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THE ESTABLISHMENT ON NON-PROFIT LEGAL ENTITIES

Belgium, Czech Republic, Spain

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Table des matières

| | |
|--|-----------|
| BELGIUM | 2 |
| 1. Legal Rules Applicable to Non-Profit Activities | 2 |
| 1.1. Choice of Legal Structure | 2 |
| 1.2. Capacity | 2 |
| 1.3. Constitution of an Association | 3 |
| 1.4. Articles of Association | 3 |
| 1.5. Management of Associations | 4 |
| 1.6. Activities | 5 |
| 1.7. Documentation and Accounting Requirements | 5 |
| 1.8. Liability of Registered Associations | 5 |
| 1.9. Rights and Duties of Members | 5 |
| 2. Competent Court | 6 |
| 3. Taxation (very succinct summary) | 6 |
| THE CZECH REPUBLIC | 7 |
| 1. No tax on income from non-commercial activities that do not generate a profit | 9 |
| 2. Tax on profits from economic activities | 9 |
| 3. Tax on donations | 9 |
| 4. Deduction of taxable income for donations to NPO | 9 |
| SPAIN | 12 |
| 1. Legal Structures available for Non-Profit Associations | 12 |
| 1.1. Scope of Application | 13 |
| 1.2. Capacity | 13 |
| 1.3. Constitution of an Association | 13 |
| 1.4. By-Laws | 13 |
| 1.5. Management of Associations | 15 |
| 1.6. Activities | 15 |
| 1.7. Documentation and Accounting Requirements | 15 |
| 1.8. Liability of Registered Associations | 15 |
| 1.9. Rights and Duties of Associates | 16 |
| 2. “Public Benefit” Associations | 16 |
| 3. Jurisdiction | 17 |
| 4. Taxation | 18 |

BELGIUM

Introduction

Belgian companies and associations law is currently being completely redrafted. The new rules are expected to come into force on 1 January 2019, although they have not yet been adopted by Parliament at the date of this report.

This report is based on the bill introduced in Parliament on 4 June 2018 and on the main proposals for amendments¹. Changes to the main principles are unlikely, but various details may be modified during the parliamentary process.

This report contains a summary of the most usual applicable rules for persons wishing to establish and participate in a non-profit legal entity. In each specific situation, more detailed provisions and/or derogatory rules will apply.

1. Legal Rules Applicable to Non-Profit Activities

1.1. Choice of Legal Structure

There are **two main legal forms** for non-profit organizations under Belgian law: the non-profit association (*association sans but lucratif* – ASBL) and the international non-profit association (*association internationale sans but lucratif* – AISBL). In this report, ASBL and AISBL are jointly designated as “**associations**”.

Both the ASBL and AISBL could be suitable for an organisation gathering various national organisations active in foreign (EU or non-EU) countries.

It would also be conceivable to use a corporate form designed for business entities, such as the (Belgian) cooperative society or the European cooperative society (SEC)². A cooperative society whose goal is to generate a positive impact for mankind, for the environment or for the community may under some conditions be labelled as a social enterprise (art. 8:5 CSA). But these forms are seldom used in practice, mainly because they are business entities and therefore subject to corporate tax rather than the tax on legal persons (which, in most cases, is more favourable). Therefore, they will not be further examined in this report.

1.2. Capacity

Any natural or legal person, Belgian or foreign, can be a member of an association. An association must have at **least 2 members** (art. 1:2 CSA).

The association has legal personality under Belgian (and therefore EU) law (art. 1:6, § 2 CSA). It can enjoy all general public and private rights of legal persons.

¹ *Projet de loi introduisant le Code des sociétés et des associations et portant des dispositions diverses*, 2017-2018, DOC 54 3119 001-002-003-004, available here : <https://www.lachambre.be/kvvcr/showpage.cfm?section=flwb&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=54&dossierID=3119>

² This is a European form regulated by Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).

1.3. Constitution of an Association

ASBL

Establishing an ASBL requires drafting an incorporation contract (which contains the Articles of Association) according to the applicable legal provisions (art. 2:5, § 2 CSA). This contract must be signed by all founding members or their legal representatives and be filed with the registry of the local commercial court (which will be called enterprise court at the latest on 1 November 2018).

The Court's clerk will then provide for the Articles of Association to be published in the Official Journal and for the association to be mentioned in the register of legal persons.

The fees for this incorporation process are low (around 300 EUR). No capital is needed.

AISBL

The incorporation contract of an AISBL must be drafted and signed by a notary (art. 2:5, § 3 CSA). The founding members must also sign the contract.

The AISBL only obtains a legal personality when it is recognized by a royal decree (art. 10:1 CSA). The process of obtaining the King's signature implies that the incorporation process is longer than for an ASBL.

The other elements of the incorporation process are similar to those applicable to the ASBL.

The incorporation fees are higher due to the intervention of the notary (around 2.000 EUR). No capital is needed.

Language

Both for an ASBL and an AISBL, the incorporation contract must be written in Dutch, French or German, depending on the region in which the corporate seat is located.

1.4. Articles of Association

The incorporation contract and the Articles of Association must contain (art. 2:9 and 2:10 CSA):

- The name and address of the founding members
- The name of the association and the region where its seat will be located
- The minimum number of members (must be at least 2)
- A description of its non-profit goal (general interest objective) and of the activities which will constitute its object; for an AISBL, the goal must have an international character; any kind of public or private philanthropic, cultural, scientific or general interest goal is acceptable, as long as it is legal and does not aim at the enrichment of the members
- The conditions for the acceptance of new members and for the exit of members
- The competence of the general assembly, the way its meetings are convened and the means by which its decisions are communicated to members and to third parties
- The conditions under which the Articles of Association may be revised (for AISBL only)
- The rules on appointment and revocation of board members and of other legal representatives of the association, the length of their term
- The maximum amount of the membership fee (for ASBL only)
- The non-profit goal to which the association will contribute its assets if it is liquidated

- The duration of the association, if it is incorporated for a limited durationThe exact address of the seat of the association
- The name of its directors, and of other legal representatives if any.

1.5. Management of Associations

Although slight variations are possible, associations are managed by a board of directors, which has full power to decide on behalf of the association and to represent the association in court and towards third parties. All matters related to the activities of the association are in principle decided by the board (art. 9:7 CSA).

The board must comprise at least three members (art. 9:6 CSA), or two if the association has only two members. The Articles of Association may specify other conditions as to the composition of the board.

The board meets as often as is necessary to conduct the association's affairs, and at least once a year. The Articles of Association may allow for participation through modern means of communication (video conference for example).

The board may appoint a manager (usually one of its members) in charge of the daily management of the association. This manager will have the power to decide on day-to-day matters and to represent the association for such matters (art. 9:10 CSA).

The Articles of Association may establish other bodies and committees which have only an internal role and may not represent the association towards the outside world.

The association also has a general assembly.

In the ASBL, the general assembly is competent mainly for (art. 9:12 CSA):

- Modification of the Articles of Association
- Appointment, dismissal and determination of the remuneration (if any) of board members and of the auditor (if any)
- Discharge to board members and to the auditor
- Approval of annual accounts and budget
- Winding-up of the association
- Exclusion of members

In the AISBL, the general assembly is competent mainly for (art. 10:5 CSA):

- Appointment, dismissal and determination of the remuneration (if any) of the auditor (if any)
- Approval of annual accounts
- Any other matter indicated in the Articles of Association

In practice, the general assembly meets once a year. The Articles of Association may allow for participation through modern means of communication (video conference for example).

1.6. Activities

The association may engage in any kind of (legal) activity which contributes to the achievement of its goals. It may have all sorts of business activities, hire personnel, acquire all kinds of assets, etc.

The association may be a member of other associations or a shareholder of a company if this is useful for the accomplishment of its goal.

It may make a profit, but it may not distribute (directly or indirectly) this profit to its members or to its directors, except if this is a way of accomplishing its non-profit goal (art. 1:2 and 1:4 CSA).

Associations may receive donations but those exceeding 100.000 EUR must be previously approved by the Minister of Justice (art. 9:22 and 10:10 CSA).

1.7. Documentation and Accounting Requirements

The association must have an up-to-date list of members (art. 9:3 CSA).
It must keep the minutes of the board and of general assembly meetings.

The accounting requirements depend on the size of the association. The size criteria are complex, but smaller associations (less than 5 employees, less than 334.000 EUR of annual turnover and less than 1.337.000 EUR assets or debts) have few accounting obligations. They must make a list of all transactions and file this list with the court's registry at the end of each financial year (art. 3:47 CSA).

1.8. Liability of Registered Associations

Associations are fully liable for their own obligations, on their own assets. They are subject to bankruptcy and other insolvency procedures in case of insolvency.

Members are not liable for the obligations of the association (art. 9:1 and 10:1 CSA).

Directors are liable towards the association and, in some cases, towards third parties, in case of fraud or if they have mismanaged the association.

1.9. Rights and Duties of Members

The members have the right to participate in the activities of the company and to vote at the general assembly. They have the right to resign from their membership in the association (art. 9:23 CSA).

The members are liable towards the association for the payment of the annual membership fee (if the association decides to ask for such a fee).

The Articles of Association may provide for further rights and duties.

2. Competent Court

Associations are considered as enterprises and are therefore subject to the commercial (enterprise) Court of the district where the corporate seat is located. The language of the Court (Dutch, French or German) varies depending on the district.

3. Taxation (very succinct summary)

The taxation regime depends on the effective activities of the association.

If the activities are mainly commercial or industrial (which they are usually not), the association is subject to corporate tax, whereby the profits are taxed at a normal rate of approx. 30%.

If the association has only ancillary commercial activities (i.e., minor commercial activities that are clearly not predominant compared to the non-profit activities), the association is subject to the tax on legal persons, whereby only specific types of income are taxed. In most cases, this leads in practice to a 0% income tax. The association must nonetheless file a yearly tax report.

If the association has savings exceeding 25.000 EUR which are not used as working capital for its normal activities, these savings are subject to a yearly tax of currently 0,17%.

THE CZECH REPUBLIC

Not-for-profit Associations according to the Czech legislation

The Czech Republic is a civil law country with **four primary forms** of not-for-profit organizations (NPOs): **Associations** (*spolek*), **Foundations** (*nadace*), **Funds** (*nadační fond*) and **Registered institutes** (*ústav*).³

An **association** is corporate entity with a certain minimum number of members, which serves the interests of its members and/or enable its members to pursue certain public interests (Civil Code Article 217). **Foundations**, **Funds** and **Registered institutes** are juridical persons without membership, established to take care of the property set aside by their founder(s) to be used for rendering activities of certain socially or economically beneficial purposes according to the will of their founder(s).

For reasons of the present report's focus on NPOs with members, we further describe only the legal forum of the association.

Relevant legal forms

As in most civil law countries in Europe, the principal legal forms of not-for-profit organizations (NPOs) in the Czech Republic are **associations and foundations**. The Czech Republic has several additional forms, including **funds** and **registered institutes**. The **Civil Code** includes general provisions for the formation, establishment, operation, and termination of any juridical person, as well as for the processes of merging, splitting, or making other changes in legal form. It also defines in general the types, rights, and responsibilities of governing, supervisory, and control bodies of juridical persons (Civil Code Articles 15-22 and 118-209). For each kind of legal form, there are further specific provisions. The Civil Code addresses **three main categories of legal entities**: 1) **corporations** (*korporace*), 2) **fundaciae** (*fundace*), and 3) **registered institutes** (*ústav*).

The main **distinguishing feature** of the **corporation** category is the existence of an active membership. This category includes all commercial companies, including those with a single proprietor, as well as associations of natural or juridical persons established for non-commercial purposes and serving the interests of their members or any public interest.

The following describes the Association in more detail:

In 2014, the Civil Code introduced a novel Czech term, "*spolek*" (which means "association") for the legal form previously known as "*občanské sdružení*" (which means the "Association of Citizens") and belonging to the **general category of corporations**. The hallmark of the *spolek/association* is its status as a not-for-profit, non-commercial, corporate entity, which has a certain minimum number of members and should serve the interests of its members and/or enable its members to pursue certain public interests (Civil Code Article 217).⁴

³ In practice, not-for-profit organizations utilize a **mix of all possible legal forms** of the organization to make use of all the possibilities enabled by the Czech tax law.

⁴ Associations (*občanská sdružení*) that were established according to the now-abolished Act on the Associating of Citizens (No. 83/1990 Sb.) are still considered to be associations under the new Civil Code. These "old" associations were originally required to adapt their name to contain the word "*spolek*" or "*zapsaný spolek*," or add the legal form acronym "z.s." as a suffix.

Associations are specifically regulated according to Articles 214-302 of the Civil Code.

Membership

The Civil Code provides that an association **must be established by and remain composed of at least three persons** (Civil Code Article 214(1)). Foreign natural and legal persons are explicitly allowed to establish and participate in the governing bodies of associations. (Civil Code Article 214).

Structure

Generally, an association's by-laws should establish an **assembly of all members of the association** as the highest governing body. If the by-laws explicitly provide otherwise, however, the association may have a different body as the highest authority (Civil Code Article 246(2)).

The Civil Code also stipulates that an absolute majority of all members of the relevant body (Civil Code Article 252) shall form a quorum of the highest governing body and all other bodies of an association.

Permissible Activities

Associations may engage in both mutual benefit and public benefit activities. (Civil Code Articles 306, 394 and 402)⁵. They may not be established primarily for entrepreneurial and other profit-generating activities (Civil Code Article 217).

Like other NPOs, Associations may act as founders of other legal entities, unless otherwise specified in the law.

The prohibition on explicitly commercial activities does not prohibit the association from engaging in some profitable activities. As long as the entrepreneurship or profit-generating activity is auxiliary and its purpose is to support the statutory purpose of the association or to enable more efficient use of its property, the association may engage in it. However, any profit generated by such **an auxiliary economic activity** must be used **exclusively for supporting statutory activities** of the association including its administration expenses (Civil Code Article 217(2)-(3)).

Moreover, like other juridical persons, associations cannot be established for activities violating the rights of other persons or the laws of the Czech Republic; activities pursuing military objectives; or activities interfering with those reserved to the state authorities, unless specified otherwise by special laws (Civil Code Article 145). Neither may an **NPO become a partner** with unlimited liability to a commercial corporation.

Public register of public benefit status

The Civil Code provides that a publicly beneficial juridical person **may register** its public benefit status in the public register (Civil Code Article 146). Following amendments in 2017, the Code does not further address the criteria for public benefit status or its implications, nor is there a separate law to govern public benefit status.

Taxation of Publicly beneficial taxpayers, including Associations

⁵ The Income Tax Law provides a more concrete definition of public benefit activities for the tax treatment of donors and beneficiaries of donations.

1. No tax on income from non-commercial activities that do not generate a profit

Under the Income Tax Law, NPO are exempt from tax on income from non-commercial activities that during the entire taxation period do not generate a **surplus of revenue** over related expenses. It relates also to an income from state subsidies and similar forms of support from public budgets (Income Tax Law Article 18a(1)).

An **association** is considered an NPO if its **primary activity** is not entrepreneurial (systematically pursuing profit making), as stated in its incorporation documents, statute, bylaws, or according to the decision of a public authority.⁶

2. Tax on profits from economic activities

Economic activities and statutory activities that generate a **surplus of revenue** over related expenses are taxed at a reduced rate, up to a certain limit.

Associations considered as NPOs are exempt from tax on income generated from their registered endowments (also those originally derived from economic activities) if this income is used exclusively for the purpose for which the foundation has been established, and if the use of such income is not used in violation of the Income Tax Law.

3. Tax on donations

Associations are generally **exempt from the tax** on donations or other forms of income received for certain purposes. This exemption applies to public benefit NPOs, assuming that the exempted donation will be used for the organization's public benefit activities (Income Tax Law Articles 15(1) and 20(8)). Accordingly, associations as defined above generally **do not have to pay income tax** on foreign grants.⁷

4. Deduction of taxable income for donations to NPO

Under **the Income Tax Law**, juridical and natural persons may generally deduct donations to a legal entity that is considered an NPO from their taxable income if:

- 1) the NPO is based in any member state of the European Union, or in Norway or Iceland;
and
- 2) the recipient allocates the received money to certain public benefit activities, including: science and learning, research and development, and culture (Income Tax Law Article 15(1)).

⁶ Other not-for-profit legal forms, which are outside the focus of this Note, include social co-operatives, relics of obsolete public benefit corporations, religious organizations, political parties and political movements, interest associations of juridical persons, trade unions, and professional chambers, as well as specialized legal forms such as public educational juridical persons, public research institutions, and public universities.

⁷ The exemption applies to all NPOs with a seat in European Union and European Economic Area member states (Income Tax Law Article 19b(2)(b)).

In general, it holds that any donor providing **monetary or non-monetary donation** or other contribution to a legal entity may do so **under contract**, in which it is specified the manner and/or purpose of the use of the donated or contributed assets. Such contracts may specify the conditions under which the donated or contributed assets must be returned to the original owner in cases of misuse or inability to properly use such assets. Therefore, the NPOs might have liabilities to individual donors or contributors and in case of termination such claims must be taken into account.

The tax base reduction applies also to foreign legal entities that organize a "public collection." Under the Public Collections Law, "public collections" are limited to collecting contributions in order to promote "public benefit purposes," such as humanitarian and charitable goals, the development of education and learning, physical fitness and sports, the protection of cultural heritage or traditions, and the environment (Public Collections Law Article 1). Thus, **tax deductibility may depend** on how an NPO uses the donation.

Dissolution

The Civil Code generally provides for the winding up and final termination of all private juridical persons (Civil Code Articles 168-173 and 185-209).

For **associations**, dissolution requires the liquidation of association assets (Civil Code, Articles 269-273). The relevant body of the association or a court appoints a liquidating officer, who must compile a list of the association's property and make the list available for all members of the association for revision.

The **liquidating officer** sells the association's property only to the extent necessary to pay off the association's debts, and uses the rest of the liquidation balance in accordance with the association's bylaws. An association may distribute its remaining assets to its members upon dissolution if such distribution is provided for in the association's by-laws. Any attempt to use the liquidation balance of an association with the status of public benefit for other than publicly beneficial purposes is deemed invalid and void.

If it is not possible to use the liquidation balance of an association in accordance with its bylaws, the liquidation officer must offer it to another association with a similar purpose. If that is not possible, the offer goes to the community where the association has its seat. If the community does not accept the offer, it is transferred under the control of the respective regional self-government. The public authorities are obliged to make use of the offered liquidation balance explicitly for a publicly beneficial purpose (Civil Code Articles 271-272).

If the association has **accepted grants** or other contributions from a public budget, the above-mentioned procedure is not applicable, and the liquidating officer shall dispose of the relevant part of the liquidation balance according to the directions of the relevant public authority (Civil Code Article 273).

Basic applicable laws

Constitution of the Czech Republic, Act No. 1/1993

The Constitutional List of **Freedoms and Rights** ("Constitutional Act"), Act No. 2/1993

Civil Code, Act No. 89/2012 (entered into force on January 1, 2014)

Law on Commercial Corporations. Act on Business and Cooperates No. 90/2012

Act on Basic Register of Juridical Persons, Self-Employed Natural Persons and Public Authorities ("**Law on Basic Registers**"), No. 111/2009,

Act on Income Tax ("**Income Tax Law**"), No. 586/1992,

Act on Public Registers of Juridical and Natural Persons ("**Law on Public Registers**"), No. 304/2013

Act on Public Collections ("**Public Collections Law**"), No. 117/2001

SPAIN

1. Legal Structures available for Non-Profit Associations

On March 2002, the Spanish Cortes promulgated Organic Law n° 1/2002⁸ ("the Organic Law"), regulating the Right of Association. The aim of this legislation is to implement Article 22 of Spain's Constitution⁹, by establishing a legal regime and supportive measures for the exercise of the **fundamental right of association**. Indeed, according to the Constitution, Spaniards enjoy the right to associate freely in pursuit of lawful objectives. The Organic Law also recognizes that the freedom to establish associations without first obtaining authorization is an integral part of this right. The Organic Law **excludes associations whose objectives are illegal, as well as secret or paramilitary associations**.

The internal organization and administration of these associations must be conducted democratically, honoring the concept of pluralism.

The Organic Law provides for the possibility of participation by the Spanish public entities among themselves or with private individuals. This must be done on a non-discriminatory basis, and avoiding taking a dominant position in the administration of associations. Assistance and financial support provided by the Spanish government are subject to certain conditions.

The government will not provide any type of support to associations who discriminate based on reasons of age, race, sex, religion, or personal or social preferences or circumstances. Similarly, the Spanish government will not support any association that manifests hatred or violence against any legal person or individual, is involved in or supports terrorism, or engages in conduct which discredits, holds in contempt or humiliates victims of terrorism, or their families.

Section VI of the preamble of the Organic Law enumerates some objectives that can be promoted by associations: environment, human rights, youth, public health, culture and creation of employment posts. This list is not *numerus clausus* (the same preamble states "and others"), which leaves the door open for other activities.

⁸ Ley Orgánica 1/2002, de 22 de Marzo, reguladora del Derecho de Asociación, in: http://noticias.juridicas.com/base_datos/Admin/lo1-2002.html.

⁹ Article 22 Spanish Constitution (unofficial translation at: http://www.servat.unibe.ch/law/icl/sp00000_.html) [Association].

- (1) The right to association is recognized.
- (2) Associations which pursue purposes or use methods which are classified as crimes, are illegal.
- (3) Associations constituted under the provisions of this article must register for purposes of public information only.
- (4) Associations may only be dissolved or their activities suspended by virtue of a motivated judicial order.
- (5) Secret and paramilitary associations are prohibited.

1.1. Scope of Application

Organic Law n° 1/2002 only applies to non-profit associations that were created after the entering into force of this piece of legislation¹⁰. Furthermore, except in very limited circumstances, the scope of the new law does not extend to civil and commercial corporations, industrial and labor organizations, cooperatives and mutual benefit societies, economic interest groups, and property ownership associations.

1.2. Capacity

Associations may be established by legal persons as well as individuals. Individuals must not be subject to any legal incapacity preventing or restricting them from acting on their own behalf.

Lawfully formed associations have the **capacity to form federations, confederations or unions** in accordance with the same requirements applicable to the formation of associations (see cf. 1.3.).

1.3. Constitution of an Association

To create an Association, it is necessary that at least three individuals or legal persons (public or private) make a written agreement in which they undertake to contribute with their knowledge, experience, resources and services to attain the objectives of the association, as well as to approve the Articles of Association governing its administration. The contents of the formation contract can be set forth in either a public or private document.

According to art. 6 of the Organic Law, the Act of foundation (*Acuerdo de Constitución*) of the Association must include the following elements:

1. The names of the promoters, the name or trade name in the case of legal persons, and in both cases, the nationality and domicile of the association;
2. An expression of the willingness of the promoters to form the association and the specific agreements made between the promoters;
3. The approved By-laws;
4. The date and place, signature of the promoters or the legal representatives in the case of legal persons; and
5. The designation of the members of the provisional managing bodies.

In the case of legal persons, adoption of the Act of foundation must be certified by the competent authority, and must accompany the Act of foundation.

The creation of an Association does not require to have an initial patrimony.

1.4. By-Laws

Among the typical information required in articles of other civil or commercial entities, the by-laws must also stipulate:

1. The objectives and authorized activities of the association;

¹⁰ Existing organizations, federations and associations at the time of entering into force of Organic Law n° 1/2002 shall continue to be subject to those legal regimes that regulate their activities.

2. The requirements and forms of admission and withdrawal of associates or for termination;
3. The various rights and obligations of associates;
4. The criteria which guarantee the democratic administration of the association;
5. The initial patrimony and the economic means that can be used.

The domicile of an association must be set in Spain, in the location established in the Articles of Association. In the case of foreign associations, a branch must be established in Spain.

The law requires that associations must register in the Registry of Associations (art. 10 Organic Law), indicating that promoters of unregistered associations shall be **personally and jointly responsible for the obligations of the association**¹¹.

Spain is a regionalized State composed of Autonomous Communities. Some of these local entities have taken advantage of their competences to legislate in the field of associations acting within their territories. Such is the case of Cataluña, of the País Vasco and of Canarias¹². The Autonomous Communities maintain an Autonomous Registry of Associations for the registration of associations with activities primarily carried out within their territories. Upon registration, the Autonomous Community's Registry notifies the National Registry that an association has been registered.

Associations that carry their objectives in more than one Autonomous Community, or foreign associations with activities in Spain, are required to register in the National Registry of

¹¹ Ley Orgánica 1/2002, de 22 de marzo. RCL 2002\854, Art. 15 : « Responsabilidad de las asociaciones inscritas

1. Las asociaciones inscritas responden de sus obligaciones con todos sus bienes presentes y futuros.
2. Los asociados no responden personalmente de las deudas de la asociación.
3. Los miembros o titulares de los órganos de gobierno y representación, y las demás personas que obren en nombre y representación de la asociación, responderán ante ésta, ante los asociados y ante terceros por los daños causados y las deudas contraídas por actos dolosos, culposos o negligentes.
4. Las personas a que se refiere el apartado anterior responderán civil y administrativamente por los actos y omisiones realizados en el ejercicio de sus funciones, y por los acuerdos que hubiesen votado, frente a terceros, a la asociación y a los asociados.
5. Cuando la responsabilidad no pueda ser imputada a ningún miembro o titular de los órganos de gobierno y representación, responderán todos solidariamente por los actos y omisiones a que se refieren los apartados 3 y 4 de este artículo, a menos que puedan acreditar que no han participado en su aprobación y ejecución o que expresamente se opusieron a ellas.
6. La responsabilidad penal se regirá por lo establecido en las leyes penales. ».

¹² Ley 7/1997, de 18 de Junio, de Asociaciones de Cataluña, in: <http://www.iniciativasocial.net/legis/ley%20aso%20cata.pdf>; Ley 4/2003, de 28 de Febrero; Ley 4/2003, de 28 de Febrero, de Asociaciones de Canarias, in: http://www.asociaciones.org/index.php?option=com_content&task=view&id=424&Itemid=41; Ley 3/1988, de 12 de Febrero, de Asociaciones en el País Vasco, in: http://www.asociaciones.org/index.php?option=com_content&task=view&id=475&Itemid=41.

Associations. In the case of foreign associations, the National Registry notifies the Autonomous Communities in which the foreign Association performs its activities.

1.5. Management of Associations

The By-laws contain the **internal regulation** of the Associations, as long as they are consistent with the provisions of the law.

The **General Assembly** of the associated members is the supreme governing authority (art. 11 Organic Law). This body meets once a year, unless a number representing at least 10% of the associates requires special meetings. The members of the General Assembly are required to approve the Association's activities, based on the principle of majority or other chosen democratic process. Under the direction of the General Assembly, a **representational body** must be constituted. The members of this body must be associates, and they assume responsibility for the ongoing management and representation of the interests of the association.

Finally, record must be made in the by-laws, as well as in the annual accounting approved by the General Assembly, of any members of the organizational bodies of the association, who receive compensation for their services.

The law establishes basic default rules for the internal administration of associations that apply in the absence of rules established in the Articles of Association of the association.

1.6. Activities

The activities performed by Associations must be consistent with their objectives (art. 13 Organic law).. All benefits must be devoted to the activities of the Association. Furthermore, no profit from the activities may be received by associates, their spouses, or other individuals or legal persons who reside with them or are otherwise natural recipients of their affection.

1.7. Documentation and Accounting Requirements

Associations are required to maintain sufficient accounting records to allow verification of the accurate status of their capital, their financial status and the results of performed activities. The accounts of the association must be approved annually by the General Assembly. Associations must keep an updated register of their members (art. 14.1 Organic law).

1.8. Liability of Registered Associations

The Organic Law establishes three basic rules regarding liability:

- only associates of **registered associations** are protected from personal liability for the obligations of the association. Associates of unregistered associations remain personally exposed to the obligations of the association.
- once the association is registered, the association alone will be liable for its debts **to the extent of its assets**.
- representatives and other persons acting in the name of the association are **personally liable to the association**, the associates, and third parties, for any damages caused by deceitful, culpable or negligent acts. Civil and administrative actions may be brought against those who are responsible for such acts. The governing bodies of the association may also be held responsible whenever liability cannot be imposed, for whatever reason, on a responsible party. However, the members of the governing bodies may

avoid liability by proving that they did not participate in the approval or the performance of the unlawful acts.

The Spanish Penal Code and other specific criminal legislation govern criminal responsibility (for example for fraud, etc.)

Charitable contributions and related activities are characteristic measures used to fund non-profit associations. In this regard, the promoters of such measures are personally liable to contributors for the administration and investment of collections taken.

1.9. Rights and Duties of Associates

The fundamental rights of associates are (art. 21 Organic law):

1. To freely integrate the association;
2. To participate in the association's activities;
3. To be informed of the internal management and administration of the association;
4. To be heard upon prior notice regarding any sanctions brought against them; and
5. To protest association actions and activities inconsistent with applicable law or the Articles of Association.

The status of an associate, and its corresponding rights, are not assignable, unless otherwise is established in the by-laws.

Nobody can be obliged to integrate an association (art. 2.3 Organic Law).

Associates have the right to withdraw voluntarily from the association at any moment. In such case, if so established in the by-laws, the associate has the right to reimbursement of his or her share of the initial or subsequent capital contributions (excluding paid association dues), as long as the reduction in the concerned capital does not prejudice third parties.

The main obligations incumbent on associates are (art. 22 Organic law):

1. To share the objectives of the association and to contribute in their achievement;
2. To settle the fees and other payments incumbent in each associate;
3. To execute the obligations established in the By-laws;
4. To respect and execute the agreements validly adopted by the managing bodies.

2. “Public Benefit” Associations

Associations declared to be of “public benefit” (*utilidad pública*) will be entitled to receive State support and financial aid. To obtain the public benefit designation, the following criteria must be met:

1. The objectives of the association tend to promote a public interest,
2. The Association is open to any person fulfilling the conditions to join and the Association’s activities are not designed to benefit only the associates,

3. Except under specific circumstances and on specific conditions, the members of the organizational bodies representing the association do not receive retribution paid from public funding obtained by the association,
4. The association has sufficient personnel, resources and adequate organizational structure to obtain the objectives of the association,
5. The association is duly formed and registered in the appropriate Registry.

When an Association is recognized as being of public benefit, it enjoys of the following advantages (art. 33 Organic law):

1. The right to use the phrase "Declared of Public Benefit" in all the documentation;
2. The right to take advantage of applicable financial incentives;
3. The right to take advantage of applicable economic benefits; and
4. The right to receive free legal assistance as provided by the applicable law.

Article 36 Organic Law states that the Spanish Autonomous Communities may extend additional benefits to public benefit associations located within their territories.

The public benefit designation entails the following obligations (art. 34 Organic Law):

1. To submit an annual accounting of activities and status of the association's capital;
2. On request of the Government agencies, to report on the results of association activities.

On the basis of art. 42 of the Organic Law, associations and government agencies may form **Sector Councils of Association**, to foster their collaboration and to enhance the participation of citizens in matters of public interest. The mentioned Sector Councils of Association may act as organs of consultation, information and advice with relation to concrete fields.

3. Jurisdiction

According to the Organic Law and the Organic Law of the Judicial Authority¹³, civil courts have jurisdiction to deal with legal proceedings involving private association matters and their internal administration. Specifically, civil courts have jurisdiction in matters involving claims brought by associates against the association to dispute association actions on the grounds that they are contrary to law or the By-laws. For so doing, the legal proceedings must be commenced within 40 days of the date the actions were adopted.

Spanish courts have the authority to order the introduction in the appropriate Registries, of specific resolutions made respecting associations, such as:

1. The registration of the association;
2. The suspension or dissolution of a registered association;

¹³ Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, available at http://noticias.juridicas.com/base_datos/Admin/lo6-1985.html (08.08.18).

3. The modification of any provision of the by-laws;
4. The closure of any of any establishment or facility of an association; and
5. Any other resolution affecting the registration of the association.

4. Taxation

Non-lucrative associations are obliged to report on their incomes, both, taxable and exempted from tax exceeding a certain yearly amount (**in 2016, this obligation concerned income exceeding 75.000 euros**)¹⁴.

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¹⁴ Ley 49/2002, de 23 de diciembre, de régimen fiscal de las entidades sin fines lucrativos y de los incentivos fiscales al mecenazgo, available at http://noticias.juridicas.com/base_datos/Fiscal/I49-2002.html (02.08.19); Law 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades.