

30/06/2023

New law on non-profit associations and foundations (the "New NPA Law")

On 28 June 2023 the Luxembourg Parliament has adopted a new law regarding non-profit associations and foundations (Bill 6054).

Non-profit associations and foundations were previously governed by the law of 21 April 1928 on non-profit associations and foundations.

This New NPA Law overhauls the law on associations and foundations in order to fill the gaps in the 1928 law and simplify the existing provisions.

Two main objectives are pursued by the New NPA Law :

- > to simplify and modernize the legal framework for non-profit organizations and foundations;
- > to create greater accounting transparency to ensure better control.

The main changes introduced by the New NPA Law are as follows:

1. **Possession of real estate** not required for the association's or foundation's purpose is now authorized. Under current legislation, associations and foundations were obliged to sell bequeathed real estate after six months, if it was not used directly to achieve their corporate purpose. As this obligation is now abolished, they can continue to own this real estate and gain added value from them which will be used to finance the achievement of the social purpose of the association or foundation.
2. **Abolition for the associations of the obligation to file an annual list of members** with the Luxembourg Trade and Companies Register ("RCS"). This obligation is now replaced by the establishment of a register of members kept by the board of directors at the association's registered office. This new requirement allows to provide evidence of membership of the association. The register may be kept electronically.
3. **The procedure of homologation** by the district court of amendments to the articles of association or of the voluntary dissolution of the association is also abolished.
4. **The process for authorizing foundations and applying for charitable status** becomes more transparent. The aim is to be clearer in authorization procedures and to speed up the processing of applications. Thus, the New NPA Law adds the requirement for a prior opinion from the Minister of Finance, as this has already been an administrative practice. Indeed, the Ministry of Justice systematically requests the opinion of the Minister of Finance in order to ensure that associations and foundations meet the criteria of public utility in order to benefit from a privileged tax status. The New NPA Law also specifies the documents that must accompany the application.
5. **The initial endowment of foundations** is set at 100,000 euros, with the possibility of consuming the assets without the net assets falling below 50,000 euros. It should be noted that the initial bill provided for a minimum endowment of 250,000 euros, but that this amount has been adapted to the economic reality to give the foundations greater flexibility. Pre-existing foundations are not required to have an initial endowment of at least 100,000 euros.
6. **Governance rules are made more flexible**, such as:
 - > introduction of a legal framework for organizing day-to-day management (the day-to-day management delegates may be natural or legal persons, and may be directors or not);
 - > possibility of holding remote board meetings (videoconferences and written resolutions) or general meetings (videoconferences);
 - > possibility, for associations, of sending the convening notice for general meetings of members by post or electronically;
 - > possibility of keeping an association's register of members in electronic form.

7. New tools for restructuring non-profit associations and foundations through transformation or merger

At present, (i) the association or foundation intending to change its legal form is obliged to dissolve itself and create a new legal personality, (ii) the transfer of all assets and liabilities of the absorbed association(s)/foundation(s) to the absorbing or newly-formed association/foundation, as in the case of a merger, is not possible (no dissolution without liquidation possible).

Two new possibilities are created by the New NPA Law: **transformation and merger**. These new restructuring tools will enable the association/foundation to maintain its legal personality in the event of transformation, and to transfer its assets and liabilities to the new association/foundation or the absorbing association/foundation, as the case may be, in the event of merger.

8. Tailor-made accounting systems

Associations are categorized according to their size, with simplified accounting in particular for small associations. Only large associations, associations recognised as being of public utility and foundations are obliged to submit their accounting documents to an approved auditor.

9. A procedure for administrative dissolution without liquidation has been introduced

to provide the RCS with the up-to-date data required to comply with FATF recommendations. The New NPA Law sets two cumulative objective criteria for triggering this procedure:

- i. the failure to update data within six months (from the date the request is sent by the management of the RCS), and
- ii. the absence of any filing with the RCS for at least five years.

If no response is received within the deadline set by the new NPA Law, the procedure for administrative dissolution without liquidation is initiated. It should be noted that the administrative dissolution procedure provided for by the law of 28 October 2022 establishing the procedure for administrative dissolution without liquidation applies only to commercial companies and not to non-profit associations.

10. Introduction of a check on directors' good repute as part of an application for recognition of an ASBL's charitable status.

The "fit and proper" check ensures that directors are trustworthy individuals who are competent to fulfil their role and who do not present any risks for the association. This helps to protect the organization's interests and prevent the risk of abuse or malfeasance. The same procedure is introduced for foundation board members.

11. Transitory provisions

Existing associations and foundations benefit from a period of 24 months as from the entry into force of the New NPA Law to bring their statutes into line with the new provisions. In the meantime, they remain governed by the previously existing legal provisions.

EXPERTISE

CORPORATE, M&A

KEY CONTACT

Jean-Paul SPANG Senior Partner

Pierre-Alexandre DEGEHET Partner

Delphine TEMPE Partner

Jerôme BUREL Partner

Renata JOKUBAUSKAITE Partner

