Non-profit organisations and fondations in Luxembourg

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Legal text: law of 21 April 1928, such as amended, on non profit organisations and foundations

Draft law n° 6054

Governmental discussions about a law referring to private foundations = wealth management tool ≠ philanthropic purpose
Non-profit organisation (« NPO »)

- Definition: a group of natural or legal persons which is aiming to a disinterested goal
- Advantage: NPO will have a separate legal personality – separation between the assets and liabilities of the NPO and those of the members
- Activity: prohibition to carry out any industrial or commercial operation, no intention to procure any material profit to its members
Non-profit organisation (« NPO »)

- Incorporation: informal procedure – notarial deed or a private agreement
- Publication of the articles of incorporation in the Memorial C and deposit of a list with the names of the members with the Company and Trade Register
- Corporate governance: classical scheme: general meetings of the members – board of directors – committees etc. …
- No governmental supervision
Foundation

- A motherless structure without any members / shareholders: « endowment » of assets allocated to a determined non-profit goal of general interest
- Purpose: foundation is aiming at the realisation of a philanthropic, social, religious, scientific, artistic, pedagogic, sport or touristic-oriented goal (exclusion of any material profit purposes)
- No minimal capital requirement BUT: foundation must mainly be funded by incomes of capital which has been affected to the creation of the foundation or received since its incorporation
- Advantages:
  - separate legal entity
  - gifts to the foundation are tax deductible under certain conditions
Foundation

- Governmental supervision:
  - Creation of the foundation needs to be approved by Grand-Ducal Decree
  - Life of the foundation is monitored by Ministry of Justice (donation, accounts, budget, etc. …)

- Corporate governance: mainly board of directors
Tax situation of the NPO / foundation

- Tax exemption because no commercial / industrial activity: no corporate income tax

- If commercial or industrial activity: 20% to 21% corporate income tax on the transaction
Tax situation of a donator

- Gift in cash is tax deductible if made for the benefit of a foundation or a NPO which has been recognized by the Ministry of Justice of being of public interest

- Maximum amount double limit: 20% of the total net income of the donator or 1.000.000€

- Minimum amount: 120€

- Gift in kind: special procedure
Guidelines of good conduct for entities which are having recourse to the generosity of the public

- Guidelines of good conduct for entities which are having recourse to the generosity of the public
  (don de confiance Luxembourg asbl)

- Members: any NPO or foundation incorporated in compliance with the law of 21 April 1928 and which is aiming to humanitarian social or environmental purposes and which is listed as an entity allowed to receive tax deductible donations for its donators

- Members commit to respect the guidelines of good conduct

- Goal: public and reliable reporting of the actions of the members
<table>
<thead>
<tr>
<th>Incorporation</th>
<th>NPO</th>
<th>NPO recognized to be of public utility</th>
<th>Foundations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Private agreement or no notarial deed</td>
<td>- Private agreement or notarial deed</td>
<td>- Notarial deed or will</td>
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<td>- Approval of articles of incorporation by grand-ducal decree</td>
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<td>- Supervision of the Minister of Justice concerning the proper allocation of the foundation's assets in accordance with its purpose</td>
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<td>Purpose</td>
<td>- Any activity other than industrial and commercial activities</td>
<td>- Pursuit of an aim of general interest: philanthropic, religious, artistic, pedagogical, social, sporting, or for tourism</td>
<td>- Achievement of an philanthropic, religious, artistic, pedagogical, social, sporting, or tourist charitable organization</td>
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<td>- Prohibition to hold real estate, except those required to achieve NPO’s purpose</td>
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<td>- No material gains for the NPO’s members</td>
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| **Lifetime** | - Members’ subscription  
- Board of directors  
- Obligation to hold general meetings | - Members’ subscription  
- Board of directors  
- Obligation to hold general meetings | - No subscriptions  
- Board of directors  
- No members, no shareholders and therefore no general meetings |
| **Donations’ tax system** | Non-deductibility of donations, neither in cash, nor in kind | - Deductibility of cash donations  
- Deductibility of kind donations when made through the “fonds culturel national” or through the “fonds national de soutien à la production audiovisuelle” | - Deductibility of cash donations  
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| **Liquidation – Winding up** | - Voluntary liquidation by decision of the general meeting  
- Possibility to request a judiciary liquidation | - Voluntary liquidation by decision of the general meeting  
- Possibility to request a judiciary liquidation | - Voluntary liquidation not possible  
- Judiciary liquidation only in case of incapacity for the foundation to pursue its purpose |
Thank you!
Contact us

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