

THE CONSTITUTION, ORGANIZATION AND OPERATION OF NON-PROFIT ORGANIZATIONS

DUMITRU FRANCA, MORARU MARIA

TIBISCUS UNIVERSITY OF TIMISOARA, DALIEI STR. NR.1A, TIMISOARA, ROMÂNIA
WEST UNIVERSITY OF TIMIȘOARA, J.H.PESTALOZZI STR.,NR.16,TIMIȘOARA,ROMÂNIA
fracadumitru@yahoo.com, mariamoraru2002@yahoo.com

Abstract:

Non-profit organizations are associations, foundations or federations which use their own assets and revenues in order to pursue activities of general, community or non-patrimonial purpose. According to these legal regulations, associations and foundations can be constituted by natural or legal persons with the purpose of undertaking such activities of general, community or non-patrimonial (non-profit) purpose. The organization and operation of non-profit organizations presents a series of particularities in the case of associations as opposed to foundations, but there are also common elements.

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JEL classification: *L30*

INTRODUCTION

An **association**¹ is a subject of law constituted by three or more persons who, on the basis of an agreement, pool together, without the right to a refund, financial, knowledge or in kind contributions in order to carry out activities of general, community or personal non-patrimonial purpose.

In order to obtain the status of legal person, associations sign an article of association and the statute of the association.

The article of association must include the following²:

- identification data of the association: name and place of abode or registered office;
- expressing the will of association and the intended purpose;
- name of association;
- registered office of the association;
- the duration of the association – fixed-term, with the term being clearly stated, or non-fixed-term;
- initial patrimony of the association; the active patrimony, worth at least double the minimum gross salary per economy, at the time when the association is constituted, consists of contributions in kind and/or cash of the associates;
- the nominal composition of the first governing, administration and oversight bodies of the association;

¹ Ordin nr. 1969/2007 din 09/11/2007, privind aprobarea reglementărilor contabile pentru persoanele juridice fără scop patrimonial, *Publicat in Monitorul Oficial, Partea I nr. 846 din 10/12/2007*

² Crăciu Sabău, Franca Stancu, “*Teorie și practică în contabilitatea persoanelor juridice fără scop patrimonial*”, Editura Eurostampa, 2009

- the person or persons authorised to carry out the procedure of obtaining the legal person status;
- the signatures of the associates;

RESEARCH METHODOLOGY

The Statute includes, in addition to the article of association, the following elements³:

- details regarding the purpose and objectives of the association;
- the means of obtaining and losing the status of associate;
- the rights and obligations of associates;
- the categories of the association's patrimonial resources;
- the duties of the governing, administration and oversight bodies of the association;

The association⁴ becomes a legal entity by being incorporated into the Register of Associations and Foundations. In order for this to happen one of the associates (authorised by his mandate) submits an application for registration which will be accompanied by the following documents: the article of association, the statute of the association, documents in support of the registered office and initial patrimony.

The association can set up branches, as territorial structures, with a minimum of 3 members, own governing bodies and a separate patrimony from that of the association.

The *branches* are entities with legal persona and can, in their own name, perform legal acts of management and conservation, within the framework set out in the article of association of the branch. The branch is set up through the decision of the general assembly of the association. The legal entity status is obtained at the time of the incorporation of the branch into the Register of Associations and Foundations.

A foundation is a subject of law constituted by one or more persons who, based on a legal act between living or for the cause of death, establish a patrimony which is reserved permanently and irrevocably for a general or community purpose.

The initial patrimonial act of the foundation must include assets in kind or cash which must total at least one hundred times the value of the minimum gross salary per economy, at the time when the foundation is constituted. Exceptions from this requirement are those foundations whose sole purpose is raising funds for other associations or foundations. In the case of these foundations the initial patrimony must only total 20 times the minimum gross salary per economy.

In order to obtain the status of legal person, the founder or founders must sign an article of association and the statute of the foundation. The content of these documents is the same as in the case of the establishment of an association. The legal person status is obtained after the incorporation into the Register of Associations and Foundations. The application for registration must be accompanied by the article of association, the statute of the foundation and documents which are evidence of the registered office of the foundation and initial patrimony.

After the incorporation of the foundation into the Register of Associations and Foundations, the founders or their beneficiaries cannot revoke the article of association. In addition, after incorporation, the article of association cannot be attacked by the personal creditors of the founders.

³ Virginia Greceanu-Cocoş, Constantin Pătruţa – „*Contabilitatea comparată, comentată, aliniată, simplificată și actualizată la persoanele juridice fără scop patrimonial*”, Editura Pro Universitaria, București 2008

The foundation can set up branches, as territorial structures, through the decision of the board of directors, who allocate each branch a patrimony. The branches have to be run by own boards of directors, made up of at least 3 members.

The organization and operation of associations.

The governing bodies of the association are: the general assembly, the board of directors and the auditor or, where appropriate, internal audit committee.

The general assembly is the governing body constituted by all the associates and has the following competencies:

- establishing the general strategy and objectives of the association;
- approving the income and expenditure budget and the balance sheet;
- electing and recalling members of the board of directors;
- electing and recalling the auditor or, where appropriate, members of the internal audit committee;
- setting up branches;
- making modifications to the article of association and the statute;
- dissolution and liquidation of the association and the destination of assets remaining after liquidation;
- other competencies defined through law or the statute;

The general assembly meets at least once a year and has permanent control over the board of directors and the auditor or, where appropriate, the internal audit committee.

The decisions of the general assembly, within the limit of the law, the article of association and/or the statute respectively, are binding even for the associates who were not present at the general assembly or voted against the decision.

The board of directors ensures the enforcement of the decisions made by the general assembly and is therefore an executive body. As many as a quarter of its members can be people from outside the association.

The general rules regarding the organization and running of the board of directors are established through the statute. The board of directors can also have internal rules of procedure.

In order to carry out its tasks, the board of directors has the following competencies⁵:

- a) present a report on its activity in the previous period, the execution of the income and expenditure budget, the balance sheet, the project for the income and expenditure budget and a project for the association's programmes to the general assembly;
- b) enter into legal acts in the name of the association;
- c) approve the organizational and personnel policy of the association, if not otherwise provided by statute;
- d) perform any other duties outlined in the statute or provided by the general assembly;

Members of the board of directors can not have any other positions of leaderships in a public institution if the association has the purpose of supporting the activity of said public institution.

The auditor or internal audit committee is the body that provides internal financial control of the association. For associations with more than 100 members enrolled before the last general assembly meeting, internal financial control is exercised

⁵ Virginia Greceanu-Cocoș, Constantin Pătruța – „Contabilitatea comparată, comentată, aliniată, simplificată și actualizată la persoanele juridice fără scop patrimonial”, Editura Pro Universitaria, București 2008

by an internal audit committee, of which at least one member shall be an authorised auditor or accountant. It is composed of an odd number of members, most of which are associates. Board members can not be auditors.

The general rules for the organization and functioning of the audit committee are approved by the general assembly. The audit committee can also have internal rules of procedure.

In order to exercise its duties, the auditor (internal audit committee) has the following competencies:

- monitor the administration of the patrimony belonging to the association;
- prepare reports and submit them to the general assembly;
- can participate in the board of director meeting without voting;
- perform such other duties stipulated in statute or established by the general assembly.

Common elements in the organization and running of associations and foundations

Two or more associations or foundations can organize in a federation. Federations obtain their own legal persona and function within the limits set out by law for associations with non-patrimonial purpose.

A federation becomes a legal person when it is incorporated into the Register of Federations. The associations or foundations which make up the federation keep their own legal persona and own patrimony. In the case of dissolution of the federation, if the statute does not state otherwise, the goods remaining are divided equally between the legal persons who make up the federation.

Associations and foundations can be declared by the Romanian Government as being of public utility in the following circumstances⁶:

- a) their activity is of general or community purpose;
- b) have been running for at least 3 years and have carried out at least part of their objectives;
- c) present a report which shows previous significant activity through the running of programmes or projects specific to their purpose along with balance sheets and revenue and expenditure budgets from the previous 3 years;
- d) the value of the active annual patrimony is equal to at least the value of the initial patrimony.

The recognition of having public utility gives the association or foundation the following rights:

- a) to lease public services with non-commercial character, according to the law;
- b) preferential access to resources from the national and local budgets;
- c) to mention that the association or foundation is of public interest in all documents it drafts.

At the same time, the recognition of an association or foundation as being of public interest creates the following obligations⁷:

- a) to maintain at least the level of activity and performance that led to the recognition;
- b) to notify the competent administrative authority of any changes to the article of association or statute, as well as activity reports and annual balance

⁶ Ordin nr. 1969/2007 din 09/11/2007, privind aprobarea reglementărilor contabile pentru persoanele juridice fără scop patrimonial, *Publicat in Monitorul Oficial, Partea I nr. 846 din 10/12/2007*

⁷ Ordin nr. 1969/2007 din 09/11/2007, privind aprobarea reglementărilor contabile pentru persoanele juridice fără scop patrimonial, *Publicat in Monitorul Oficial, Partea I nr. 846 din 10/12/2007.*

sheets, the administrative authority being responsible of making these documents available to any interested party;

- c) to publish excerpts of activity reports and annual balance sheets in the Official Journal of Romania part IV as well as in the National register of legal persons without patrimonial purpose.

Recognition of public utility is of unlimited duration. If the association or foundation no longer meets one or more of the conditions which led to the recognition of public utility, the Government, at the proposal of the competent administrative authority or the Ministry of Justice, will withdraw the act of recognition.

Revenue of associations or federations originates from the following sources: membership fees, interest and dividends arising from the investment of amounts available under law, dividends from companies set up by the associations or federations, income from direct economic activities, donations, sponsorships or related, resources obtained from the state budget and / or local budgets, other revenues provided by law. Foundations revenues do not include their membership fees.

Associations and foundations may establish companies. Dividends from the activities of such companies, if not reinvested in the same company, must be used to achieve the purpose of the association or foundation.

Dissolution of associations and federations can be achieved in the following ways: de jure; by court decision or, if necessary, by decision of the general assembly.

Foundations are dissolved by the following forms: de jure and by court order.

CONCLUSION

In the case of dissolution of associations or foundations, assets remaining after liquidation can not be transmitted to individuals. These goods may be transmitted to private legal persons or public legal persons with similar purposes through a procedure established in the statute of the association or foundation.

For records of legal persons without patrimonial purpose the National register of legal persons without patrimonial purpose - associations, foundations and federations was set up. This register is kept by the Ministry of Justice through its specialized directorate and is public. The Ministry of Justice is obliged to issue at the expense of the person requesting certified copies of records made in the National Register and on written evidence.

BIBLIOGRAPHY

1. Crăciu Sabău, Franca Stancu, *“Teorie și practică în contabilitatea persoanelor juridice fără scop patrimonial”*, Editura Eurostampa, 2009;
2. Virginia Greceanu-Cocoș, Constantin Pătruța – *„Contabilitatea comparată, comentată, aliniată, simplificată și actualizată la persoanele juridice fără scop patrimonial”*, Editura Pro Universitaria, București 2008;
3. Virginia Greceanu-Cocoș, Constantin Pătruța - *„Contabilitatea in partida simpla comparata : Actualizata si comentata”* Pro Universitaria, Bucuresti, 1011;
4. Ordin nr. 1969/2007 din 09/11/2007, privind aprobarea reglementărilor contabile pentru persoanele juridice fără scop patrimonial, *Publicat in Monitorul Oficial, Partea I nr. 846 din 10/12/2007.*
5. Ordin nr. 2869/2010 din 23 Decembrie 2010 pentru modificarea si completarea unor reglementari contabile.