distinct document);
 - c) the decision of the leadership body of that legal person, whereby recognition in Romania is required;
 - d) the statute of the future representative⁶⁴ in Romania of that legal person, comprising provisions regarding the headquarters, the legal capacity and the persons representing the foreign legal persons;
 - e) the decision of the Government of Romania to approve the required recognition in Romania of that legal person.
- (3) The provisions of articles 8-12 and 81 apply accordingly.

Article 77

- (1) Associations and foundations established as Romanian legal persons by foreign legal or natural persons may acquire, along the whole period of operation, the right to property and any other real rights for the grounds necessary to accomplish the purpose for which they have been established.
- (2) In case of dissolution and liquidation of associations and foundations stipulated in paragraph (1), liquidators are obliged to alienate the grounds, within a year, only to persons having the legal capacity to acquire such assets. The one year period is calculated from the date the court decision which reaches the conclusion dissolution is in order or disposes the dissolution remains irrevocable, or as may be the case, from the date of the voluntary dissolution.
- (3) In case of non-observance of the one year period for alienation of the grounds stipulated in paragraph (2), the competent court shall dispose their selling at public auction.

⁶⁴ Read "branch."

- (4) In all cases, the assets remaining after liquidation, including the grounds not alienated under the terms in paragraphs (2) and (3), are appropriated according to provisions of article 60.

Chapter 12

Transitory and final provisions

Article 78

The present ordinance comes into force within 3 months from the date of publication in the Official Gazette of Romania, Part 1.⁶⁵

Article 79

During the period stipulated in article 78, the Ministry of Justice:

- a) shall elaborate and adopt the Rulings regarding the organization of the Registry of associations and foundations, the Registry of federations, as well as the National Registry of legal persons without patrimonial aim, that shall comprise provisions regarding access to this registry of legal persons of public law, legal persons of private law, as well as natural persons;
- b) shall establish the form and contents for registration certificates mentioned in article 12, section(1), and article 17, section(3), as well as the terms for issuing the proof mentioned in article 6, section(4).

Article 80

Provisions of the Decree #31 of 1954, regarding natural and legal persons, apply accordingly to associations and foundations as well, except for those provisions that run counter to provisions stipulated under the present ordinance.

Article 81

As to the associations and foundations that have the status of foreign legal persons, the provisions of article 43 and the following, from the Law #105 of 1992, regarding the regulation of international private law relations, are and remain valid.

Article 82

Petitions for authorizing the establishment of associations, foundations, federations or unions of persons, that are currently in the process of being solved, in courts legally invested at the date the present ordinance comes into force, shall continue to be solved by those instances.

Article 83

- (1) Associations and foundations established, until the present ordinance comes into force, under the terms of Law #21 of 1924 for legal persons (Associations and Foundations) keep the already acquired legal status. To these associations and foundations, the legal framework established herein shall be applied starting from the date the present ordinance comes into force.
- (2) Unions, federations or groups of legal persons, as regulated by Law #21 of 1924, keep their legal status and, from the date the present ordinance comes into force, will be applied the legal framework for federations provided herein.

Article 84

- (1) Within 3 months from the coming into force of the present ordinance, registers of legal persons with the clerks' office at tribunals in whose circumscriptions function legal persons of private law, according to provisions of Law #21 of 1924, shall be transmitted to courts in whose circumscription they have their headquarters.
- (2) Within the same period, registers of unions and federations with the clerk's office at courts of appeals in whose circumscriptions function unions and federations, according to provisions of Law #21 of 1924, shall be

⁶⁵ That is, on 1 May 2000.

transmitted to tribunals in whose circumscriptions they have their headquarters.

- (3) In order to establish the National Registry stipulated article 73, within the period stipulated in paragraph (1), courts are obliged to submit to the Ministry of Justice copies of the registries of associations and foundations, as well as of the registries of unions and federations, currently with their clerks' offices.

Article 85

Legal persons of public utility—associations, foundations or other organizations of the kind, established by laws, ordinances, decree-laws, decisions of the Government or other acts of public law—do not come under the incidence of the provisions of the present ordinance, but are subject to the special regulations that are the basis for their establishment and operation.

Article 86

On the date the present ordinance comes into force, Law #21 of 1924 for legal persons (Associations and Foundations), published in the Official Gazette, Part I, #27 of 6 February 1924, is abrogated together with the subsequent modifications, as well as any other contrary provisions.

Signed by

Prime-Minister
Mugur Constantin Isarescu

Countersigned by

Flavius Baias
Secretary of state⁶⁶
at the Ministry of Justice

and

Decebal Traian Remes,
Minister of Finance

for Valeriu Stoica,
State Minister and
Minister of Justice

⁶⁶ The Romanian title equivalent to Deputy Minister.